

Item # 5-ZB

**City of Carson City
Agenda Report**

Date Submitted: October 6, 2008

Agenda Date Requested: October 16, 2008

Time Requested: Consent

To: Mayor and Supervisors
From: Purchasing & Contracts

Subject Title: Action to determine that Contract No. 0809-122 is a contract for additions to and repair and maintenance of equipment which may be more efficiently added to and repaired and maintained by a certain person and therefore not suitable for public bidding pursuant to NRS 332.115 and to approve Contract No. 0809-122 a request for Equipment Services Agreement to be provided by AT&T for the period of April 1, 2009 through March 31, 2012, for a not to exceed cost of \$76,839.60 to be prepaid FY 2009 from the Sheriff's Office Communications Division Fund and funded at follows:

FY09 =	\$ 6,403.29
FY10 =	\$25,613.16
FY11 =	\$25,613.16
FY12 =	<u>\$19,209.99</u>
	\$76,839.60

Staff Summary: This is a continuation of the previous agreement approved by the Board of Supervisors June 19, 2003. This agreement will provide equipment and service for the 911 system at the Sheriff's Office Communications Center.

Type of Action Requested: (check one)
 Resolution Ordinance
 Formal Action/Motion Other (Specify)

Does This Action Require A Business Impact Statement: Yes No

Recommended Board Action: I move to determine that Contract No. 0809-122 is a contract for additions to and repair and maintenance of equipment which may be more efficiently added to and repaired and maintained by a certain person and therefore not suitable for public bidding pursuant to NRS 332.115 and to approve Contract No. 0809-122 a request for Equipment Services Agreement to be provided by AT&T for the period of April 1, 2009 through March 31, 2012, for a not to exceed cost of \$76,839.60 to be prepaid FY 2009 from the Sheriff's Office Communications Division Fund and funded at follows:

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FY10 =	\$25,613.16
FY11 =	\$25,613.16
FY12 =	<u>\$19,209.99</u>
	\$76,839.60

Explanation for Recommended Board Action: Pursuant to NRS 332.115 subsection 1 (a) and (c), staff is requesting the Board of Supervisors declare that the contract is not adapted to award by competitive bidding.

NRS 332.115 Contracts not adapted to award by competitive bidding; purchase of equipment by local law enforcement agency, response agency or other local governmental agency; purchase of goods commonly used by hospital.

1. Contracts which by their nature are not adapted to award by competitive bidding, including contracts for:

- (a) Items which may only be contracted from a sole source;
- (c) Additions to and repairs and maintenance of equipment which may be more efficiently added to, repaired or maintained by a certain person;

are not subject to the requirements of this chapter for competitive bidding, as determined by the governing body or its authorized representative.

Applicable Statue, Code, Policy, Rule or Regulation: NRS 332.115 subsection 1 (c)

Fiscal Impact: \$76,839.60

Explanation of Impact: If approved the below listed account could be reduced by \$76,839.60

Funding Source: Initial invoice of \$76,839.60 will be prepaid in FY09, and expensed through the Sheriff's Office Communications Division account 101-2017-421.07-10, as follows:

FY09 =	\$ 6,403.29
FY10 =	\$25,613.16
FY11 =	\$25,613.16
FY12 =	\$19,209.99
	<u>\$76,839.60</u>

Alternatives: Deny funding – allow current maintenance agreement to lapse

Supporting Material: AT&T Equipment Service Agreement

Prepared By: Sandy Scott, Purchasing & Contracts Coordinator

Reviewed By:

(Sheriff's Department)

(City Manager)

(District Attorney)

(Finance Director)

Date: 10-7-08

Date: 10-7-08

Date: 10-7-08

Date: 10-7-08

Board Action Taken:

Motion: _____

1) _____

2) _____

Aye/Nay

(Vote Recorded By)



CUSTOMER ("Customer")

Carson City

Customer Address

911 East Musser Street
Carson City
NV USA
89701

Customer Contact

Name: Jack Freer
Title: Chief Deputy
Telephone: 775 887-2020 x 41904
FAX: 775 887-2026
Email: JFreer@ci.carson-city.nv.us

