

 Southwestern Bell Telephone

AGREEMENT FOR ENGINEERING, INSTALLATION AND MAINTENANCE SERVICES

Between

Southwestern Bell Telephone Company  
A Missouri Corporation  
One Bell Center  
St. Louis, Missouri 63101

("Contractor")

and

Southwestern Bell Communications Services, Inc.  
A Delaware Corporation  
130 E. Travis  
San Antonio, Texas 78205

("SBC")

Table of Contents

CLAUSE 1. SERVICE ORDERS.....	2	CLAUSE 17. PAYMENT OF TAXES.....	5
CLAUSE 2. AGREEMENT GOVERNS.....	3	CLAUSE 18. INDEMNIFICATION.....	3
CLAUSE 3. CONFLICT OF INTEREST.....	3	CLAUSE 19. LABOR AND MATERIAL.....	5
CLAUSE 4. RISK OF LOSS.....	3	CLAUSE 20. SEVERABILITY.....	5
CLAUSE 5. CONTRACTOR WARRANTIES.....	3	CLAUSE 21. NON-WAIVER.....	6
CLAUSE 6. SUBCONTRACTORS.....	4	CLAUSE 22. SURVIVAL.....	6
CLAUSE 7. COMPLIANCE.....	4	CLAUSE 23. CUMULATIVE RIGHTS AND	
CLAUSE 8. HARMONY.....	4	REMEDIES.....	6
CLAUSE 9. PAYMENT TO CONTRACTOR.....	4	CLAUSE 24. MODIFICATION IN WRITING.....	6
CLAUSE 10. BREACH OF AGREEMENT.....	4	CLAUSE 25. CHOICE OF LAW.....	6
CLAUSE 11. TERMINATION.....	4	CLAUSE 26. APPLIES TO EMPLOYEES.....	6
CLAUSE 12. FORCE MAJEURE.....	4	CLAUSE 27. ASSIGNMENTS.....	6
CLAUSE 13. USE OF INFORMATION.....	5	CLAUSE 28. NOTICES.....	7
CLAUSE 14. CONTRACTOR NOT AN EMPLOYEE,		CLAUSE 29. LIMITATION OF LIABILITY.....	7
PARTNER, VENTURER OR SERVICE OF SBC.....	5	CLAUSE 30. MODIFICATION TO CONFORM TO LAW...7	
CLAUSE 15. INSURANCE.....	5	CLAUSE 31. ENTIRE AGREEMENT.....	7
CLAUSE 16. ADVERTISING AND PUBLICITY.....	5		

- APPENDIX A - FORM OF SCOPE OF WORK LETTER
- APPENDIX B - FORM OF SERVICE ORDER
- APPENDIX C - PRICE SCHEDULE
- APPENDIX D - NON-DISCRIMINATION COMPLIANCE AGREEMENT

**RESTRICTED - PROPRIETARY INFORMATION**

The information contained herein is for use by authorized employees of the parties hereto only and is not for general distribution within or outside their respective companies.

Agreement No. SC95014100

Page 2 of 8

**AGREEMENT FOR ENGINEERING, INSTALLATION AND MAINTENANCE SERVICES**

THIS MASTER ENGINEERING, INSTALLATION AND MAINTENANCE AGREEMENT (the "Agreement") is entered into July \_\_, 1995, by and between Southwestern Bell Communications Services, Inc. ("SBC"), a Delaware corporation having its principal offices at 130 E. Travis, San Antonio, Texas 78205, and Southwestern Bell Telephone Company ("Contractor"), a Missouri corporation having its principal offices at One Bell Center, St. Louis, Missouri 63101.

**INTRODUCTION**

WHEREAS, Contractor has the capability of installing and/or maintaining and/or engineering Building Distribution Systems/Local Area Networks (BDS/LANs) for end users (Customer[s]) and Contractor has represented to SBC that it is skilled, experienced and knowledgeable in such business; and

WHEREAS, Contractor has offered to install and/or maintain and/or engineer for SBC ("Services") such BDS/LANs as may from time to time hereafter be designated by SBC in an "Order" (as that term is hereinafter defined); and

WHEREAS, SBC wishes to have the right to obtain and utilize Contractor's installation, maintenance and engineering services, while still being at all times free to enter into similar master agreements with other contractors; and

WHEREAS, the parties hereto have agreed that in the event SBC and Contractor enter into one or more Service Orders there should be a master agreement in place setting forth their respective rights and obligations relative thereto.

NOW, THEREFORE, in consideration of the premises and the mutual promises and covenants set forth below, and for such other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

**CLAUSE 1. SERVICE ORDERS**

Whenever SBC shall desire Contractor to perform BDS/LANs installation services, maintenance services or engineering services for SBC, SBC shall prepare a Scope of Work Letter ("Scope Letter") substantially in the form and substance of Appendix A attached hereto and incorporated by reference herein. Each Scope Letter shall set forth the Scope of Work, Services required, and/or Material ("Material") required (together "Project").

Contractor will submit to SBC within ten (10) days of the receipt of the Scope Letter, a signed Service ("Order") substantially in the form and substance of Appendix B, attached hereto and incorporated by reference herein, offering to perform the work within ten (10) days of the receipt of the Scope Letter will be deemed a rejection of the Scope Letter. If the terms set forth on the Order are acceptable to SBC, then SBC shall execute the Order and return the executed Order to the Contractor. Each Project will be completed pursuant to the terms of the executed Order and the terms and conditions of this Agreement. Following the receipt of the executed Order, Contractor shall begin performing the Services described therein. SBC agrees to pay for the Services in accordance with the rates specified in the applicable Order.

Contractor agrees to furnish the Services described in each Order at the price agreed to in the Order. Contractor agrees to furnish the Material described in each Order. The Services specified in a particular Order, together with the location(s) at which the Services are to be performed, are collectively referred to, in connection with such Order, as the "Project". Each Project shall be completed within the time specified in the applicable Order, times being of the essence in each case, and in accordance with and subject to the terms and provisions of this Agreement and such Order.

