

State of Oregon No. 2587

PARTICIPATING ADDENDUM UNDER THE WESTERN STATES CONTRACTING ALLIANCE WIRELESS COMMUNICATION SERVICES AND EQUIPMENT BID NUMBER RFP: #1907

PARTICIPANT: STATE OF OREGON, ACTING BY AND THROUGH THE DEPARTMENT OF ADMINISTRATIVE SERVICES, STATE PROCUREMENT OFFICE

This Participating Addendum (the "PA") is made this 10th day of July, 2012 (the "PA Effective Date"), between the State of Oregon, acting by and through the Department of Administrative Services, State Procurement Office ("Participant"), and AT&T Mobility National Accounts LLC ("Contractor") (Participant and Contractor are, at times, referred to individually as a "Party" or together as the "Parties").

Section 1. Recitals.

1.1 Contractor and the State of Nevada, acting through its Department of Administration, Purchasing Division, and the participating members of the Western States Contracting Alliance ("WSCA"), and the NASPO Cooperative, are parties to that certain Western States Contracting Alliance contract, #1907, dated March 15, 2012, successor contract to that certain Western States Contracting Alliance contract number 1523, dated October 10, 2006, as amended, successor contract to that certain Western States Contracting Alliance contract number 10-00115, dated June 29, 2001, as amended (the "Contract").

1.2 Participant wants to participate in the Contract pursuant to the terms and conditions of this PA.

Section 2. Agreement. In consideration of the recitals set forth in §1 above, which are hereby restated and agreed to by the Parties, and for valuable consideration, the receipt and sufficiency of which is hereby acknowledged by the Parties, Participant and Contractor hereby agree to the terms and conditions of this PA (the Contract and the PA, together with all Purchase Orders submitted to Contractor by Participating Entity, collectively, the "Agreement"). Unless otherwise defined, capitalized terms in this PA have the meanings ascribed to them in the Contract.

Section 3. Authorized Participating Entities. Participant hereby designates the State of Oregon and all state agencies, including the Department of Administrative Services, State Procurement Office ("DAS SPO") and all State Agencies under the purchasing authority of the Department of Administrative Services and all Independent State Agencies, and all members of the Oregon Cooperative Purchasing Program ("ORCPP") as the only authorized Participating Entities under the Agreement. The term "Independent State Agency" hereunder means an agency, board, commission, department or subdivision of the State of Oregon with independent procurement authority pursuant to ORS 279A.050, 279A.170 or other provisions of applicable State law. This PA is not exclusive.

Section 4. Purchase Orders. Participating Entities may issue purchase orders hereunder. If a Participating Entity issues a purchase order, that purchase order may be on its own form, must reference both Master Agreement #S1907 and the PA, and must contain the verbiage set forth in §4.1 herein. Upon issuance of any such valid purchase order, Participating Entity will be bound by the terms and conditions of the Agreement including, without limitation, the obligation to pay Contractor for Service, Equipment, and related products provided. Notwithstanding the foregoing, any purchase order submitted does not properly reference Master Agreement #S1907 and the PA, may be accepted, at Contractor's sole discretion, if Contractor can reasonably ascertain that such purchase order was properly authorized and intended for use with the PA. In such instances, the corresponding purchase order will be similarly valid and binding. The parties acknowledge and agree that orders submitted to Contractor from a Participating Entity through the Participating Entity's Business Procurement Card are authorized Purchase Orders under the WSCA Master

Agreement. To the extent that the terms of any purchase order form differ from the terms of the Agreement, the terms of the Agreement supersede such contrary terms.

4.1 Purchase Order Language. THIS PURCHASE IS PLACED AGAINST THE WESTERN STATES CONTRACTING ALLIANCE MASTER AGREEMENT NO. S1907. THE TERMS AND CONDITIONS OF THE MASTER AGREEMENT AND THE PARTICIPATING ADDENDUM ENTERED INTO BY THE STATE OF OREGON, CONTRACT NO. 2587 APPLY TO THIS PURCHASE AND SUPERSEDE ALL CONFLICTING TERMS AND CONDITIONS, EXPRESS OR IMPLIED.

