

Contract #: 205136

Entry Date: 7/17/2020 10:51:03 AM

Department: Wyoming Department of Administration and Information, General Services, Procurement

Agency Contact: Gershmel, Mandy

Phone: 3077776718

Other Agency Contact:

WYOMING ATTORNEY
GENERAL'S OFFICE

SEP 23 2020

WYOMING ATTORNEY
GENERAL'S OFFICE

Client Comments: NASPO MA149-1 Agreement for cellular services

Contractor/Vendor Name: AT&T Corp.

WYOMING ATTORNEY
GENERAL'S OFFICE

SEP 23 2020

Contract Title: AT&T Corp.

Contract Type: IT Contract (routes to OCIO first)

Tyler M. Renner
APPROVED AS TO FORM

Contract Amount: 0

Contract Effective Date:

WYOMING ATTORNEY
GENERAL'S OFFICE

DEC 01 2020

Contract Expiration Date:

Status: AG Approved as to Form

Tyler M. Renner
APPROVED AS TO FORM

RETURN VIA: Ink Signature - Inter-agency Mail

Assigned Attorney: Tyler Renner

WYOMING ATTORNEY
GENERAL'S OFFICE

JAN 13 2021

Tyler M. Renner
APPROVED AS TO FORM

**PARTICIPATING ADDENDUM
UNDER THE
NASPO VALUEPOINT
WIRELESS COMMUNICATION SERVICES AND EQUIPMENT
MASTER AGREEMENT NUMBER: MA149-1**

PARTICIPATING ENTITY: Wyoming

This Participating Addendum (the "PA") shall commence upon the date of the last required signature is affixed hereto (the "PA Effective Date"), between the State of Wyoming ("Participating Entity"), and AT&T Corp. ("Contractor") (Participating Entity and Contractor are, at times, referred to individually as a "Party" or together as the "Parties"), and shall remain in full force and effect through the term of the Master Agreement unless terminated at an earlier date pursuant to the provisions of Attachment A, or pursuant to federal or state statute, rule or regulation

Section 1. Recitals.

1.1 Contractor and the State of Utah, acting through its Department of Administration, Purchasing Division, and the participating members of the NASPO ValuePoint, a division of the National Association of State Procurement Officials ("NASPO"), are parties to that certain wireless communication services and equipment contract #MA 149-1, dated, December 4, 2019 (the "Contract" or "Master Agreement").

1.2 Participating Entity wants to participate in the Contract pursuant to the terms and conditions of the 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, Participating Entity and Contractor hereby agree to the terms and conditions of the PA (the Contract and the PA, together with all valid Purchase Orders submitted to Contractor by Participating Entity, collectively, the "Agreement"). Unless otherwise defined, capitalized terms in the PA have the meanings ascribed to them in the Master Agreement.

Section 3. Authorized Purchasing Entities. NASPO ValuePoint Master Agreement #MA 149-1 (the "Master Agreement") may be used by all state agencies, institutions of higher institution, political subdivisions and other entities authorized to use statewide contracts in the State of Wyoming. Issues of interpretation and eligibility for participation are solely within the authority of the State Chief Procurement Official.

Section 4. Purchase Orders. Participating Entity must issue purchase orders hereunder that reference both Master Agreement #MA149-1 and the PA. 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 that does not properly reference the Master Agreement number and/or 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. Except as expressly provided in the Agreement, terms and conditions inconsistent with, contrary or in addition to the terms and conditions of the Agreement will not be added to or incorporated into the Agreement by any Purchase Order; and any such attempts to add or incorporate such terms and conditions are hereby rejected. The terms and conditions of the Agreement will prevail and govern in the case of any such inconsistent or additional terms.

Section 5. Primary Contacts.

