

Item 21 Attachment

Applicant: Houston ISD
BEN: 141223

Attachment: 398831-FW-M-143
Application: 398831
FRN#'s: 1136548

Narrative description: Maintenance of 143 fiber sites within Houston Independent School District.

Quantity (# sites)	Product or Service Description	Unit Monthly Cost	Total Monthly Cost	Extended Pre-discount Cost	
				Recurring	Non-Recurring
143	Management Fee for Fiber Optic Lines	\$ 143.79	\$ 20,561.97	\$ 246,743.64	
			TOTAL:	\$ 246,743.64	

Item 21 Attachment

Applicant: Houston ISD
BEN: 141223

Attachment: 398831-FW-I-35
Application: 398831
FRN#'s: 1136899

Narrative description: Installation of fiber lines to thirty-five (35) sites within Houston Independent School District.

Quantity (# sites)	Product or Service Description	Unit Monthly Cost	Total Monthly Cost	Extended Pre-discount Cost	
				Recurring	Non-Recurring
35	Installation of Fiber Optic lines	\$ 4,148.75	\$ 49,785.00		\$ 580,825.00
			TOTAL:		\$ 580,825.00

Attachment 3
Program Integrity Assurance Reviews of 2002 471
Application 295389 and 2004 471 Application 398831



80 South Jefferson Road
Whippany, New Jersey 07981
Fax: 973-599-6512

Universal Service Administrative Company
Schools & Libraries Division

FAX TRANSMISSION COVER SHEET

To: Jill Duncan
Fax: 17138926749
Subject: Jill Duncan: Additional information needed for E-Rate app. #295389
From: PIA Team4
Date: September 26, 2002
Time: 1:58:24 PM

YOU SHOULD RECEIVE 2 PAGE(S), INCLUDING THIS COVER SHEET. IF YOU DO NOT RECEIVE ALL THE PAGES, PLEASE CALL THE CONTACT SPECIFIED BELOW.

Dear Ms. Duncan,

Thanks for providing all of the documentation we have requested so far. After seeing the contract related to FRN 812439 I will need to ask you for some further information:

Please send us a letter that explains why a leased WAN is the most cost-effective way of providing internet access to the schools that would be served.

In the letter dated July 3, 2002 from Phonoscope's David Caddle to Mr. Edwards of the Houston ISD the cost of installing the fiber for this project is said to be \$5.35M for the 7/02-6/03 period. In the same period, there will be a charge of \$184,620 for "necessary electronics". These figures differ from the amounts discussed in the contract. Can you explain this difference? Also can we get a detailed breakdown showing what is included and the costs?

The contract mentions a "Table A.1" which presumably shows the costs and describes how they will be amortized over three years. Could you provide this?

Privilege and Confidentiality Notice

The information in this telecopy is intended for the named recipients only. It may contain information that is privileged, confidential or otherwise protected from disclosure. If you are not the intended recipient, you are hereby notified that any disclosure, copying, distribution, or the taking of any action in reliance on the contents of this telecopied material is strictly prohibited. If you have received the telecopy in error, please notify us by telephone immediately and mail the original to us at the above address. Thank you.

As you well know, our program rules require that we receive a response within 7 calendar days. Please feel free to contact me if I can provide any further assistance.

Regards,
Joe Moryl
Schools and Libraries Division
Program Integrity Assurance
Voice (973)428-7339
Fax (973)599-6512
jmoryl@sl.universalservice.org

PHONOSCOPE

communications and cable television since 1953

July 3, 2002

William Edwards
Houston Independent School District
3830 Richmond Ave
Houston, Texas 77027-5838

RE: 471 Application 295389, Funding Request Number 812439

Dear Mr. Edwards:

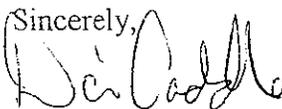
We offer the following information concerning the installation of a District Wide Area Fiber Optic Network (the Applicable Fiber) and operation of a High Speed Data Network (Managed Network Services) for the Houston Independent School District.