**RESTRICTED - PROPRIETARY INFORMATION**

The information contained herein is for use by authorized employees of the parties hereto only and is not for general distribution within or outside their respective companies.

Agreement No. SC95014100  
Page 3 of 8

#### **CLAUSE 2. AGREEMENT GOVERNS**

The Order shall describe/initiate Contractor's performance hereunder and shall be deemed to incorporate the terms of this agreement. In the event of any inconsistency or conflict between the terms of any Order or any attachments-(s) thereto and this Agreement, this Agreement shall govern unless the Order expressly notes the inconsistency or conflict and expressly states that the Order shall govern. Contractor shall have the right to accept or reject any term in an Order which conflicts with this Agreement.

#### **CLAUSE 3. CONFLICT OF INTEREST**

Both parties hereby represent and warrant that no officer, employee, or agent of the other party has been or will be employed, retained, paid a fee, or otherwise has received, or will receive, any personal compensation, "kickback" or any other consideration, whether directly or indirectly, in connection with, or in contemplation of, this Agreement or any Order.

#### **CLAUSE 4. RISK OF LOSS**

Contractor agrees to protect any Material furnished in connection with a Project and bear the risk of loss or damage thereto upon acceptance of delivery until Services are completed and accepted by SBC according to the applicable Order and in accordance with Clause 5. CONTRACTOR'S WARRANTIES. The foregoing, notwithstanding, Contractor will not be liable for any damages caused by SBC or SBC's customer or for defects in any material furnished by SBC.

#### **CLAUSE 5. CONTRACTOR'S WARRANTIES**

Unless otherwise specified in a Scope Letter and corresponding execute Order, Contractor warrants: (a) for a period of thirty (30) days following the completion of the Project that Services provided will have been performed in a workman-like manner; and (b) any Material provided will be free from defects for a period of ninety (90) days following the completion of the Project.

Contractor's sole duty and SBC exclusive remedy for Contractor's breach of either of the foregoing warranties will be limited to the correction of the un-workmanlike installation and/or repair or replacement of the defective Material.

If SBC requests repairs during the warranty period and Contractor responds to such requests and determines that the problem(s) is not covered by the above warranties, Contractor will invoice and SBC shall pay Contractor a minimum two (2)-hour service charge for making a service call or the actual time expended, whichever is greater.

This warranty does not include the following services but such services may upon SBC's request and at the Contractor's option be provided. If such services are provided they shall be provided at Contractor's standard service rate:

- (a) Repair of damage due to SBC's customer's failure to provide adequate electrical power or environmental conditions.
- (b) Repair of damages caused by misuse or neglect.
- (c) Repair of damages caused by SBC's customer's existing wiring or damage to the existing wiring.
- (d) Repair of damage caused by accident and/or disaster, including, but not limited to fire, flood, wind, or water.
- (e) Repair of damage caused by the attachment of mechanical, electrical, or electronic equipment or devices to the cabling that are not supplied by SBC.
- (f) Repairs which are impractical for customer to render because of alterations in, or attachments to the cabling.

Warranty service provided under this Agreement does not assure uninterrupted operation of the cabling or customer's service.

The foregoing states SBC's sole and exclusive remedy hereunder:

**OTHER THAN AS SET FORTH IN THIS CLAUSE, CONTRACTOR MAKES NO WARRANTIES, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO ANY WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE OF MERCHANTABILITY, WITH RESPECT TO THE MATERIAL AND/OR SERVICES PROVIDED HEREUNDER.**

**RESTRICTED - PROPRIETARY INFORMATION**

The information contained herein is for use by authorized employees of the parties herein only and is not for general distribution within or outside their respective companies.

Agreement No. SC95014100

Page 4 of 8

**CLAUSE 6. SUBCONTRACTORS**

Contractor will have the right to enter into any subcontract relating to the Services to be performed hereunder without obtaining SBC's prior consent, provided Contractor binds any subcontractor by contract to all the terms and conditions of this Agreement. Contractor will give SBC written notice of each subcontractor performing Services hereunder and will remain liable for such subcontractor's performance.

**CLAUSE 7. COMPLIANCE**

All Services shall be rendered in full compliance with applicable Federal, State, and Local statutes, laws, regulations, rules, ordinances, directives, orders, and code, including, but not by way of limitation, the Fair Labor Standards Act and the Occupational Safety and Health Act. Contractor shall be responsible for obtaining all permits and other governmental authorization necessary for Contractor to conduct business at the Project site(s) and to perform the Services in accordance with the Order(s). Expenses for such permits and other governmental authorizations will be added to the price of the Services.

**CLAUSE 8. HARMONY**

Contractor's shall cooperate, schedule and coordinate the performance of Services with the work of SBC and any other consultants or contractors retained by SBC.

**CLAUSE 9. PAYMENT TO CONTRACTOR**

SBC agrees to pay Contractor and Contractor agrees to bill SBC for Services performed hereunder in accordance with the Order. Contractor's request for final payment shall include details of the specific Services billed to SBC and bear the signature of the Contractor's duly authorized representative, certifying Contractor's completion of the Services. SBC reserves the right to verify that Contractor's performance is in accordance with the Order and the provisions of **CLAUSE 5. CONTRACTOR'S WARRANTIES**, prior to accepting Contractor's Services. Payment shall be made net thirty (30) days from the date of receipt of Contractor's invoice.

**CLAUSE 10. BREACH OF AGREEMENT**

In the event either party shall be in breach or default of any of the terms, conditions, or covenants of this Agreement, and said breach or default shall continue for a period of ten (10) days after the giving of written notice to the other party thereof, then in addition to all other rights and remedies at law or equity, either party shall have the right to cancel this Agreement.