Participating Entity: State of Wyoming

Name: Mandy Gershmel, A&I Procurement
Title: Senior Buyer
Address: 2800 Central Avenue
Cheyenne, WY 82002
Telephone: 307-777-6718
Fax Number: N/A
E-Mail: mandy.gershmel1@wyo.gov

Lead State: Utah

Name: Christopher Jennings
Title: Assistant Director
Address: 3140 State Office Bldg.
Salt Lake City, UT 84114
Telephone: 801-538-3157
Fax Number: 801-538-3882
E-Mail: ctjennings@utah.gov

Contractor Account Team:

Name: Tate Archibald
Title: Client Solutions Executive
Address: 4393 Riverboat Rd Floor 1
Taylorsville UT, 84123
Telephone: 801-903-2000
Fax Number: N/A
E-Mail: ma257p@att.com

Contractor Main:

Name: Bethani Cross
Title: Client Solutions Executive
Address: 311 S Akard St.
Dallas, TX 75202
Telephone: 214-679-9053
Fax Number: N/A
E-Mail: bethani.cross@att.com

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

Section 7. Miscellaneous.

7.1 Employee Benefit Program. Participating Entity will participate with Contractor in efforts to obtain eligible Employees' participation in the Employee Benefit Program.

Section 8. Notice of Administrative Fees. All Participating Entities are hereby on notice of the following charges being paid by Contractor under the Contract.

- **Contract Fees Under the Master Agreement,** Contractor is being charged an Administrative Fee of: (i) 0.25% of all CRUs' Total Wireless Spend; and (ii) 0.10% of all IRUs' Total Wireless Spend of the Total Wireless Spend, pursuant to the schedule of payments set forth in the Contract.

Section 9. Order of Precedence. Notwithstanding the Order of Precedence set forth in the Master Agreement, the Parties acknowledge and agree that in the event of a conflict between the terms contained in the various documents comprising the Agreement, the following order of precedence will control: (a) the PA, including any attachments thereto; (b) the Master Agreement; and (c) any valid Purchase Order issued in connection therewith.

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

Section 11. Entire Agreement. The Master Agreement and this Participating Addendum, consisting of three (3) pages, along with Attachment A, consisting of five (5) pages, set forth the entire agreement between the Parties with respect to its subject matter, and it supersedes all previous communications, representations or agreements, whether oral or written, with respect thereto.

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

AT&T CORP.

DocuSigned by:
By: Jack WILDERMUTH
C344D793EABD4AD...
, duly authorized
Name: Jack WILDERMUTH
Title: Senior Contract Manager
Date: 1/14/2021

STATE OF WYOMING

DocuSigned by:
By: Mandy Gershmel
88FEC7841EB84C3...
, duly authorized
Name: Mandy Gershmel
Title: Senior Buyer
Date: 1/14/2021

ATTORNEY GENERAL'S OFFICE: APPROVAL AS TO FORM ONLY WITH ATTACHMENT A

Tyler M. Renner #205136
Tyler M. Renner, Assistant Attorney General

01-13-2021
Date

WYOMING DEPARTMENT OF ADMINISTRATION & INFORMATION:

DocuSigned by:
Patricia L. Bach
8F48EF2B8DF5404...
Patricia L. Bach, Director

1/20/2021
Date

Attachment A Wyoming General Conditions

This Attachment A, Wyoming General Conditions, is incorporated into the Participating Addendum. Together, those documents (the "Wyoming Documents") supplement and replace certain terms and conditions contained in Utah NASPO ValuePoint Master Agreement MA149 dated December 4, 2019, (the "Master Agreement"), as between AT&T Corp. ("Contractor") and the State of Wyoming (referred to in this Attachment A as "State"). In the event of any conflict or inconsistency between the terms and conditions contained in the Master Agreement and the Wyoming Documents, the terms and conditions in the Wyoming Documents shall control, and shall supersede and replace the terms contained in the Master Agreement as between the Contractor and State.

The following General Conditions of this Attachment A are hereby incorporated into the Participating Addendum:

General Provisions.

A. Amendments. Any changes, modifications, revisions or amendments to this Participating Addendum which are mutually agreed upon by the parties to this Participating Addendum shall be incorporated by written instrument, executed by all parties to this Participating Addendum.