4.2 Effect of Purchase Orders. Participant is only liable for purchases made by State of Oregon agencies, boards, commissions, departments or subdivisions that issue purchase orders. Other Participating Entities are responsible for any purchases under purchase orders they issue. Participant expressly disclaims any liability for purchases made by non-State agency Participating Entities or any other entity.

4.3 Verification of Participating Entities. Contractor is responsible for verifying that it provides Service, Equipment and related products and services available under this Agreement only to Participating Entities authorized to purchase under this Agreement. Contractor may verify that a particular Participating Entity is an ORCPP member on-line at <http://www.oregon.gov/DAS/PFSS/SPO/coop-menu.shtml> or by using the Oregon Procurement Information Network (ORPIN) at <http://orpin.oregon.gov/open.dll/welcome>.

Section 5. Primary Contacts.

Participant:

Name: Lori Nordlien
Title: State Procurement Analyst, DAS SPO
Address: 1225 Ferry St., SE, U 140
Salem, OR 97301
Telephone: (503) 378-6781
Fax Number: (503) 378-1626
E-Mail: pam.johnson@state.or.us

Lead State:

Name: Teri Smith
Title: Purchasing Officer
Address: 515 E. Musser St., Suite 300
Carson City, NV 89701
Telephone: 775-684-0178
Fax Number: 775-684-0188
E-Mail: tlsmith@admin.nv.gov

Contractor Account Team:

Name: Paul Braunstein
Title: Account Manager
Address: 19801 SW 72d Ave
Tualatin, OR 97062
Telephone: 503-691-4926
Fax Number:
E-Mail: paul.braunstein@att.com

Contractor Main:

Name: Twila Lively
Title: Manager, Sales Operations
Address: 2600 Camino Road
San Ramon, CA 94583
Telephone: (925) 487-9945
Fax Number: (510) 261-2155
E-Mail: twilalively@att.com

Section 6. Authority. By signing below, the corresponding Party's representative represents that such person is duly authorized by Contractor or Participant, as applicable, to execute this PA on behalf of the respective Party, and that the Contractor and Participant agree to be bound by the provisions hereof. In addition, Participant represents that it has received the requisite approvals from the applicable Chief Procurement Official and WSCA to participate in the Agreement.

Section 7. Miscellaneous.

7.1 American Recovery and Reinvestment Act of 2009 ("ARRA"). If or when Contractor is notified in writing by Participating Entity that a specific purchase or purchases are being made with ARRA

funds, Contractor agrees to comply with the data element and reporting requirements as currently defined in Federal Register Vol 74 #61, Pages 14824-14829 (or subsequent changes or modifications to these requirements as published by the Federal OMB) that are legally required of vendors as providers of goods and services to recipients or sub-recipients of ARRA funds. Each Participating Entity is responsible for informing Contractor in writing prior to ARRA funds being used for a purchase or purchases under the Contract. Contractor will provide the required report, if any, to the ordering entity with the invoice presented to the Participating Entity for payment. Contractor will provide the required report, if any, to the Participating Entity with the invoice presented to the Participating Entity for payment. Contractor, as it relates to purchases under the Contract, is not a sub-contractor, recipient, sub-recipient or sub-grantee, but simply a vendor, as defined in the OMB guidelines, and assumes no responsibilities under ARRA beyond those required of a vendor.

7.2 Employee Benefit Program. Participating Entity(ies) will participate with Contractor in efforts to obtain eligible Employees' participation in the Employee Benefit Program.

7.3 Term. This PA remains in effect until the earlier of (a) the expiration or termination of the Master Agreement, or (b) termination of this PA in accordance with its terms.

Section 8. Notice of Administration Fees. Participant and any and all other Participating Entities under this PA are hereby on notice of the following charges being paid by Contractor under the Contract.

8.1 WSCA. Contractor is being charged a WSCA Administration Fee of 1/10th of 1% (one-tenth of one percent) of the Total Wireless Spend, pursuant to the schedule of payments set forth in the Contract.

8.2 Participant. Contractor is being charged a Vendor Collected Administrative Fee ("VCAF") of one percent (1%) of the Total Wireless Spend of Participating Entities under this PA, as set forth herein.