Customer Billing Address

911 East Musser St.
Carson City
NV USA
89701

AT&T DataComm* ("AT&T")

AT&T Address

One AT&T Way
Bedminster, NJ 07921-0752
Attn: General Attorney

AT&T Sales Contact Name

Name: Patrick Irwin
Last

AT&T Sales Contact Address

PO Box 11010, 645 E. Plumb Lane
Carson City
NV USA
89701

AT&T Sales Contact Information

Telephone: 775 762-2400
FAX: 775 333-4150
Email: pi3494@att.com
Branch Manager: Nancy McCormick
Sales Strata: Majors
Sales Region: BCM

This Equipment and Services Agreement ("Agreement") between AT&T DataComm* (or "AT&T") and Customer governs the sale and purchase of the Equipment and Services described in this Agreement and any Orders issued pursuant to this Agreement, as well as any additions to and replacements for, the Equipment and Services. Unless earlier terminated by a party pursuant to the provisions hereof, this Agreement is effective after execution by both parties and remains in full force and effect until the later of (i) five (5) years after such execution; or (ii) the expiration or completion of all Orders issued pursuant to this Agreement.

For the purpose of this Agreement, "Customer" includes any entity that controls, is controlled by or is under common control with Customer ("Customer Affiliate"). AT&T grants to Customer the right to permit Customer Affiliates to purchase Equipment and access and use the Equipment and Services, provided that Customer shall remain solely responsible for such purchase, access and use and for the Customer Affiliates' performance.

This Agreement establishes the terms and conditions for present or future purchases for Equipment and/or Installation or Maintenance Services included under this Agreement. If, during the term of this Agreement, Customer requests Equipment, installation and/or maintenance Service from AT&T, the terms and conditions set forth herein will apply to applicable attachments specific to the request that will be required. These attachments, in order of precedence, include 1. Statements / Scopes of Work (SOW/SCOW); 2. Invoicing Schedule and Payment Terms; 3. Bill of Materials for Equipment and Services; 4. Project Implementation Guide (PIG); 5. Implementation Timeline; and 6. Certificate of Acceptance.

There is no Equipment and/or Installation or Maintenance Services ordered at this time.

This Agreement shall become effective when signed by authorized representatives of both parties.

CUSTOMER

By: _____
(Authorized Agent or Representative)

(Typed or Printed Name)

(Title)

(Date)

AT&T

By: _____
(Authorized Agent or Representative)

(Typed or Printed Name)

(Title)

(Date)



Company in California.

AT&T ECATS / Contract No. _____

*AT&T DataComm, Inc. is a Delaware corporation; "AT&T DataComm" is an assumed name of AT&T DataComm, Inc., of Southwestern Bell Telephone Company in Missouri, Oklahoma, Arkansas, Kansas and Texas, and of Pacific Bell Telephone



DESCRIPTION OF EQUIPMENT/SERVICES

(See also attached Exhibits as listed here and subsequent Orders):

2008 Maint quote and equipment list

EXHIBITS:

Installation Location(s): (Include physical address, City, County and State)

4645 Snyder Ave, Carson City Nevada 89701. Term is for April 1st 2009 to March 31st 2012

EQUIPMENT/SERVICES PRICE:	\$ 0.00
MAINTENANCE AGREEMENT:	\$ 76,839.60
INSTALLATION PRICE:	\$ 0.00
OTHER (DESCRIBE)	\$ 0.00

TOTAL PURCHASE PRICE
(BEFORE SHIPPING, HANDLING, TAXES*) \$ 76,839.60

TAX-EXEMPT? (N) (Y)

*Shipping, handling and all applicable sales/use taxes will be added to Total Purchase Price listed separately on the invoice.

Maintenance Declined _____ Customer Initials: _____

FY09	6,403.29
FY10	25,613.16
FY11	25,613.16
FY12	19,209.99

Equipment and Services Agreement – General Terms and Conditions**1. Definitions**

"Cutover" means (i) for a Service when the Service is first provisioned or made available to Customer's use at any site, and/or (ii) for Equipment when it is delivered to a carrier for shipment, or if AT&T provides installation as part of the Services, then upon AT&T's installation of the Equipment.