**CLAUSE 11. TERMINATION**

Either party may terminate this Agreement in whole or in part by giving the other party at least thirty (30) days' prior written notice. Upon termination, SBC will pay Contractor all amounts due for Material and Services, hereunder by Contractor, up to and including the effective date of termination. Such payment will constitute a full and complete discharge of SBC's payment obligations hereunder.

**CLAUSE 12. FORCE MAJEURE**

Contractor will not be liable for any delay or failure to supply Material or perform Services hereunder due to circumstances beyond its reasonable control including, by way of illustration only and not limitation, labor strikes, natural catastrophes, civil disturbances, weather, material shortages, government regulations or other similar causes.

**RESTRICTED - PROPRIETARY INFORMATION**

The information contained herein is for use by authorized employees of the parties hereto only and is not for general distribution within or outside their respective companies.

Agreement No. SC95014100

Page 5 of 8

**CLAUSE 13. USE OF INFORMATION**

SBC agrees to keep confidential all information, drawings, specifications, or data (collectively, "Information"), including, but not limited to the technical drawings furnished by Contractor, to SBC in connection with the Material or Services provided hereunder and/or any Order. SBC will only provide such Information to those of its employees who need to know and will only use the Information to operate and repair the BDS/LAN. All copies of such Information in written, graphic, or other tangible form will be returned to Contractor upon request.

**CLAUSE 14. CONTRACTOR NOT AN EMPLOYEE, PARTNER, VENTURER OR SERVANT OF OPERATIONAL TECHNOLOGIES CORPORATION**

Neither Contractor nor its employees, agents or representatives are employees, servants, partners, or joint venturers of, or with SBC. Contractor is an independent contractor and shall at all times direct, control, and supervise all of its employees, agents, and representatives and their respective activities.

**CLAUSE 15. INSURANCE**

Contractor is self-insured and agrees to furnish to SBC, upon request, evidence of its financial capability to self-insure.

**CLAUSE 16. ADVERTISING AND PUBLICITY**

SBC agrees not to use in advertising or sales promotion, press releases, or other external publicity matters, any endorsement by Contractor or any of its employees without Contractor's prior written approval. SBC will submit for written approval, prior to publication, all publicity matters that mention or display Contractor's name and/or marks or contain language from which a connection to said name and/or marks may be inferred or implied.

**CLAUSE 17. PAYMENT OF TAXES**

In the event that SBC is liable under Federal Law for excise taxes, or under State or Local Law for sales taxes, collected by Contractor on the Services provided hereunder, Contractor shall bill such taxes as separate items, listing each tax jurisdiction involved. Contractor agrees on a request of SBC to furnish statements evidencing that taxes and assessments for which SBC is responsible hereunder have been paid.

**CLAUSE 18. INDEMNIFICATION**

Contractor agrees to indemnify, defend, and hold SBC harmless from and against any and all liability, loss, or damage arising out of any claim made on account of bodily injury, including death, or damage to tangible personal property to the extent such a claim arises out of Contractor's, or its employees', negligence. SBC agrees to indemnify, defend, and hold Contractor harmless from and against any and all liability, loss, or damage arising out of any claim made on account of bodily injury, including death, or damage to tangible personal property to the extent that such claim arises out of SBC's or its employees', negligence.

**CLAUSE 19. LABOR AND MATERIAL**

Contractor shall furnish all supervision, labor, tools, power, transportation, material, and supplies (collectively "Labor and Material") specified in the Order, except any items specifically listed in the Order as being furnished by SBC or others.

**CLAUSE 20. SEVERABILITY**

If any of the provisions of this Agreement or any Order shall be determined to be invalid, void or illegal, such invalidity, unenforceability or illegality shall in no way affect, impair or invalidate any other provision hereof, and the remaining provision hereof, and the remaining provisions hereof shall nevertheless remain in full force and effect.

**RESTRICTED - PROPRIETARY INFORMATION**

The information contained herein is for use by authorized employees of the parties to this agreement and is not to be disseminated to other employees of the parties.

Agreement No. SC95014100

Page 6 of 8

**CLAUSE 21. NON-WAIVER**

No waiver of any default hereunder shall be implied from any omission by either party to take any action on account of such default, if such default persist or is repeated, and no express waiver shall affect any default specified in the express waiver, and, then, only for the time and to the extent therein stated. One or more waivers of any breach of any covenant, terms or condition of this Agreement shall not be construed as a waiver of any subsequent breach of the same covenant, term, or condition. To be effective, any express waiver must be in writing.

**CLAUSE 22. SURVIVAL**

Any obligation arising during the term of this Agreement, under any clause or provision hereof, or under any Project, which, by its nature, may require the parties to take certain action or make any payment after the expiration, termination, or cancellation of this Agreement, or any Project, shall be deemed to survive such expiration, termination, or cancellation.

**CLAUSE 23. CUMULATIVE RIGHTS AND REMEDIES**

The various rights, options, elections, powers, and remedies contained in this Agreement shall be construed as cumulative and no one of them shall be exclusive of any others, or of any other legal or equitable remedy which either party might otherwise have in the event of a breach or default in the performance of the terms, conditions, covenants, and agreements set forth herein, and impair or waive its rights to any other right or remedy.

**CLAUSE 24. MODIFICATION IN WRITING**

All modifications and amendments to this Agreement shall be in writing and signed by authorized representatives of both the parties hereto..

**CLAUSE 25. CHOICE OF LAW**

This Agreement shall be governed by and construed in accordance to the Laws of the State of Missouri..

**CLAUSE 26. APPLIES TO EMPLOYEES**

The obligations, duties, restrictions, and prohibitions of this Agreement apply, not only to Contractor, but also to its agents, employees, representatives, suppliers, subcontractors, successors, and assigns.

**CLAUSE 27. ASSIGNMENTS**

Neither party shall assign, or otherwise assign, any of its rights or obligations under this Agreement without prior written consent of the other, which consent will not be unreasonably withheld provided, however, Contractor will have the right to assign this Agreement to any present or future affiliate, subsidiary or parent corporation of Contractor without securing the consent of SBC and may grant to assignee the same rights and privileges Contractor enjoys hereunder.