8.2.1 During the term of this PA and for the sales during the last calendar quarter of the term of this PA, Contractor will remit the corresponding Volume Sales Report ("VSR") (see §8.2.5 herein), along with the corresponding VCAF within forty-five (45) calendar days after the end of each calendar quarter. The VSR and VCAF will reflect the previous calendar quarter's Total Wireless Spend.

8.2.2 Contractor may not reflect the VCAF as a separate line item charge to Participating Entities. Contractor's prices will reflect all of Contractor's charges to Participating Entities, including the VCAF. Contractor will submit the corresponding VCAF with each Volume Sales Report(s) ("VSR"). Contractor is responsible for timely reporting and payment, regardless of the entity that actually reports or makes VCAF payment to DAS SPO.

8.2.3 The VCAF will be in the form of a check remitted to:

State of Oregon
Department of Administrative Services
Atten: State Procurement Office
1225 Ferry Street, SE, U140
Salem, Oregon 97301-4285

or to such other address as designated by the Contract Administrator. Any other form of payment must be specifically approved by the Contract Administrator.

8.2.4 Any payments Contractor makes or causes to be made to DAS SPO after the due date as indicated on the invoice shall accrue interest at a rate of 18% per annum or the maximum rate permitted by law, whichever is less, until such overdue amount shall have been paid in full. DAS SPO's right

to interest on late payments shall not preclude DAS SPO from exercising any of its other rights or remedies pursuant to this PA or otherwise with regards to Contractor's failure to make timely remittances.

8.2.5 Contractor shall submit a VSR to DAS SPO containing: (a) complete and accurate details of all receipts (sales and refunds) for the reported period; (b) the information as identified in the DAS SPO document titled Volume Sales Report Template - Data Requirement, Format and Layout; and (c) such other information as DAS SPO may reasonably request.

When no sales have been recorded for a quarter, a VSR must be submitted stating "No Sales for the Quarter." For the purposes of this PA, quarters end March 31, June 30, September 30, and December 31. Contractor shall provide VSRs in MS Excel (.xls) format. VSRs must be submitted by e-mail. Delivered print outs of VSRs are not acceptable. Hard copies of VSRs on CDs are only acceptable if the size of the file precludes transmission by email. Approval from the Contract Administrator must be obtained for deviations from these requirements. The first VSR submitted by Contractor must be submitted to the Contract Administrator for review and approval. Approved first VSRs and subsequent VSRs must be submitted to vcnf.reporting@state.or.us. The Contract administrator's receipt or acceptance of any of the VSRs furnished pursuant to this PA does not preclude DAS SPO from challenging the validity thereof at any time.

Section 9. Order of Precedence. The Parties acknowledge and agree that in the event of a conflict between the terms contained in the various documents comprising this Agreement, the following order of precedence will control: (a) this PA; (b) the Master Agreement; and (c) any Purchase Order issued in connection therewith. This section specifically supersedes any order of precedence provisions set forth elsewhere in the Agreement.

Section 10. Additional Terms and Conditions. The Parties acknowledge and agree to the additional terms and conditions set forth in Exhibit A, attached hereto and incorporated herein by reference.

Section 11. Exceptions to Commercial Connectivity Services (CCS). The Parties acknowledge and agree that State Agencies will be excluded from purchasing the following Commercial Connectivity Services set forth below, from Contractor for the use of (a) Wireless Wide Area Network ("WAN"); (b) Remote Location WAN; (c) Local Area Network (LAN); and/or (d) Wireless backup to WAN/LAN Networks.

- Frame Relay
- COAM Frame Relay
- Permanent Virtual Circuit
- Network VPN
- Custom APN
- Dedicated APN

Section 12. Entire Agreement. The Agreement sets forth the entire agreement between the Parties with respect to the subject matter of all previous communications, representations or agreements, whether oral or written, with respect to the subject matter hereof. Except as expressly provided in the Agreement, terms and conditions inconsistent with, contrary or in addition to the terms and conditions of the Agreement shall not be added to or incorporated herein by any subsequent purchase order; and any such attempts to add or incorporate such terms and conditions are hereby rejected. The terms and conditions of the Agreement shall prevail and govern in the case of any such inconsistent or additional terms.