"Equipment" means the equipment and Licensed Software that AT&T sells, licenses or leases, as applicable, to Customer or for which AT&T provides Services as provided hereunder.

"Hazardous Substance" means any substance or material that is classified as a hazardous material, hazardous chemical, hazardous substance, pollutant, contaminant, or toxic substance under any federal, state, or local law, regulation, or ordinance related to the pollution or protection of air, ground or surface water, soil or other environmental media, occupational health and safety or any other environmental or safety hazard.

"Information" means proprietary information of either party that is disclosed to the other party in the course of performing or evaluating potential amendments to this Agreement, provided such information (except for content) is written or other tangible form that is clearly marked as "proprietary" or "Confidential".

"Order" means any purchase order issued by Customer for Equipment or Services that references this Agreement, is signed by Customer's authorized representative, and is accepted by AT&T.

"Premises" means Customer's facility or location specified in an Order where the Equipment will be installed or Services performed.

"Services" means CPE related services such as project management, installation, maintenance and staging.

"Statement of Work" or "SOW" means the attached statement(s) of work and/or other ordering documents that describe materials and Services to be provided pursuant to this Agreement, entitled Statement of Work (SOW), Scope of Work (SCOW) or Pre-Installation Guide (PIG).

2. Scope

AT&T will sell and Customer will procure the Equipment and Services specified in any Statement of Work or Bill of Materials attached to this Agreement or any Order issued under this Agreement.

3. Delivery and Installation by AT&T

AT&T will deliver the Equipment FOB origin, prepaid and add. Title to the Equipment and all risk of loss to the Equipment shall pass to Customer at the time of delivery to the carrier for shipment. Origin is defined as the manufacturer's site when the equipment is shipped directly to Customer location and as AT&T's staging facility when AT&T performs staging on the equipment before delivery to Customer. Customer acknowledges and agrees that AT&T's ability to provide Equipment during the term of this Attachment is contingent upon the supply and delivery schedules of each of the

Equipment manufacturers. AT&T shall have no liability for delays in any delivery schedule.

4. Customer Responsibilities for Installation Services

AT&T's obligations under this Agreement and the timely fulfillment thereof, are contingent upon timely receipt from Customer of all reasonably necessary assistance and cooperation to AT&T in all matters relating to this Agreement, including reasonable access to relevant personnel, records, information and facilities. Customer shall provide AT&T, in a timely fashion, with all information reasonably required for the performance of the AT&T Services by AT&T. Customer represents that all information presently known to be necessary to AT&T's understanding of the AT&T Services to be performed have been disclosed or provided to AT&T and Customer will keep AT&T timely informed of any new information which may be necessary to AT&T's understanding of the AT&T Services to be performed. Customer shall provide AT&T with reasonable access to the premises necessary for the performance of the AT&T Services required under this Agreement. In the event of Customer's failure to perform its responsibilities hereunder, AT&T may, at AT&T's option, assume or fulfill any and/or all of Customer's responsibilities, directly or through contract with third parties. In such instance, it shall be considered an increase in the scope of AT&T Services.

In connection with the installation of the Equipment at the Premises, Customer will furnish any conduit, holes, wireways, wiring, plans, equipment, space, temporary and permanent power and other utilities, and all other items and services reasonably required for the Equipment's installation/integration in accordance with the Statement of Work. AT&T will rely on all information provided by Customer and will not be responsible or held liable for any damages or costs that result from errors or omissions in such information. Customer shall provide a suitable and safe environment for AT&T to work at the Premises. Customer represents and warrants that the area of the Premises within which AT&T performs Services shall be free of Hazardous Substances. Customer understands and agrees that AT&T does not handle, remove, or dispose of, nor does AT&T accept any liability for, Hazardous Substances on the Premises. If, during its performance of Services, its employees, subcontractors, or agents encounter a Hazardous Substance or other environmental or safety hazard, AT&T may suspend performance under this Agreement until Customer at Customer's own expense completes the clean up and removal of the Hazardous Substance in accordance with applicable laws or removes hazard to our satisfaction. Customer's failure to abate a Hazardous Substance or hazard within thirty (30) days of AT&T's suspension of performance pursuant to this clause shall constitute a material breach for which AT&T may terminate this Agreement or the applicable SOW. Customer shall pay AT&T for any costs, expenses, fines, or penalties incurred by AT&T as a result of the presence or release of the Hazardous Substance or hazard and its suspension of