**RESTRICTED - PROPRIETARY INFORMATION**

The information contained herein is for use by authorized employees of the parties hereto only and is not for general distribution within or outside their respective companies.

Agreement No. SC95014100

Page 7 of 8

**CLAUSE 28. NOTICES**

Any notices or demands which under the terms of this Agreement or otherwise must, or may be given, or made by SBC or Contractor will be in writing and given or made by facsimile or similar communications, or by certified or by registered mail, return receipt requested, addressed to the respective parties as shown:

- (a) If to SBC: Southwestern Bell Communications, Inc.  
130 E. Travis  
San Antonio, Texas 78205  
Attn: Lowery S. Harper
- (b) If to Contractor: Southwestern Bell Telephone Company  
105 Auditorium Circle, Room 1121  
San Antonio, Texas 78299-2780  
Attn: Leticia D. Diaz

Such notice or demand will be deemed to have been given or made when sent, if sent by facsimile or similar communication, or when deposited, postage prepaid, in the U. S. Mail. The above addresses may be changed at any time giving thirty (30) days prior written notice as above provided

**CLAUSE 29. LIMITATION OF LIABILITY**

**CONTRACTOR WILL NOT BE LIABLE FOR ANY INCIDENTAL, CONSEQUENTIAL, SPECIAL, OR INDIRECT DAMAGE, WHETHER ARISING OUT OF BREACH OF WARRANT, BREACH OF CONTRACT, NEGLIGENCE, STRICT LIABILITY OR OTHERWISE, ATTRIBUTABLE TO, OR RESULTING FROM ITS PERFORMANCE HEREUNDER.** This limitation of liability will not be construed to limit the cost of repairing or replacing MATERIAL or correcting SERVICES performed in an un-workmanlike manner should Contractor be required to do so pursuant to **CLAUSE 5. CONTRACTOR'S WARRANTY.** In no event will Contractor's liability for damages caused by, or arising out of its failure to supply Material or perform Services in a proper and timely manner, exceed the amount paid by SBC to Contractor for such Materials and Services.

**CLAUSE 30. MODIFICATION TO CONFORM TO LAW**

This Agreement and all obligations hereunder will be subject to all applicable laws, court orders, rules, and regulations (collectively, "LAWS") including by way of illustration and not limitation, the Modification of Final Judgment, as amended, entered in United States vs. Western Electric Co., Inc. et al. C.A. No. 82-0192 (the "MFJ"), to the extent the MFJ applies. In the event this Agreement, or any of the provisions hereof, or the operations contemplated hereunder, are found to be inconsistent with, or contrary to any Laws, the latter will be deemed to control and, if commercially practicable, this Agreement will be regarded as modified accordingly and will continue to be in full force and effect, as so modified. If such modified Agreement is not commercially practicable, in the opinion of either party, then the parties agree to meet promptly and discuss any necessary amendments or modifications in order to comply with any Laws, then this Agreement may be terminated immediately by either party. In the event of such termination, SBC will pay Contractor all amounts due for Services provided hereunder by Contractor up to, and including, the effective date of termination.

**CLAUSE 31. ENTIRE AGREEMENT**

Estimates furnished will not constitute commitments. The terms contained herein constitute the entire agreement between SBC and Contractor and may not be modified except by a writing signed by both parties. Any terms proposed by SBC in SBC's proposal or acceptance of Contractor's offer, or that may appear in SBC's invoice or in any other communications, which may add to, vary from, or conflict with the terms herein, will be void. The provisions of this Agreement supersede all prior oral and written communications, agreements, and understandings of the parties in respect of the subject matter hereof.

**RESTRICTED - PROPRIETARY INFORMATION**

The information contained herein is for use by authorized employees of the parties herein only and is not for general distribution within or outside their respective companies.

Agreement No. SC95014100  
Page 8 of 8

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed in duplicate by their duly authorized representatives as of the date first set forth above.

Southwestern Bell Communications Services, Inc.  
("SBC")

By: Lawrence S. Harper

Title: VP - Operations

Date: 8/8/95

Southwestern Bell Telephone Company  
("Contractor")

By: Robert R. Velt

Title: Area Mgr - Bus Sales

Date: 7-27-95

**RESTRICTED - PROPRIETARY INFORMATION**

The information contained herein is for use by authorized employees of the parties herein only and is not for general distribution within or outside their respective companies.

Agreement No.95014100  
Appendix A  
Page 1 of 1

**SCOPE OF WORK LETTER**

**SBC** hereby submits the following descriptions and specifications of the Services and Material requirements to be provided in the completion of the following Project:

**DATE:** \_\_\_\_\_

**PROJECT NAME:** \_\_\_\_\_

**PROJECT LOCATION:** \_\_\_\_\_

**PROJECT DIRECTOR:** \_\_\_\_\_

**SCOPE OF SERVICES:**

**MATERIAL REQUIRED:**



SERVICE ORDER (Cont.)

B. MATERIAL AND PRICE LIST

	<u>QTY/UNIT</u>	<u>RATE</u>	<u>TOTAL</u>
MATERIAL			
SUBTOTAL			\$
SERVICES			\$
SUBTOTAL			\$
SALES TAX			\$
GRAND TOTAL			\$

IN WITNESS WHEREOF, this Order has been executed by authorized representatives of the parties hereto, in duplicate, as of the dates set forth below.

Accepted:

Southwestern Bell Communications Services, Inc.  
("SBC")

By: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Accepted:

Southwestern Bell Telephone Company  
("Contractor")

By: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Agreement No. SC95014100  
Appendix C  
Page 1 of 1

PRICE SCHEDULE

(To Be Provided)

Contract No. SC95014100

Appendix D

Page 1 of 2

**NONDISCRIMINATION COMPLIANCE AGREEMENT (SW-9368)**

Contractor recognizes its responsibility to comply with all federal and state laws governing performance of this contract including, but not limited to: Executive Order 11246, Executive Order 11625, Executive Order 12138, Section 503 of the Rehabilitation Act of 1973 as amended and the Vietnam Era Veteran's Readjustment Assistance Act of 1974.