IN WITNESS WHEREOF, the Parties have executed this PA as of the PA Effective Date.

AT&T MOBILITY NATIONAL ACCOUNTS LLC

By: [Signature]
duly authorized

Name: Theresa Page

Title: Sr Contracts Manager

Date: 7/5/2012

Federal Tax Identification No. 84-1659970

Oregon Tax Identification No. _____

STATE OF OREGON

Acting by and through the Department of Administrative Services

By: [Signature]
duly authorized

Name: Lori Nordlien

Title: State Procurement Analyst

Date: 7/10/12

APPROVED

By: [Signature]
Assistant Attorney General

Date: per email dated 6/29/12

EXHIBIT A
ADDITIONAL TERMS AND CONDITIONS

1. Payments. DAS SPO shall not be responsible, directly or indirectly, for payment for the Service, Equipment and related products and services provided or delivered to Participating Entities; however, the State of Oregon shall be responsible for payment for the Service, Equipment and related products and services provided or delivered to Participating Entities except as provided in §3.2 herein.

2. Third Party Goods and Services. Any goods, services or other products acquired by Participating Entities from a third party not made part of the Agreement are not covered by or included under the terms and conditions of this Agreement, unless otherwise specifically agreed. The parties hereby acknowledge and agree that the AT&T Mobility Applications, which are third party applications, ARE covered by and included under the terms and conditions of the Agreement.

3. Additional Tax Provisions. The individual signing on behalf of Contractor hereby certifies and swears under penalty of perjury: (a) the number shown in the PA is Contractor's correct taxpayer identification (Contractor must provide Contractor's Social Security number unless Contractor provides a federal tax identification number. This number is requested pursuant to ORS 305.385, OAR 125-246-0330(2)(d), and OAR 150-305.100. Social Security numbers provided pursuant to this authority will be used for the administration of state, federal, and local tax laws.); (b) Contractor is not subject to backup withholding because (i) Contractor is exempt from backup withholding, (ii) Contractor has not been notified by the IRS that Contractor is subject to backup withholding as a result of a failure to report all interest or dividends, or (iii) the IRS has notified Contractor that Contractor is no longer subject to backup withholding; and (c) s/he is authorized to act on behalf of Contractor, s/he has authority and knowledge regarding Contractor's payment of taxes, and to the best of her/his knowledge, Contractor is not in violation of any Oregon Tax Laws. (For purposes hereof, "Oregon Tax Laws" means a state tax imposed by ORS 320.005 to 320.150 and 403.200 to 403.250 and ORS chapters 118, 314, 316, 317, 318, 321 and 323 and the elderly rental assistance program under ORS 310.630 to 310.706 and local taxes administered by the Department of Revenue under ORS 305.620.)

3.1 Taxes, Fees and Surcharges Allowed. Contractor may pass through to Participating Entities the following taxes, fees and surcharges: (a) Universal Service; (b) Franchise Fee or Privilege Tax, if any, but only to the maximum extent allowed by law; and (c) Oregon Public Utility Commission Fee.

3.2 Taxes, Fees and Surcharges Not Allowed. Contractor may not pass through or assess Participating Entities for the following taxes, fees and surcharges: (a) Residential Service Protection Fund (RSPF); (b) Oregon Telecommunications Relay Service; (c) Telephone/Telecommunications Assistance Programs; (d) Oregon Emergency Communications Tax (E-9-1-1); (e) Federal Telephone Excise Tax; and (f) State Telephone Excise Tax

4. Account Representative. At DAS SPO's request, on a regular basis Contractor's account representative or team shall be prepared to meet to conduct a broad review of all the sales, Service, Equipment and related products and services, and ongoing operations, performance and billing accuracy.

5. Non-Appropriations. All payments to Contractor are subject to ORS 293.462. Nothing in this Agreement is to be construed as permitting any violation of Article XI, section 7 of the Oregon Constitution or any other law regulating liabilities or monetary obligations of the State of Oregon. Purchasing Entity represents that it has sufficient appropriations and limitation for the current biennium to make payments under any Purchaser Order issued under this PA.