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performance. Customer also will obtain, at Customer's expense, any necessary licenses, permits and consents (including landlord's or mortgagee's consents) in connection with the installation.

Notwithstanding any other part of this Agreement: (a) AT&T shall have the right to suspend performance or to pursue any other remedies provided for under this Agreement where Customer delays or fails to comply with this provision; and (b) where any of the measures described above are unreasonably expensive, Customer may request that AT&T suspend its performance until such time as an alternative remedy or course of performance is secured or agreed upon; provided, however, that AT&T may terminate this Agreement or an Order where any such suspension lasts longer than thirty (30) days.

5. Invoicing and Payment Terms

Unless the deferred cash option is selected, invoices for all Equipment will be issued the date the Equipment is delivered to the carrier; invoices for Services will be issued monthly for all Services performed in the preceding month; invoices for maintenance Service contracts will be issued as of the date of such contract and for the entire amount of such contract. All Change Orders will be invoiced separately.

Customer will advise AT&T of any billing discrepancies or disputes about an invoice within fifteen (15) business days after receiving the invoice or the amount of invoice shall be deemed due and payable.

Payment terms are net thirty (30) days from date of invoice. A late payment fee of one and one-half percent (1-1/2%) per month (but in no event may any late fee exceed the maximum amount permitted under applicable law) shall be applied to any payment that is not received by AT&T within thirty (30) days after the date of the invoice. Customer will pay AT&T attorneys' fees and other costs incurred by AT&T in the collection of any amount invoiced and not timely paid.

5A. AT&T Capital Services, Inc. ("AT&T-CS") Financing Option

[Customer Initials:] _____ Customer elects to finance the Total Purchase Price through AT&T-CS. Customer hereby requests that AT&T invoice AT&T-CS and arrange for payment as described below:

AT&T will invoice Customer in care of AT&T-CS for 100% of the Total Purchase Price on the Cutover Date (as defined in paragraph 6 below) and the invoice shall be promptly paid after its delivery to AT&T-CS, provided that all required lease documentation has been properly executed and received by AT&T-CS, including the signed certificate of acceptance. If all lease documentation is not executed and received by AT&T-CS as required in the previous sentence, Customer agrees to and will pay the Total Purchase Price to AT&T upon receipt of an invoice.

6. Acceptance

Customer shall have a designated staff member on-site at the completion of Services to sign the acceptance document, acknowledging the Services were performed in accordance with the SOW and are complete. If any Services are incomplete or nonconforming, Customer must provide written notice to AT&T identifying such Services within ten (10) business days of notice by AT&T of completion of said Services, or else Customer waives remedy. Upon written notification, AT&T will then have thirty (30) business days to re-perform or complete the nonconforming Services. If AT&T is unable to, or fails to, correct such nonconformance in all material respects, AT&T may, as AT&T's sole liability and Customer's sole remedy, refund to Customer all service fees paid by Customer for the nonconforming portion of the Services.

7. Licensed Software

Software is provided subject to the particular licensor's standard software license that accompanies the Equipment. The standard software license is a separate agreement between Customer and the licensor. Customer's assent to the terms and conditions of this Attachment binds Customer to the terms and conditions of the licensor's standard software license, as if the terms and conditions of the licensor's standard software agreement were fully set forth in this Attachment, and Customer shall comply with the terms and conditions of the licensor's standard license and associated documentation.