The Applicable Fiber and all necessary electronics for the Managed Network Services are and shall remain the property of Phonoscope or its assignees and the district's interest is only that of a lessee.

In consideration for the installation and operation of the Applicable Fiber and Managed Network Services, the district agrees to pay its portion of cost as identified:

- 1) The total cost to construct and install the Applicable Fiber for the interconnection of one hundred and seven proposed diverse school sites with six strands of single-mode fiber optic cable, for the period from July 1, 2002 to June 30, 2003, is \$5,350,000.00. This is a turnkey price inclusive of fiber cabling, terminations, as-built drawings, taxes, fees, permits, property taxes, insurance and associated materials required for the delivery of the service.
- 2) The total cost to provide all necessary electronics for the Managed Network Services to one hundred and seven proposed school sites, for the period from July 1, 2002 to June 30, 2003, is \$184,620.00. This cost is a turnkey price inclusive of installing all necessary electronics, 24 X 7 network monitoring, and associated materials required for the delivery of the service.

If you have further questions or concerns, please contact Mel Painter or David Caddle at 713-272-4600.

Sincerely,


David Caddle
Project Manager
Phonoscope

Facsimile Transmission

Technology and Information Systems

3830 Richmond Avenue

Houston, Texas 77027

October 2, 2002-12:04 PM

Attention: Joe Moryl

Company: Schools and Libraries Division

Telephone #: 973-428-7339

Fax #: 973-599-6512

Subject: Support for 471 # 295389, FRN 812439

Sender: Jill Duncan

Sender Telephone #: 713-892-6222

Sender Fax #: 713-892-6749

You should receive 21 pages, *including this cover sheet*. If you do not receive all the pages, please call the number above.

COMMENTS:

Mr. Moryl,

Please find the attachments in support of FRN 812439: two addenda to the original Fiber Optic Network Lease Agreement for Project 00-11-6, and a letter of explanation from Bill Edwards, Assistant Superintendent for Technology.



HOUSTON INDEPENDENT SCHOOL DISTRICT

HATTIE MAE WHITE ADMINISTRATION BUILDING
3830 RICHMOND AVENUE · HOUSTON, TEXAS 77027-5838

KAYE STRIPLING, Ed.D.
Superintendent of Schools

William L. Edwards
Assistant Superintendent, Technology and Information Systems
TEL 713-892-7880 · FAX 713-892-6749

September 27, 2002

Joseph Moryl
USAC/Schools and Libraries Division
100 South Jefferson Road
Whippany, New Jersey 07981

RE: 471 Application 295389, Funding Request Number 812439

Dear Mr. Moryl,

In consideration of your request for information via fax, received September 26, 2002, we supply the following details. As our recurring telecommunications costs for data connections to our schools approach \$3.5 million annually (see FRN 790996), the Board of Education of Houston ISD one year ago unanimously approved the installation of a fiber wide-area network (WAN) as the lowest-cost solution to our long-term data and telecommunications needs.

The total cost for installation, maintenance, and fiber lease fees to interconnect one hundred seven proposed sites with six strands of single-mode fiber optic cable, for the period from July 1, 2002 to June 30, 2003, is \$5.35 million. This is a turnkey price inclusive of fiber cabling, conduit from the Public right of Way to each school's main distribution frame, terminations, as-built drawings, taxes, fees, permits, property taxes, insurance and associated materials required for the delivery of the service.

The annual cost (post-installation) for managed service for equipment and maintenance of this fiber is \$184,620 for one hundred seven sites, with an additional annual service cost of \$174,072 (see FRN 831678) to manage Gb-ethernet circuits for eleven fiber-node network school sites installed during the 2001-2002 school year. The annual lease fees for the fiber WAN reflect substantial savings to our district over the next three years.

It is important to note that the fiber-optic WAN provides a bandwidth upgrade of over six hundred times our current capability. The increase in bandwidth affords our schools new capabilities for Internet usage, as well as access to media-rich educational resources now only available to us over Internet II.