6. Termination of Individual Purchase Orders. A Participating Entity's performance under a Purchase Order is conditioned on Contractor's compliance with the provisions of ORS 279B.220, 279B.235, 279B.230, and 279B.270. In addition, Contractor warrants the Goods and Services provided under this PA

will comply with all federal Occupational Safety and Health Administration (OSHA) requirements and with all Oregon safety and health requirements, including those of the State Workers' Compensation Division. Contractor also agrees to comply with (a) Title VI of the Civil Rights Act of 1964, (b) Section v of the Rehabilitation Act of 1973, (c) the Americans with Disabilities Act of 1990 and ORS 659.425, (d) all regulations and administrative rules established pursuant to the foregoing laws and (e) all other applicable requirements of federal and state civil rights and rehabilitation statutes, rules and regulations.

7. Application of Public Records Law. Contractor acknowledges that any disclosures Contractor makes to Participating Entity under this PA are subject to application of the Oregon Public Records Law, including but not limited to ORS 192.410 – 192.505, the provisions for the Custody and Maintenance of Public Records, ORS 192.005 – 192.710, and of ORS 646.461 - 646.475. The non-disclosure of documents or of any portion of a document submitted by Contractor to Participating Entity may depend upon official or judicial determinations made pursuant to the foregoing laws. Contractor will be notified prior to Participating Entity's release of documents to entities other than participating agencies or other State agencies. Contractor shall be exclusively responsible for defending Contractor's position concerning the confidentiality of the requested documents, at its own expense.

8. Recycled Products. Contractor will comply with its recycling program referenced in the Response.

9. Foreign Contractor. If Contractor is not domiciled in or registered to do business in the State of Oregon as of the effective date of this PA, Contractor will promptly provide to the Oregon Department of Revenue all information required by that department relative to the PA. A Participating Entity may withhold final payment under a Purchase Order until Contractor has provided the Oregon Department of Revenue with the required information.

10. Access to Records. Contractor will maintain all fiscal records relating to Purchase Orders in accordance with generally accepted accounting principles and will maintain any other records relating to Purchase Orders in such a manner as to clearly document Contractor's performance thereunder. Contractor will retain and keep accessible all such fiscal records, books, documents, papers, plans, and writings for a minimum of four (4) years, or such longer period as may be required by applicable law following final payment and termination of this PA or until the conclusion of any audit, controversy or litigation arising out of or related to this PA, whichever date is later. \

11. Dispute Resolution. Except as provided below and otherwise in the Master Agreement, in the event that there is any disagreement, dispute, breach or claim of breach, non-performance, or repudiation arising from, related to or in connection with the PA or any of the terms or conditions hereof, or any transaction hereunder including but not limited to any party's failure or alleged failure to comply with any of the provisions of the PA (hereinafter collectively the "Dispute"), other than one related to the release of Confidential Information, DAS SPO and Contractor shall first conduct the following procedure in an attempt to resolve the Dispute:

- DAS SPO and Contractor shall make every effort to settle any dispute through their respective managers, within ten (10) calendar days of one party notifying the other party of a dispute.
- If the dispute is not resolved between the managers, then either party may initiate formal dispute resolution discussions by advising the other party in writing. The contact point for these discussions shall be DAS SPO's and Contractor's Authorized Representatives. DAS SPO and Contractor shall attempt to resolve the dispute within 10 calendar days of the notice from the other party that they are initiating this second level of dispute resolution discussions. If DAS SPO and Contractor mutually agree in writing that there has been substantial progress toward resolution of the dispute, this second level may be extended for an additional 5 business day period which shall commence at the conclusion of the first 10 day period.

Nothing in this Section 14.a: (a) shall in any way limit a party's rights to seek injunctive relief of any kind, at any time, with respect to any matter; or (b) in any way limit a party's right to suspend or terminate the PA or pursue other remedies available under the Master Agreement and PA, by law or otherwise; or (c) remove the requirement to provide notices or filings to meet deadlines otherwise required by law; or (d) constitute a waiver of the sovereign immunity of the State of Oregon.

Participating Entities and Contractor also shall attempt to resolve all Disputes related to purchase orders under the above described Dispute Resolution process.