8. Limited Warranty, Limitation of Liability and Limitation of Remedy

WARRANTIES. (a) **Equipment.** The Equipment will be provided to Customer on an "As Is" basis. (i) AT&T DISCLAIMS ANY AND ALL WARRANTIES, EXPRESS OR IMPLIED (INCLUDING, BUT NOT LIMITED TO, WARRANTIES OF MERCHANTABILITY OR OF FITNESS FOR A PARTICULAR PURPOSE). (ii) AT&T WILL NOT HAVE ANY OBLIGATION OR BE LIABLE FOR ANY ERROR, OMISSION, DEFECT, DEFICIENCY, OR NONCOMFORMITY IN ANY EQUIPMENT OR ANY OF THE SERVICES. AT&T DOES NOT WARRANT THAT THE OPERATION OF EQUIPMENT WILL BE UNINTERRUPTED OR ERROR FREE. AT&T HAS NO WARRANTY OBLIGATION FOR EQUIPMENT THAT CUSTOMER ACQUIRES THROUGH AT&T AND EQUIPMENT THAT IS NOT MANUFACTURED BY AT&T AND THAT DOES NOT BEAR AN AT&T LOGO OR COPYRIGHT NOTICE. Customer, not AT&T, is responsible for selecting Equipment to achieve its intended results and for promptly verifying that the Equipment performs as specified by the manufacturer or licensor. (b) **Manufacturer's Warranty:** Notwithstanding

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the disclaimer set forth in the subsection (a) of this section, AT&T shall pass through to Customer any hardware warranties available from Equipment manufacturers and subsection (a) does not negate any software warranty that Customer may obtain directly from the licensor under the particular licensor's standard software license.

WORKMANSHIP; WARRANTY

(a) The provision of AT&T Services and any deliverables under this Agreement shall be performed in a workmanlike manner that would meet commercial industry standards in the field to which the work pertains, as well as any standards set forth in attachments SOW.

AT&T AND ITS AFFILIATES, SUBCONTRACTORS AND AGENTS SPECIFICALLY DISCLAIM ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE AND, EXCEPT FOR THE FIRST SENTENCE IN THIS SECTION AND AS OTHERWISE EXPRESSLY PROVIDED FOR IN THIS AGREEMENT, MAKES NO OTHER WARRANTIES, EXPRESS OR IMPLIED, IN REGARD TO THE AT&T SERVICES.

(b) **Services.** The AT&T Services, as described in the attachments which may include the SOW/SCOW, Inventory schedule and payment terms, Bill of Material, Project Implementation Guide, Implementation Timeline or Certificate of

Acceptance, are based upon, among other things, information provided by CUSTOMER. IN THIS REGARD, AT&T MAKES NO EXPRESS OR IMPLIED REPRESENTATION OR WARRANTY AS TO THE ACCURACY OR COMPLETENESS OF THE INFORMATION PROVIDED TO AT&T BY CUSTOMER. CUSTOMER ACKNOWLEDGES AND AGREES THAT: (I) NONE OF THE INFORMATION FURNISHED BY CUSTOMER IN CONNECTION WITH AT&T SERVICES AND/OR DELIVERABLES HAS BEEN INDEPENDENTLY VERIFIED BY AT&T AND (II) AT&T EXPRESSLY DISCLAIMS, AND WILL NOT BE SUBJECT TO, ANY LIABILITY WHICH MAY BE BASED ON SUCH INFORMATION, OR ANY ERRORS OR OMISSIONS IN SUCH INFORMATION, WHETHER OR NOT AT&T KNEW OR SHOULD HAVE KNOWN OF ANY SUCH ERRORS OR OMISSIONS, OR WAS RESPONSIBLE FOR OR PARTICIPATED IN THEIR INCLUSION IN OR OMISSION FROM THE SERVICES AND/OR DELIVERABLES. If AT&T does become aware of any errors or omissions in information are made or provided by Customer, AT&T will promptly notify Customer, in writing, of such errors and omissions.

(c) Each party will perform their obligations under this Agreement in compliance with all applicable laws.