If you have further questions or concerns, please contact Jill Duncan in the office of Technology and Information Systems, Houston ISD, at 713-892-6222.

Sincerely,

A handwritten signature in cursive script that reads "W L Edwards".

William L. Edwards, Assistant Superintendent

ADDENDUM #1

TO THE

FIBER OPTIC NETWORK

LEASE AGREEMENT

FOR

HOUSTON INDEPENDENT SCHOOL DISTRICT

RFP# 00-11-6

Prepared by

Phonoscope, Ltd.

and

Phonoscope Education Network, Inc.

**ADDENDUM #1
TO THE
FIBER OPTIC NETWORK LEASE AGREEMENT**

This Addendum #1 ("Addendum #1") to the Fiber Optic Network Lease Agreement is by and between **PHONOSCOPE, LTD.**, a Texas Limited Partnership and **PHONOSCOPE EDUCATION NETWORK, INC.**, a Texas corporation jointly referred to as ("Phonoscope") having their principal office at 6105 Westline, Houston, Texas 77036 and **HOUSTON INDEPENDENT SCHOOL DISTRICT** (the "District"), an independent school district and political subdivision of the State of Texas located in the greater Houston area and having its central office at 3830 Richmond Avenue, Houston, Texas 77027.

WHEREAS, The District has previously awarded to Phonoscope, Request for Proposal, Project Number 00-11-6 for a District Wide Area Network Fiber Optic Network and the parties entered into a certain Fiber Optic Network Lease Agreement ("Agreement") and Statement of Work ("Statement of Work") on or about February 4, 2002;

WHEREAS, The District has currently awarded to Phonoscope, Universal Service Fund's Funding Request Number (FRN) 812349, the provision of additional sites to the District Wide Area Fiber Optic Network covered in E-rate funding year five (5) as described in Table A.2 herein;

WHEREAS, Phonoscope desires to provide additional sites to the District Wide Area Fiber Optic Network to the District on a lease basis according to the terms and conditions of this Addendum #1;

NOW, THEREFORE, in consideration of the premises and the mutual promises hereinafter set forth, it is agreed by both parties to amend the Agreement to include the following additional provisions:

I. Services to be Provided - Applicable Fiber

- A. Statement of Work-Addendum #1 and Six-strand fiber Network:**
Phonoscope shall provide and construct as necessary for the District, an expansion of the District Wide Area Fiber Optic Network Installation ("DWAFON") to accommodate the provision of the District's additional sites as more particularly described in Table A.2.

B. Applicable Fiber; Termination at Sites: The "Applicable Fiber", as used herein, shall refer to the expansion of the DWAFON to be built in a spoke configuration which shall terminate in the designated hub sites and together shall form the integrated DWAFON. The specific termination routing is detailed in Table A.2 herein. The Applicable Fiber does not include the onsite equipment, which the District will use to interface with the DWAFON. The Applicable Property is an inseparable part of Phonoscope's network consisting of fiber optic cables and appurtenances related thereto located in and near Harris County, Texas (the "Fiber Network") and is comprised of access to specific fibers within the Fiber Network, as identified in the Table A.2, for exclusive use by the District.

II. Term

- A. Commencement:** The term of this Addendum #1 shall commence on the date of execution of this Addendum #1. The date the term of this Agreement commences is hereafter called the Commencement Date.
- B. Termination:** The term of this Addendum #1 shall coincide with the termination of the Agreement.
- C. Right of Renewal:** At the end of the initial term, this Addendum #1 shall automatically renew for successive one (1) year terms, unless either party gives thirty (30) days' prior written notice, sent via certified mail, return receipt requested, of its intent to cancel this Agreement.
- D. Limit of Appropriation:** Notwithstanding anything in this Addendum #1 to the contrary, it is expressly understood and agreed that the District has available the total maximum sums hereinafter certified available by the HISD Controller for the purpose of satisfying District's obligations for the initial term of this Agreement. Notwithstanding these certified funds, Phonoscope has been advised and understands that the funding of this Agreement is subject to approval of and annual appropriation by the Board of Education of HISD, and agrees that should the Board of Education fail to approve a budget for the District which includes sufficient funds for the continuance of this Agreement or should the District fail to certify funds for any reason, then and upon the occurrence of such event,

this Agreement shall terminate and the District shall have no further obligation to Phonoscope, and the sole and exclusive remedy of Phonoscope shall be to terminate this Agreement.