B. Applicable Law, Rules of Construction, and Venue. The construction, interpretation, and enforcement of this Participating Addendum shall be governed by the laws of the State of Wyoming, without regard to conflicts of law principles. The terms "hereof," "hereunder," "herein," and words of similar import, are intended to refer to this Participating Addendum as a whole and not to any particular provision or part. The Courts of the State of Wyoming shall have jurisdiction over this Participating Addendum and the parties. The venue shall be the First Judicial District, Laramie County, Wyoming.

C. Availability of Funds. Each payment obligation of the State is conditioned upon the availability of government funds which are appropriated or allocated for the payment of this obligation and which may be limited for any reason including, but not limited to, congressional, legislative, gubernatorial, or administrative action. If funds are not allocated and available for continued performance of the Participating Addendum, the Participating Addendum may be terminated by the State at the end of the period for which the funds are available. The State shall notify the Contractor at the earliest possible time of the services which will or may be affected by a shortage of funds. No penalty shall accrue to the State in the event this provision is exercised, and the State shall not be obligated or liable for any future payments due or for any damages as a result of termination under this section.

D. Award of Related Contracts. The State may award supplemental or successor contracts for work related to this Participating Addendum or may award contracts to other contractors for work related to this Participating Addendum. The Contractor shall cooperate fully with other contractors and the State in all such cases.

E. Compliance with Laws. The Contractor shall keep informed of and comply with all applicable federal, state, and local laws and regulations in the performance of this Participating Addendum.

F. Extensions. Nothing in this Participating Addendum shall be interpreted or deemed to create an expectation that this Participating Addendum will be extended beyond the term described herein. Any extension of this Participating Addendum shall be initiated by the State and shall be accomplished through a written amendment between the parties entered into before the expiration of the original Participating Addendum or any valid amendment thereto and shall be effective only after it is reduced to writing and executed by all parties to the Participating Addendum.

G. Force Majeure. Neither party shall be liable for failure to perform under this Participating Addendum if such failure to perform arises out of causes beyond the control and without the fault or negligence of the nonperforming party. Such causes may include, but are not limited to, acts of God or the public enemy, fires, floods, epidemics, quarantine restrictions, freight embargoes, and unusually severe weather. This provision shall become effective only if the party failing to perform immediately notifies the other party of the extent and nature of the problem, limits delay in performance to that required by the event, and takes all reasonable steps to minimize delays.

H. Indemnification. See Section 34 of Master Agreement.

I. Independent Contractor. The Contractor shall function as an independent contractor for the purposes of this Participating Addendum, and shall not be considered an employee of the State of Wyoming for any purpose. Consistent with the express terms of this Participating Addendum, the Contractor shall be free from control or direction over the details of the performance of services under this Participating Addendum. Nothing in this Participating Addendum shall be interpreted as authorizing the Contractor or its agents or employees to act as an agent or representative for or on behalf of the State of Wyoming or any Purchasing Entity, or to incur any obligation of any kind on behalf of the State of Wyoming or any Purchasing Entity. The Contractor agrees that no health or hospitalization benefits, workers' compensation or similar benefits available to State of Wyoming employees will inure to the benefit of the Contractor or the Contractor's agents or employees as a result of this Participating Addendum.

J. Kickbacks. The Contractor certifies and warrants that no gratuities, kickbacks or contingency fees were paid in connection with this Participating Addendum, nor were any fees, commissions, gifts, or other considerations made contingent upon the award of this Participating Addendum. If the Contractor breaches or violates this warranty, the State may, at its discretion, terminate this Participating Addendum without liability to the State, or deduct from the contract price or consideration, or otherwise recover, the full amount of any commission, percentage, brokerage, or contingency fee.

K. Nondiscrimination. The Contractor shall comply with the Civil Rights Act of 1964, the Wyoming Fair Employment Practices Act (Wyo. Stat. § 27-9-105, *et seq.*), the Americans with Disabilities Act (ADA), 42 U.S.C. § 12101, *et seq.*, and the Age Discrimination Act of 1975 and any properly promulgated rules and regulations thereto and shall not discriminate against any individual on the grounds of age, sex, color, race, religion, national origin, or disability in connection with the performance under this Participating Addendum.