**I. EQUAL EMPLOYMENT OPPORTUNITY DUTIES OF GOVERNMENT CONTRACTORS (APPLICABLE TO CONTRACTS AND SUBCONTRACTS EXCEEDING \$10,000)**

During the performance of this contract, the Contractor agrees as follows:

- (1) The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, or national origin. Such action shall include, but not be limited to the following: Employment, upgrading, demotion, or transfer, recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of this nondiscrimination clause.
- (2) The Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin.
- (3) The Contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided by the agency contracting officer, advising the labor union or workers' representative of the Contractor's commitments under section 202 of Executive Order 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- (4) The Contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.
- (5) The Contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the contracting agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
- (6) In the event of the Contractor's noncompliance with the nondiscrimination clauses of this contract or with any of such rules, regulations, or orders, this contract may be cancelled, terminated or suspended in whole or in part and the Contractor may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.
- (7) The Contractor will include the provisions of paragraphs (1) through (7) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The Contractor will take such action with respect to any subcontract or purchase order as may be directed by the Secretary of Labor as a means of enforcing such provisions including sanctions for noncompliance: Provided, however, that in the event the Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction, the Contractor may request the United States to enter into such litigation to protect the interests of the United States.

**II. CERTIFICATION OF NON-SEGREGATED FACILITIES (APPLICABLE TO CONTRACTS AND SUBCONTRACTS EXCEEDING \$10,000)**

The Contractor certifies that it does not and will not maintain any facilities it provides for its employees in a segregated manner, or permit its employees to perform their services at any location under its control where segregated facilities are maintained; and that it will obtain a similar certification, prior to the award of any nonexempt subcontract.

**III. EMPLOYER INFORMATION REPORT (APPLICABLE IF VALUE OF CONTRACT IS \$50,000 OR MORE AND CONTRACTOR HAS 50 OR MORE EMPLOYEES)**

Contractor agrees and certifies that it will file complete and accurate report (EEO-1) per the current instructions and file such other compliance reports as may be required under Executive Order 11246, as amended, and rules and regulations adopted thereunder.

**IV. WRITTEN AFFIRMATIVE ACTION PROGRAM (APPLICABLE IF VALUE OF CONTRACT IS \$50,000 OR MORE AND CONTRACTOR HAS 50 OR MORE EMPLOYEES)**

Contractor will develop an affirmative action compliance program for each of its establishments as required by 41 C.F.R. Part 60-1.40 and 60.2.

**V. CERTIFICATION OF COMPLIANCE WITH VETERAN RESPONSIBILITIES (APPLICABLE TO CONTRACTS AND SUBCONTRACTS OF \$10,000 OR MORE)**

In accordance with the Vietnam Veteran's Readjustment Assistance Act of 1974 and 41 C.F.R. Part 60-250, as amended, the parties incorporate by reference the "Affirmative Action For Disabled Veterans and Veterans of the Vietnam Era" clause and such other regulations and contract clauses required to be made part of government contracts and subcontracts.

**VI. EMPLOYMENT OF THE HANDICAPPED (APPLICABLE TO CONTRACTS AND SUBCONTRACTS OF \$2,500 OR MORE)**

In accordance with the Rehabilitation Act of 1973, as amended, Executive Order 11758 and 41 C.F.R., Part 60-741, the parties incorporate by reference the "Affirmative Action For Handicapped Workers" clause and all other regulations and contract clauses required to be made part of government contracts and subcontracts.

**VII. UTILIZATION OF SMALL BUSINESS CONCERNS AND SMALL DISADVANTAGED BUSINESS CONCERNS (APPLICABLE WHEN GOVERNMENT CONTRACT IS EXPECTED TO BE OVER \$500,000)**

(a) It is the policy of the United States that small business concerns and small business concerns owned and controlled by socially and economically disadvantaged individuals shall have the maximum practicable opportunity to participate in performing contracts let by any Federal agency.

(b) The Contractor hereby agrees to carry out this policy in the awarding of subcontracts to the fullest extent consistent with efficient contract performance. The Contractor further agrees to cooperate in any studies or surveys as may be conducted by the United States Small Business Administration or the awarding agency of the United States as may be necessary to determine the extent of the Contractor's compliance with this clause.

(c) As used in this contract, the term "small business concern" shall mean a small business as defined pursuant to section 3 of the Small Business Act and relevant regulations promulgated pursuant thereto. The term "small business concern owned and controlled by socially and economically disadvantaged individuals" shall mean a small business concern-

- (1) Which is at least 51 percent owned by one or more socially and economically disadvantaged individuals; or, in the case of any publicly owned business, at least 51 per centum of the stock of which is owned by one or more socially and economically disadvantaged individuals; and
- (2) Whose management and daily business operations are controlled by one or more of such individuals.

The Contractor shall presume that socially and economically disadvantaged individuals include Black Americans, Hispanic Americans, Native Americans, Asian-Pacific Americans, Asian-Indian Americans and other minorities, or any other individual found to be disadvantaged by the Administration pursuant to section 8(a) of the Small Business Act.

(d) Contractors acting in good faith may rely on written representations by their subcontractors regarding their status as either a small business concern or a small business concern owned and controlled by socially and economically disadvantaged individuals.

**VIII. SMALL BUSINESS AND SMALL DISADVANTAGED BUSINESS SUBCONTRACTING PLAN (IF SUBCONTRACT OF GOVERNMENT CONTRACT EXCEEDS \$500,000)**

Contractor will adopt a subcontracting plan similar to the plan agreed to by Southwestern Bell Telephone Company.