III. Fiber Optic Network Lease Fee

- A. **Installation Fees:** In consideration for Phonoscope constructing the District's additional sites which will become part of the Applicable Fiber, the District agrees to pay the sum of Five Million Three Hundred Fifty Thousand Dollars (\$5,350,000.00). This amount shall be payable by the District, as described in Table A.2.
- B. **Basic Fiber Optic Network Lease Fee:** The Basic Fiber Optic Network Lease Fee shall be waived.
- C. **Fiber Optic Maintenance Fees:** The recurring monthly Fiber Optic Maintenance Fee shall be waived. The Fiber Lease Fee shall include all routine maintenance but shall explicitly not include ("Excluded Maintenance") any service calls performed by Phonoscope whose cause is not attributable to the Applicable Fiber, such as those attributable to any actions or equipment provided by the District or its employees, affiliates, agents, subcontractors, or vendors. However, any maintenance caused by fiber cuts or outages caused by any third party other than the District or the District's employees, agents, or contractors shall be repaired and restored at no additional cost to the District. Any Excluded Maintenance performed by Phonoscope shall be billed at the Hourly Rate as defined below).

Any Excluded Maintenance performed by Phonoscope shall be billed at the Hourly Rate of Three Hundred Fifty Dollars (\$350.00) on an hourly basis with a four (4) hour minimum, inclusive of all labor, equipment, and material costs. These charges will be billed directly to the District by Phonoscope.

- E. **Invoicing:** Phonoscope will adjust its billing policy and process to confirm to the USF and the E-rate payment plan. Phonoscope will invoice Sixteen Percent (16%) of the service and support provided, directly to District. Phonoscope will invoice the SLC or the USF Administration Designee the remaining Eighty-Four percent (84%) of the contracted amount. Invoices for the Installation Fees, the

District's Basic Fiber Lease Fees, Fiber Optic Maintenance Fees, and any Excluded Maintenance will be submitted on a work completion basis as described in Table A.2. Phonoscope will show the full amount of the invoice and then show the appropriate percentage due from the District and from the USF.

If in the event E-rate funding is not available, or not available in sufficient amounts to cover the Eighty-Four percent (84%) contemplated by this Agreement, the District shall notify Phonoscope within two (2) business days of receiving knowledge of the loss, or decrease, in funding. At such time, Phonoscope shall have the right to suspend any and all obligations to proceed with construction of the DWFON unless the District provides written assurance of alternate funding which will be made available to fulfill its payment obligations.

XII. Other Provisions

- A. Severability:** If any provision of this Addendum #1 shall be held to be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall in no way be affected or impaired thereby.

- B. Entire Agreement and Addendum:** The Agreement together with this Addendum #1 constitute the entire agreement of the parties with respect to the subject matter hereof. Each party warrants to the other that there is no other agreement relating to the subject matter hereof. No modification of this Agreement may be made except in writing signed by both parties. Except as expressly outlined herein, in no way do the terms and conditions of this Addendum #1 affect or alter the terms and conditions of the Agreement referenced above.

- C. Notice:** All notices permitted or required hereunder shall be in writing and shall be deemed to have been duly given on the earlier of (i) the date received, or (ii) the third Business Day (meaning dates when banks in Harris County, Texas are generally open for business) after the same shall have been mailed by United States registered or certified mail, return receipt requested, adequate postage prepaid, addressed as follows:

If to the District:

Houston Independent School District
3830 Richmond Avenue
Houston, Texas 77027
Attn: Kaye Stripling, Superintendent of Schools

Cc: Bill Edwards, Asst. Supt., Technology and Information
Systems

If to Phonoscope:

Phonoscope, Ltd.
6105 Westline Drive
Houston, Texas 77036
Attn: Rhonda Druke

Notice given by any other method (including facsimile, electronic mail, etc.) shall be effective when actually received. Either party may change its address for notice by notice to the other party in the manner herein set forth.