9. PATENT AND TRADEMARK INDEMNITY.

AT&T SHALL HAVE NO DUTY TO DEFEND, INDEMNIFY, AND HOLD HARMLESS CUSTOMER FROM AND AGAINST ANY OR ALL DAMAGES AND COSTS INCURRED BY CUSTOMER ARISING FROM THE INFRINGEMENT OF PATENTS OR TRADEMARKS OR THE VIOLATION OF COPYRIGHTS BY EQUIPMENT. NOTWITHSTANDING ANY OTHER TERMS OR CONDITIONS TO THE CONTRARY, AT&T'S LIABILITY UNDER THIS SECTION SHALL NOT EXCEED THE PURCHASE PRICE OF THE INFRINGING EQUIPMENT.

10. Force Majeure

Neither party shall be liable to the other party for delays, failure in performance, loss or damage due to a cause beyond the parties reasonable control, such as fire; lightning, strike; embargo; explosion; power surge or failure; acts of god; war; labor disputes; civil disturbances; acts of civil or military authority; inability to secure materials, fuel, products or transportation facilities; acts or omissions of suppliers, or any other causes beyond its reasonable control. This clause shall not excuse the payment of money.

11. Arbitration

Customer and AT&T agree that any dispute arising under this Agreement, shall be submitted to binding arbitration in accordance with the Commercial Arbitration Rules of the American Arbitration Association ("AAA"). The arbitrator shall have no authority in excess of the authority of a court having jurisdiction over the matter. Additionally, the arbitrator shall not alter, revoke, or suspend any provision of this Agreement. The arbitration awards shall be binding and deemed enforceable in any court of competent jurisdiction.

12. Taxes

Prices are exclusive of, and Customer must pay, all taxes (excluding those on AT&T's net income), surcharges, recovery fees, custom clearances, duties, levies, shipping charges, and other similar charges (and any associated interest and penalties) relating to the sale, transfer of ownership, installation, license, use or provision of the Services, except to the extent Customer provides a tax exemption certificate, valid in place of delivery, prior to or with an Order.

13. Assignments and Subcontracts

Neither party to the Agreement shall assign it in whole or in part without the written consent of the other, which consent will not be unreasonably withheld, provided however, AT&T may assign this Agreement to any present or future affiliate, subsidiary or parent corporation upon notice to, but without securing Customer's consent and may grant to any such assignee the same rights and privileges AT&T enjoys under this Agreement. In addition, AT&T may subcontract any portion of the Services to be performed without Customer's prior written approval.

14. Notices; Representatives of Parties

All notices pertaining to this Agreement will be given in writing and will be sufficient if delivered personally to the representatives of the parties designated in this Agreement, or sent by telefax, telegram, or express or regular mail, postage prepaid.

15. Confidentiality and Proprietary Information

Each party's INFORMATION shall, for a period of three (3) years following its disclosure (except in the case of Software, for an indefinite period): (i) be held in

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confidence; (ii) be used and transmitted between countries only for purposes of performing this Agreement (including in the case of AT&T, the ability to monitor and record Customer's transmissions in order to detect fraud, check quality, and to operate, maintain and repair the Services), using the Services or evaluating potential amendments to this Agreement; and (iii) not be disclosed except to the receiving party's employees, agents and contractors having a need-to-know (provided that such agents and contractors are not direct competitors of the other party and agree in writing to use and disclosure restrictions as restrictive as this Article 4), or to the extent required by law (provided that prompt advance notice is provided to the disclosing party to the extent practicable).

The restrictions in this Article shall not apply to any information that: (i) is independently developed by the receiving party; or (ii) is lawfully received by the receiving party free of any obligation to keep it confidential; or (iii) becomes generally available to the public other than by breach of this Agreement.

Both parties agree to comply with privacy laws applicable to their respective businesses. Customer shall obtain any user consents legally required relating to handling of user's content. If Customer believes that, in the course of providing Services under this Agreement, AT&T will have access to data Customer does not want AT&T personnel to comprehend, Customer should encrypt such data so that it will be unintelligible.