**IX. UTILIZATION OF WOMEN-OWNED SMALL BUSINESSES**

(a) "Women-owned small businesses," as used in this clause, means businesses that are at least 51 percent owned by women who are United States citizens and who also control and operate the business.

"Control," as used in this clause, means exercising the power to make policy decisions.

"Operate," as used in this clause, means being actively involved in the day-to-day management of the business.

(b) It is the policy of the United States that women-owned small businesses shall have the maximum practicable opportunity to participate in performing contracts awarded by any Federal agency.

(c) The Contractor agrees to use its best efforts to give women-owned small businesses the maximum practicable opportunity to participate in the subcontracts it awards to the fullest extent consistent with the efficient performance of its contract.

RESTRICTED-PROPRIETARY INFORMATION  
 The information on this document is intended for the use of employees of Pacific Bell and is not for general distribution within the company.

AGREEMENT No. SC9514100

SERVICE ORDER

<u>MATERIAL AND PRICE LIST</u>	<u>QTY</u>	<u>UNIT PRICE</u>	<u>TOTAL PRICE</u>
WIRE, LVL 3 4 PR PLENUM VOICE WHITE	13000	\$0.10	\$1,300.00
WIRE, LVL 5 4 PR PLENUM DATA GREEN	12000	\$0.24	\$2,880.00
JACKS, RJ45 VOICE LVL 3 IVORY	31	\$4.17	\$129.27
JACKS, RJ45 DATA LVL 5 ORANGE	62	\$6.78	\$420.36
JACKS, RJ 45 VOICE LVL 3 BLACK	31	\$4.17	\$129.27
FACEPLATES, QUAD IVORY	17	\$0.90	\$15.30
FACEPLATES, MODFURN, TRIPLEX, BLACK	31	\$1.67	\$51.77
CONNECTING BLOCKS, 110AW300	3	\$27.44	\$82.32
C-5 CABS PK OF 10	18	\$5.97	\$107.46
COAX CABLE, RG 59 PLENUM CATV	500	\$0.07	\$35.00
COAX COUPLERS, FEMALE	6	\$2.08	\$12.48
COAX, CONNECTORS, FEMALE	6	\$0.69	\$4.14
JACKS, WALL PHONE	1	\$12.58	\$12.58
ETHERNET, 10 BASET CARD, 24 PORT	1	\$2,572.92	\$2,572.92
CABLE, MALE AMP/BLANK, 30'	2	\$16.67	\$33.34
XCON CORDS, LVL5	30	\$3.32	\$99.60
ADAPTOR, MODFURN, FLEXMODE	31	\$1.39	\$43.09
SHIPPING AND HANDLING			\$341.68
INSTALLATION			\$3,126.08
SALES TAX			\$846.74
TOTAL			\$12,243.40

IN WITNESS WHEREOF, THIS ORDER HAS BEEN EXECUTED BY AUTHORIZED REPRESENTATIVES OF THE PARTIES HERETO, IN DUPLICATE, AS OF THE DATE SET FORTH BELOW.

ACCEPTED:

Southwestern Bell Communications Services, Inc.  
 (SBC)

By: [Signature]

Title: VP operations

Date: 8/8/95

ACCEPTED:

Southwestern Bell Telephone Company  
 ('Contractor')

By: [Signature]

Title: SE SYSTEMS ENGINEERING CONSULTANT

Date: 8/8/95

## MEMORANDUM OF UNDERSTANDING

This Memorandum of Understanding ('MOU') sets forth the understanding reached by the Southwestern Bell Communications Services (SBCS) and Southwestern Bell Telephone Company ("SWBT") regarding modifications to SWBT's billing systems for processing SBCS's billing records by SWBT.

### 1. General

1.1 SBCS intends to obtain billing and collections services from SWBT for PIC'd and Casual Call customers and SWBT intends to provide such services. The parties are not able to commence billing until implementation of modifications to SWBT's billing systems for processing of SBCS's billings and entry into a contract for same.

### 2. Developmental Costs

2.1 SBCS agrees to pay SWBT for the modifications to SWBT's billing systems, associated with SBCS's billing and collection service requests at established rates currently available in Schedule II of SWBT's July 1996 Agreement for the Provision of Billing and Collection Services.

2.2 If SBCS or SWBT finds there is a need for a change in the specifications or in any aspect of the billing service, such change will be addressed by the parties on an individual case basis. For the purpose of this MOU, a "SBCS Change" is defined as a new functionality or enhancement specifically required by SBCS. Any change suggested by SBCS, which SWBT reasonably determines may have general applicability to billing customers in addition to SBCS, will not be considered a SBCS change. SWBT agrees that such changes of general applicability will not impact the

HIGHLY CONFIDENTIAL - NO COPIES

price for SWBT's developmental, testing and installation activities hereunder.

**HIGHLY CONFIDENTIAL - NO COPIES**

3. Ownership Rights and Use Restrictions

- 3.1 The parties agree that, except as provided herein, any modifications to SWBT's billing systems will be the sole property of SWBT, and that the specifications constitute SWBT's Confidential Information.
- 3.2 SWBT acknowledges that such ownership interest does not extend to any SBCS Confidential Information. SWBT agrees not to disclose, license or use, for the benefit of any third party or for the purposes other than those contemplated by this MOU, any SBCS Confidential Information.
- 3.3 Notwithstanding the foregoing, Confidential Information of either party shall not be deemed confidential or proprietary and the recipient shall have no obligation to prevent disclosure of such Confidential Information if such Confidential Information:
- 3.3.1. is already known to the recipient without restriction as to its confidentiality;
  - 3.3.2 is or becomes publicly known through no wrongful act of the recipient;
  - 3.3.3 is received by the recipient from a third party without similar restriction and without breach of this MOU;
  - 3.3.4 is independently developed by the recipient without any use of or reference to the disclosing party's Confidential Information;
  - 3.3.5 is authorized for public disclosure by the disclosing party;
  - 3.3.6 is disclosed pursuant to a requirement imposed by a governmental agency or is otherwise required to be disclosed by operation of law except that prior to any

disclosure pursuant to this subsection, the party receiving the request for information shall notify the disclosing party and shall give that party an opportunity to participate in objecting to production of the confidential information or;