- D. Triplicate Originals.** This Addendum #1 is executed in three (3) counterparts, each of which shall be deemed an original and have the full force and effect as an original, but all of which shall constitute but one and the same instrument.

ADDENDUM #2
TO THE
FIBER OPTIC NETWORK LEASE AGREEMENT

This Addendum #2 ("Addendum #2") to the Fiber Optic Network Lease Agreement ("Agreement") is by and between **PHONOSCOPE, LTD.**, a Texas Limited Partnership and **PHONOSCOPE EDUCATION NETWORK, INC.**, a Texas corporation jointly referred to as ("Phonoscope") having their principal office at 6105 Westline, Houston, Texas 77036 and **HOUSTON INDEPENDENT SCHOOL DISTRICT** (the "District"), an independent school district and political subdivision of the State of Texas located in the greater Houston area and having its central office at 3830 Richmond Avenue, Houston, Texas 77027.

WHEREAS, The District has previously awarded to Phonoscope the Request for Proposal, Project Number 00-11-6 for a District Wide Area Network Fiber Optic Network and the parties entered into a certain Fiber Optic Network Lease Agreement ("Agreement") and Statement of Work ("Statement of Work") on or about February 4, 2002;

WHEREAS, the District has currently awarded to Phonoscope, Universal Service Fund's Request Number (FRN 812439 and 831678), the provision of managed IP circuits establishing a Private IP Network ("PIP") over a private IP-backbone running over the Applicable Fiber as covered in E-rate funding year five (5) as described in Service Order #1 and Service Order #2 herein; and

WHEREAS, Phonoscope desires to provide the District with such managed circuits thereby establishing a Virtual Private Network on a lease basis according to the terms and conditions of this Addendum #2;

NOW, THEREFORE, in consideration of the mutual promises, conditions and agreements herein contained, the sufficiency of which is hereby acknowledged, the District and Phonoscope hereby agree as follows:

I. AGREEMENT.

Upon issuance of the District's Service Order(s), in the form as set forth herein and incorporated herein by this reference, and acceptance thereof in writing by Phonoscope, the District hereby requests Phonoscope to provide the products, materials and supplies and to perform the PIPN networking services (collectively referred to as "Services") set forth in the Service Order(s). Phonoscope and the District agree that the terms and conditions set forth in this Addendum shall control and govern all Services performed by Phonoscope for the District's end users on behalf of the District. In the event of any conflict between the terms and conditions of the Service Order and this Addendum #2, this Addendum #2 shall prevail except that with respect to any specific operational terms of the Service Order, the Service Order shall prevail.

II. TERM.

- A. **Commencement:** The term of this Addendum #2 shall commence on the date all circuits are installed and connected at the District's sites described in the Service Order(s) attached hereto. The date of the term of this Addendum #2 commences is hereafter called the Commencement Date.
- B. **Termination:** The term of this Addendum #2 shall be for five (5) years from the Commencement Date.
- C. **Right of Renewal:** At the end of the initial term, this Addendum #2 shall automatically renew for successive one (1) year terms, unless either party gives one hundred twenty (120) days' prior written notice, sent via certified mail, return receipt requested, of its intent to cancel this Agreement.