L. Notices. All notices arising out of, or from, the provisions of this Participating Addendum shall be in writing and given to the parties at the addresses provided under this Participating Addendum, either by regular mail, email (mandy.gershmel@wyo.gov and bc4732@att.com), or delivery in person

M. Prior Approval. This Participating Addendum shall not be binding upon either party, no services shall be performed, and the Wyoming State Auditor shall not draw warrants for payment, until this Participating Addendum has been fully executed, approved as to form by the Office of the Attorney General, filed with and approved by the Department of Administration and Information Procurement Division, and approved by the Governor of the State of Wyoming, or his designee, if required by Wyo. Stat. § 9-2-1016(b)(iv).

N. Publicity. Any publicity given to the projects, programs, or services provided herein, including, but not limited to, notices, information, pamphlets, press releases, research, reports, signs, and similar public notices in whatever form, prepared by or for the Contractor, shall identify the State as the sponsoring entity and shall not be released without prior written approval from the State.

O. Severability. Should any portion of this Participating Addendum be judicially determined to be illegal or unenforceable, the remainder of the Participating Addendum shall continue in full force and effect, and the parties may renegotiate the terms affected by the severance.

P. Sovereign Immunity and Limitations. Pursuant to Wyo. Stat. § 1-39-104(a), the State of Wyoming and each Purchasing Entity that is an instrumentality of the State of Wyoming expressly reserve sovereign immunity by entering into this Participating Addendum or any purchase order, and each Purchasing Entity constituting a governmental entity expressly reserves

governmental immunity. All of them specifically retain all immunities and defenses available to them as sovereigns or governmental entities pursuant to Wyo. Stat. § 1-39-101, *et seq.*, and all other applicable law. The parties acknowledge that the State of Wyoming has sovereign immunity and only the Wyoming Legislature has the power to waive sovereign immunity. The parties further acknowledge that there are constitutional and statutory limitations on the authority of the State of Wyoming and its agencies or instrumentalities to agree to certain terms and conditions supplied by the Contractor, including, but not limited to, the following: the State's liability for damages; choice of law in a state other than Wyoming; conflicts of law provisions; venue and forum-selection clauses in a state other than Wyoming; Contractor-provided defense or control of litigation or settlement; the State's liability for acts or omissions of third parties; any requirement that the State pay attorneys' fees or costs; additional insured provisions; dispute resolution, including, but not limited to, arbitration; the State's indemnification of another party; and confidentiality. Any such provisions in the Master Agreement, the Participating Addendum, or in any purchase order, attachment, or document incorporated by reference, will not be binding on the State of Wyoming or any Purchasing Entity if and to the extent said provision or any aspect thereof is inconsistent with State law.

Q. Taxes. Notwithstanding anything to the contrary in this section R, the State agrees that the applicable terms and conditions contained in Section 17 of the Master Agreement control. The Contractor shall pay all taxes and other such amounts required by federal, state, and local law, including, but not limited to, federal and social security taxes, workers' compensation, unemployment insurance, and sales taxes.

R. Third-Party Beneficiary Rights. Except for those third-party beneficiary rights allowable under this Participating Addendum, the parties do not intend to create in any other individual or entity the status of third-party beneficiary, and this Participating Addendum shall not be construed so as to create such status. The rights, duties, and obligations contained in this Participating Addendum shall operate only between the parties to this Participating Addendum and shall inure solely to the benefit of the parties to this Participating Addendum. The provisions of this Participating Addendum are intended only to assist the parties in determining and performing their obligations under this Participating Addendum.

S. Titles Not Controlling. Titles of sections and subsections are for reference only and shall not be used to construe the language in this Participating Addendum.

T. Counterparts. This Participating Addendum may be executed in counterparts. Each counterpart, when executed and delivered, shall be deemed an original and all counterparts together shall constitute one and the same Participating Addendum. Delivery by the Contractor of an originally signed

counterpart of this Participating Addendum by facsimile or PDF shall be followed up immediately by delivery of the originally signed counterpart to the State.

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