#### **4. Billing Agreement**

- 4.1 The Parties agree to use good faith efforts to negotiate and execute a Billing Agreement on or before April, 1997. Both Parties acknowledge that finalization of a Billing Agreement is dependent upon mutual agreement on all relevant terms and conditions.
- 4.2 SBCS may cancel this MOU or any individual test at any time by giving written notice to SWBT. SWBT shall be entitled to payment for its expenses incurred up to and including the date of notification of cancellation. In the event amounts paid by SBCS to SWBT pursuant to this MOU exceed SWBT's expenses incurred up to and including the date of notification of cancellation, SWBT shall refund such excess to SBCS.

#### **5. Force Majeure**

Notwithstanding the foregoing, neither party shall be held responsible for any delay or failure in performance of any part of this MOU to the extent that such delay or failure is caused by fire, flood, epidemic, explosion, war, terrorist acts, riots, insurrections, explosions, earthquakes, nuclear accidents, power blackouts, strike, embargo, government requirement, civil or military authorities, Act of God or by the public enemy, or other causes beyond their control. If any force majeure condition occurs, the party delayed or unable to perform shall give immediate written notice to the other party. During the pendency of the force majeure the duties of the parties

under this MOU shall be abated and shall resume without liability thereafter.

6. Limitation of Liability

6.1 In no event shall either Party be liable to the other for any indirect, special, incidental or consequential damages whether or not such Party has been advised of the possibility of such loss or damage.

7. Entire Agreement

7.1 This MOU constitutes the entire and exclusive statement of understanding between the parties and supersedes all prior and contemporaneous oral representations, understanding and negotiations between the parties, and with respect to the subject matter. This MOU may be modified only in writing, signed by both parties.

IN WITNESS WHEREOF, the parties have caused this Memorandum of Understanding to be executed by their duly authorized agents as of the date written below:

SOUTHWESTERN BELL TELEPHONE COMPANY

SOUTHWESTERN BELL COMMUNICATIONS SERVICES

BY: Sandy Kinney

BY: Van H. Taylor

SIGNATURE: Sandy Kinney

SIGNATURE: Van H. Taylor

TITLE: Vice President-Inter-Industry Marketing

TITLE: President & CEO

DATE: October , 1996

DATE: 9/19/96

**CENTRAL OFFICE LEASE AGREEMENT**

**BETWEEN**

**SOUTHWESTERN BELL TELEPHONE COMPANY**

**AND**

**SOUTHWESTERN BELL COMMUNICATIONS SERVICES, INC.**

**as "Tenant"**

**for**

**Kansas City McGee**

**TABLE OF ARTICLES**

ARTICLE I - PREMISES.....	3
ARTICLE II - EFFECTIVENESS.....	4
ARTICLE III - TERM.....	4
ARTICLE IV - PREMISES CHARGES.....	4
ARTICLE V - USE OF PREMISES.....	6
ARTICLE VI - STANDARDS.....	8
ARTICLE VII - RESPONSIBILITIES OF THE TENANT.....	8
ARTICLE VIII-QUIET ENJOYMENT.....	9
ARTICLE IX - ASSIGNMENT.....	9
ARTICLE X - CASUALTY LOSS.....	9
ARTICLE XI - RE-ENTRY.....	10
ARTICLE XII - LIMITATION OF LIABILITY.....	10
ARTICLE XIII - INDEMNIFICATION OF SWBT.....	10
ARTICLE XIV - SERVICES, UTILITIES, MAINTENANCE AND FACILITIES.....	11
ARTICLE XV - LIMITATION OF ACTIONS; DISPUTE RESOLUTION.....	11
ARTICLE XVI - SUCCESSORS BOUND.....	12
ARTICLE XVII - CONFLICT OF INTEREST.....	12
ARTICLE XVII- NON-EXCLUSIVE REMEDIES.....	12
ARTICLE XIX - NOTICES.....	12
ARTICLE XX - COMPLIANCE WITH LAWS.....	13
ARTICLE XXI - OSHA STATEMENT.....	13
ARTICLE XXII - INSURANCE.....	13
ARTICLE XXIII - SWBT'S RIGHT OF ACCESS.....	15
ARTICLE XXIV - MISCELLANEOUS.....	15

## CENTRAL OFFICE LEASE AGREEMENT

THIS CENTRAL OFFICE LEASE AGREEMENT ("Agreement") is made this 30th day of April, 1997 by and between SOUTHWESTERN BELL TELEPHONE COMPANY, a Missouri corporation ("SWBT"), and SOUTHWESTERN BELL COMMUNICATIONS SERVICES, INC. a Delaware corporation ("Tenant").

### WITNESSETH

WHEREAS, SWBT has space available in the Building (as defined herein) that it is willing to lease;

WHEREAS, the Tenant needs space for telecommunications equipment and has determined that the Building would be suitable.

NOW THEREFORE, in consideration of the mutual agreements and covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, SWBT and the Tenant (the "parties") agree as follows:

### ARTICLE I - PREMISES

1.1 Right to Use. Subject to this Agreement, SWBT grants to Tenant the right to use the premises described on Exhibit 1 Physical Collocation Application Form for Non-Standard Arrangements/Central Office Space Application Form ("Premises"), attached and incorporated herein, within real property at 1101 McGee the City of Kansas City, County of Jackson, State of Missouri.

1.2 Relocation. Notwithstanding Section 1.1, in the event that SWBT determines it necessary for the Premises to be moved within the building in which the Premises is located ("Building") or to another building of similar characteristics, the Tenant is required to do so. In such an event, the Tenant shall be responsible for the preparation of the new premises at the new location if such relocation arises from circumstances beyond the reasonable control of SWBT, including condemnation or government order or regulation that makes the continued occupancy of the Premises or Building unlawful or uneconomical in SWBT's sole judgment. Otherwise SWBT shall be responsible for any such preparation.