III. OBLIGATIONS OF THE DISTRICT. The District shall be responsible as follows:

- A. **Prohibited Uses of Phonoscope PIPN.** The District shall not use Phonoscope PIPN or equipment provided by Phonoscope, directly or indirectly:

1. to conduct any transmissions constituting or encouraging conduct that would constitute a criminal offense, give rise to civil liability, or otherwise violate any municipal, provincial, state, federal or international law, order or regulation;
2. to alter, modify or tamper with the equipment of the Phonoscope PIPN;
3. to restrict, inhibit or otherwise interfere with the ability of any other person to use or enjoy Phonoscope PIPN or the services therein available, including, without limitation, posting or transmitting any information or software which contains a virus, lock, key, bomb, worm, Trojan horse or other harmful or debilitating feature; or generating levels of traffic sufficient to impede others ability to send or retrieve information.
4. to disrupt Phonoscope backbone network nodes or network services;
5. to resell Phonoscope PIPN other than to the District's end users specifically identified in the Service Order(s). Phonoscope PIPN is for the District's and the District's end users use only and the District agrees not to use Phonoscope PIPN for any other business enterprise in competition with Phonoscope PIPN.

Phonoscope PIPN is available to the District for unlimited use at each contracted facility. The District is solely responsible for all use of the District's access, whether by the District or any other person.

- B. Chassis Powered.** Phonoscope provided network interface chassis must be powered on and operational twenty-four (24) hours per day, seven days per week. The District is responsible for furnishing a reliable twenty-four (24) hour per day power source in capacities required for Phonoscope provided Equipment.

IV. Private IP Network Service Fee

- A. Service Fees:** In consideration for Phonoscope providing the District with managed IP-circuits establishing a PIPN, the District

Initials: Phonoscope _____ District _____

agrees to pay the sum of Three Hundred Fifty-Eight Thousand, Six Hundred Ninety-Two Dollars (\$358,692.00) on an annual basis as described in the Service Order(s) attached hereto.

- B. Invoicing:** Phonoscope will adjust its billing policy and process to conform to the USF and the E-rate payment plan. On the sites described in Service Order #1 as funded by FRN #812439, Phonoscope will invoice Sixteen percent (16%) of the service and support provided directly to District, with the remaining Eighty-Four percent (84%) of the contracted amount invoiced to the SLC or the USF Administration Designee. On the sites described in Service Order #2 as funded by FRN #831678, Phonoscope will invoice Seventeen percent (17%) of the service and support provided directly to District, with the remaining Eighty-Three percent (83%) of the contracted amount invoiced to the SLC or the USF Administration Designee. Invoices for the Service Fees will be submitted on a work completion basis as described in Table A.2. Phonoscope will show the full amount of the invoice and then show the appropriate percentage due from the District and from the USF.

In the event E-rate funding is not available, or not available in sufficient amounts to cover the percentages contemplated by this Agreement, the District shall notify Phonoscope within two (2) business days of receiving knowledge of the loss, or decrease, in funding. At such time, Phonoscope shall have the right to suspend any and all obligations to proceed with the provisioning of the managed IP-circuits unless the District provides written assurance of alternate funding which will be made available to fulfill its payment obligations.

- C. Limit of Appropriation:** Notwithstanding anything in this Addendum #2 to the contrary, it is expressly understood and agreed that the District has available the total maximum sums hereinafter certified available by the HISD Controller for the purpose of satisfying District's obligations for the initial term of this Agreement. Notwithstanding these certified funds, Phonoscope has been advised and understands that the funding of this Agreement is subject to approval of and annual appropriation by the Board of Education of HISD, and agrees that should the Board of Education fail to approve a budget for the District which includes sufficient funds for the

Initials:
Phonoscope _____
District _____

continuance of this Agreement or should the District fail to certify funds for any reason, then upon the occurrence of such event, this Agreement shall terminate and the District shall have no further obligation to Phonoscope, and the sole and exclusive remedy of Phonoscope shall be to terminate this Agreement.

- D. Service Demarc.** As necessary, Phonoscope shall provide and install a Phonoscope managed network device, which shall be the Service Demarc. The District may not, without Phonoscope's express written permission alter, modify, remove relocate, damage, or tamper with any equipment or cabling within Phonoscope's Service Demarc.

V. OBLIGATIONS OF PHONOSCOPE. Phonoscope shall be responsible as follows:

- A. Network Bandwidth.** Phonoscope will make reasonable efforts to make available the network bandwidth contracted for with the District. Phonoscope will design its network infrastructure on industry accepted standards designed to provide a reasonable level of performance. Phonoscope will make reasonable efforts to assure that the network infrastructure will support the contracted Service from the District.

B. Warranty.

- 1. General Warranty.** PHONOSCOPE PIPN AND ANY HARDWARE OR SOFTWARE PROVIDED BY OR THROUGH PHONOSCOPE IS PROVIDED "AS IS" AND "AS AVAILABLE", WITHOUT WARRANTY OF ANY KIND. PHONOSCOPE DOES NOT WARRANT UNINTERRUPTED USE OR WARRANT THAT ANY DATA OR FILES SENT BY OR TO THE DISTRICT WILL BE TRANSMITTED IN UNCORRUPTED FORM OR WITHIN A REASONABLE PERIOD OF TIME. ALL REPRESENTATIONS, WARRANTIES, ENDORSEMENTS AND CONDITIONS OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, ANY WARRANTIES OF TITLE OR NONINFRINGEMENT AND ANY IMPLIED REPRESENTATIONS, WARRANTIES AND CONDITIONS OF FITNESS FOR A PARTICULAR PURPOSE AND

Initials: Phonoscope _____ District _____

MERCHANTABILITY AND THOSE ARISING FROM A COURSE OF DEALING OR USAGE OF TRADE, ARE HEREBY EXCLUDED. ANY WARRANTY FOR EQUIPMENT IS PROVIDED BY THE MANUFACTURER. HOWEVER, PHONOSCOPE DOES AGREE TO PASS THROUGH THE RIGHTS GRANTED UNDER ANY THIRD-PARTY MANUFACTURER'S WARRANTY APPLICABLE TO ANY HARDWARE OR SOFTWARE PROVIDED BY OR THROUGH PHONOSCOPE.

VI. Other Provisions

- A. Severability:** If any provision of this Addendum #2 shall be held to be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall in no way be affected or impaired thereby.
- B. Entire Agreement and Addendum:** The Agreement together with this Addendum #2 and any Service Order(s) constitute the entire agreement of the parties with respect to the subject matter hereof. Each party warrants to the other that there is no other agreement relating to the subject matter hereof. No modification of this Agreement may be made except in writing signed by both parties. Except as expressly outlined herein, in no way do the terms and conditions of this Addendum #2 affect or alter the terms and conditions of the Agreement referenced above.
- C. Notice:** All notices permitted or required hereunder shall be in writing and shall be deemed to have been duly given on the earlier of (i) the date received, or (ii) the third Business Day (meaning dates when banks in Harris County, Texas are generally open for business) after the same shall have been mailed by United States registered or certified mail, return receipt requested, adequate postage prepaid, addressed as follows:

If to the District:

Houston Independent School District
3830 Richmond Avenue
Houston, Texas 77027
Attn: Kaye Stripling, Superintendent of Schools

Initials:
Phonoscope _____
District _____

Cc: Bill Edwards, Asst. Supt., Technology and Information
Systems

If to Phonoscope:

Phonoscope, Ltd.

6105 Westline Drive

Houston, Texas 77036

Attn: Rhonda Druke

Notice given by any other method (including facsimile, electronic mail, etc.) shall be effective when actually received. Either party may change its address for notice by notice to the other party in the manner herein set forth.

- D. Triplicate Originals.** This Addendum #2 and any Service Order(s) are executed in three (3) counterparts, each of which shall be deemed an original and have the full force and effect as an original, but all of which shall constitute but one and the same instrument.

Attachment 1

Phonoscope Service Level Commitments

Service Level:

Phonoscope has a target network availability of 99.997%. This includes all Phonoscope physical infrastructures.

Measurement and Calculation:

Availability is calculated on a site specific basis as the percentage of time that a particular site is capable of accepting and delivering data to the Customer's network to the total time in the measured period.