In the event that the Tenant requests that the Premises be moved within the Building or to another SWBT building, SWBT shall permit the Tenant to relocate the Premises, subject to the availability of space and associated requirements. The Tenant shall be responsible for all applicable charges associated with the move, including the reinstallation of its equipment and facilities and the preparation of the new Premises and the new building as applicable.

In either such event, the new premises shall be deemed the "Premises" and the new "Building" for purposes of the Agreement.

1.3 The Premises. SWBT agrees, at the Tenant's sole cost and expense as set forth herein, to prepare the Premises in accordance with working drawings and specifications entitled Physical Collocation Application Form/Central Office Space Application Form and dated 3/15/96 through 6/12/96, which documents, marked

Exhibit 1, are attached and incorporated herein. The preparation shall be arranged by SWBT in compliance with all applicable codes, ordinances, resolutions, regulations and laws. After the Tenant has made the initial payments required by Section 4.4, SWBT agrees to pursue diligently the preparation of the Premises for use by the Tenant.

#### ARTICLE II - EFFECTIVENESS

This agreement shall be effective upon receipt of SWBT of the initial payments specified in Section 4.4, whereupon SWBT shall begin preparing the Premises for the Tenant. Payment to SWBT of the remaining charges under that Section shall be due upon completion and prior to the Tenant being permitted access to the Premises for purposes other than inspection.

#### ARTICLE III - TERM

3.1 Commencement Date. This Agreement shall be a term of Five (5) years, beginning on the "Commencement Date." The term shall automatically renew unless either party gives written notice to the contrary at least ninety (90) days prior to the fifth anniversary of the commencement date. The "Commencement Date" shall be the first day upon which Tenant begins placing its equipment in the Premises.

3.2 Occupancy. Unless there are unusual circumstances, SWBT will notify the Tenant that the Premises is ready for occupancy within 154 days after receipt of the initial payments due under Sections 4.4. and 4.5. The Tenant must take possession of the premises within sixty (60) days after receipt of such notice. Possession is deemed to have been taken under this Agreement when Tenant begins to place any personal property in the Premises. If the Tenant fails to take possession within such period, this Agreement is terminated except that the Tenant shall be liable in an amount equal to the unpaid balance of the charges due hereunder.

#### ARTICLE IV - PREMISES CHARGES

4.1 Monthly Charges. Beginning on the Commencement Date, Tenant shall pay to SWBT a charge of nineteen thousand eight hundred thirty eight dollars eighty seven cents (\$19,838.87) per month for use of the Premises. The monthly charge may be increased upon thirty (30) days' notice by SWBT, but no more than once per calendar year. Should SWBT increase the monthly charge, Tenant may cancel Agreement upon thirty (30) days notice thereafter.

4.2 Billing. Billing shall occur on or about the 25th day of each month, with payment due thirty (30) days from the bill date. SWBT may change its billing date practices upon thirty (30) days notice to the Tenant.

4.3 Preparation Charge. The one-time charge for preparing the Premises for use by the Tenant is estimated to be nine hundred thirty nine thousand one hundred eighty four Dollars (\$939,184.00) ("Preparation Charge"), which consists of two components: (i) the charge associated with modifying the Building to make the Premises available ("Common Charge"), and (ii) the charge associated with preparing the Premises ("Premises Charge"). Of the Preparation Charge two hundred nineteen thousand Dollars (\$219,000.00) is the estimate for subcontractor charges ("Subcontractor Charges").

**4.4 Payment of Common Charges.** Prior to any obligation of SWBT to start any preparation of the Premises, the Tenant shall pay SWBT fifty percent (50%) of the Premises Charge and shall be due no later than ten (10) business days after the Agreement has been executed. The remainder of the Premises Charge is due upon completion and prior to occupancy by the Tenant.

**4.5 Payment of Common Charges.** (a) In addition and prior to any obligation on SWBT to start any preparation of the Building, the Tenant shall pay SWBT fifty percent (50%) of the Common Charge. The other fifty percent (50%) of the Common Charge is due upon completion and prior to occupancy by the Tenant.

(b) The first entity to which SWBT provides space in the Building, whether as a lease or as a physical collocation, shall be responsible for all costs incurred by SWBT associated with the preparation of the Building to provide initial space ("Initial Common Charge"). Thereafter the Initial Common Charge will be prorated and the prorated share refunded to the previous tenant(s)/physical collocater(s) as additional entities use space in the Building within (12) months of the first billing date of the initial monthly charge for the first entity in the Building, using the following schedule:

<u>Entity</u>	<u>Initial Common Charge</u>	<u>Refund</u>
1st	100%	NA
2nd	50%	50%
3rd	33 1/3%	16 2/3%
4th	25%	8 1/3%
5th and beyond	0%	0%

To the extent that such an entity uses a space other than such initial space, SWBT shall refund to the Tenant the portion of the Initial Common Charge applicable to such entity based on the relative use of such initial space in a manner consistent with the above methodology and other terms of this Agreement. The obligation for a refund is conditioned upon any law or regulation or governmental decision that may affect or foreclose such refund or SWBT's ability to perform the proration.

(c) No interest will be paid on refunds. Refunds shall be based on the Initial Common Charge actually paid by the first entity provided space in the Building.

(d) Notwithstanding the above, SWBT shall have no obligation to remit any amount that would result in SWBT being unable to retain the full amount of the Common Charge, irrespective of whether paid by the Tenant and/or any subsequent entity, or to remit any amount based upon charges not actually collected.

(e) Tenant shall have the right, through its representatives, to inspect and audit, during normal business hours, the records of SWBT related to the charges to Tenant hereunder, subject to reasonable notice and a reasonable non-disclosure agreement, if requested by SWBT.