The calculation for per site availability in a given year is as follows:

$$\text{Service Availability} = \frac{(\text{Hours in a Year}) - \text{Network Outage Time in Hours for the Site}}{(\text{Hours in a Year})}$$

Outage time starts from the time the Customer or Phonoscope identifies the problem by opening a trouble ticket until the problem is fixed.

Components Included (but not limited to):

- Phonoscope provided Customer Premise Equipment
- Phonoscope provided Data Circuit
- All Ports on Phonoscope equipment (Switches, Routers, etc.)

Components Excluded:

- All components during Phonoscope Network downtime for Phonoscope scheduled maintenance windows
- Fast / Gigabit Ethernet patch cables (both fiber and copper)
- Any Phonoscope components within the Customers Facility that cannot be corrected due to unavailability of the Customer or inaccessibility of its premise
- Customer's equipment or Content
- Force Majeure

Reports:

Monthly Phonoscope service level reports and other Phonoscope service level information can be provided to Customer upon request. Monthly Phonoscope service level reports are regularly updated and may be requested at any time.

Phonoscope represents and warrants to Customer that (i) the Service provided over its Network hereunder shall be **99.997%** free of errored seconds over a one (1) month period for each Service, other than for reasons of Planned Service Outages (scheduled maintenance). In the event the standard established in the prior sentence is not met in a given month, upon written request of Customer, Phonoscope will investigate the circumstances, isolate and remedy the cause.

Initials: Phonoscope _____ Customer _____

**Addendum #2 to the
Fiber Optic Network Lease Agreement**

Service Order 1

As part of the Fiber Optic Network Lease Agreement dated 02/04/02, by and between Phonoscope and Houston ISD, the parties agree to incorporate the following:

A. Service Type

The District requests eleven (11) 1 Gbe Ethernet connections each with a dedicated, high capacity, full duplex channel with a line speed of 1Gbe data using 802.3x signaling and 802.3p/q VLAN and QoS configuration. Phonoscope shall provision, manage, and maintain the dedicated Gigabit Ethernet Private Network linking the eleven (11) sites, described in this Service Order, in a fault tolerant ring topology over the Applicable Fibers.

B. Term of Services

Service will be furnished for a term of five (5) years. At the end of the initial term, this Agreement shall automatically renew for successive one (1) year terms, under the same terms and conditions contained in the Agreement including, unless either party gives one hundred twenty (120) day's written notice, sent via certified mail, return receipt requested, of its intent to cancel this Addendum #2.

C. Services and Equipment

Phonoscope will provide turnkey installation of the Service including provisioning of the necessary equipment and port density to provision the Services. The District connections will be terminated with a fiber optic multi-mode SC connection, provided by the District. Service to each site will be provisioned from a designated District node site through a Phonoscope managed network device.

D. The District's Billing Address

Houston ISD
3830 Richmond Avenue
Houston, Texas 77027
Billing contact: James Liechty
Phone: _____
e-mail: JLIECHTY@houstonisd.org

Initials: Phonoscope _____ Customer _____

E. Phonoscope's Remittance Address

Phonoscope Education Network, Inc.
6105 Westline Drive
Houston, Texas 77036

F. Representatives

For Phonoscope:

Robert Jacobs
Data Services & Outside Plant Mgr.
Phonoscope Communications, Inc.
Phone: (713) 272-4608
e-mail: robert@phonoscope.com

For: The District

Bill Edwards
Title:
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It is requested that the District assign a technical representative and that the individual be available during the installation process.

K. Agreements

All services performed under this Service Order are subject to the terms of the Fiber Optic Network Lease Agreement executed on or about 02/04/02 and any Addendums thereto, including, but not limited to Addendum #2 executed on or about / / between Phonoscope and the District. Special conditions are noted on this form.

L. Infrastructure Compatibility

The District is required to provide a Gbe SX interface at each location for provisioning of this network.

The District hereby authorizes Phonoscope to set up an account in its name and to enter its place of business to activate the network service. The District acknowledges that a Phonoscope Service Representative will contact the District to confirm and schedule the order.

Initials: Phonoscope _____ Customer _____