16. Publicity

Customer agrees that during the term of this Agreement, AT&T may refer to Customer, orally and in writing, as a customer of AT&T and may publish a press release announcing in general terms that AT&T and Customer have entered into this Agreement and AT&T may in general terms describe the activities contemplated hereunder. Any other reference to one party by the other party requires written consent of the first party.

17. Storage of Equipment

AT&T and/or its designated subcontractors may store a reasonable amount of AT&T or subcontractor equipment, materials, tools and other items necessary for the performance of an Order on the Premises or in such other secure location(s) as Customer may designate, at no charge. Customer will take reasonable precautions to protect and maintain the integrity of any such items and will accept delivery of any such items delivered to Customer's facilities when AT&T personnel are not available to accept delivery and place or direct the placement of such items on the Premises or other secure location(s). In the event Customer accepts delivery of any items under this Agreement, Customer will promptly notify AT&T of the delivery and location of the items delivered.

18. Amendments; Termination

Customer will be charged for any additions, deletions or changes ("Change") in the Equipment/Services. If Customer desires a Change, Customer will notify AT&T by written request, and AT&T will provide Customer a revised Bill of Materials and/or Statement of Work reflecting the equipment, service and price changes shipping dates, Cutover dates and other terms. Any increase or decrease in the price occasioned by a Change will be added to/subtracted from the amount of Customer's final invoice. After the date of the complete execution of this Agreement, any changes to an Order or SOW requested by Customer will be processed as a "Change Order". If AT&T does not receive the executed change documents within 30 days, no changes will be made to the original document. This Agreement may be amended or modified only by written instrument signed by an authorized representative of each party.

If Customer changes the work schedule in a SOW or if compliance with such schedule becomes impractical, due to no fault of AT&T, AT&T reserves the right to reevaluate and amend the pricing for Equipment and Services or to submit change notice for any additional costs incurred as a consequence of such changes.

Either party may terminate this Agreement in whole or in part by giving the other party at least thirty (30) days' prior written notice. Either Party may terminate an Order or Change Order by giving the other Party written notice prior to Cutover. In the event Customer terminates an Order or Change Order: (i) prior to the date of delivery of any Equipment, Customer shall pay as a cancellation fee, and not as a penalty, an amount equal to twenty percent (20%) of the total purchase price of the Equipment cancelled (and once Equipment is delivered to Customer, the relevant Order(s) may not be cancelled); and (ii) Customer shall be liable for an amount equal to fifty percent (50%) of the fees for Services for the remaining term of this Agreement (or any applicable Order) plus any non-recoverable costs including, but not limited to, amounts incurred by AT&T in connection with the provisioning of cancelled Equipment and Services. Upon termination, Customer agrees to pay all amounts due for Equipment and Services provided by AT&T up to and including the effective date of termination, plus any costs or expenses (including restocking fees) incurred by AT&T in connection with the performance of the Order. In the event the Customer terminates an Order or Change Order prior to Cutover, the Customer shall be liable for all expenses incurred by AT&T under that Order or Change. Upon termination, Customer agrees to pay AT&T all amounts due for Equipment and Services provided by AT&T up to and including the effective date of termination, plus any nonrecoverable restocking fees or other costs incurred by AT&T. Such payment will constitute a full and complete discharge of Customer's payment obligations. Termination will also constitute a full and complete discharge of AT&T's obligations. Any Order in progress or requested prior to the termination of this Agreement will be completed and Customer agree to pay AT&T for the Services performed

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and/or any Equipment delivered or installed under the Order.

19. Termination of Purchase Order; Suspension of Service

Except as otherwise expressly provided in this Agreement, Order(s) may not be terminated, suspended or canceled unless: a) the other party is in material breach of or default under such Order, and such breach or default continues for a period of thirty (30) days after the giving of written notice by the party not in breach or default; or b) any federal, state or local governmental agency or regulatory body or a court or tribunal of competent jurisdiction renders or enters an order, ruling, regulation, directive, decree or judgment which restricts or prohibits either party from continuing, impairs either party's ability to continue, or makes impractical or unduly expensive either party's continuance under such Order or this Agreement.

20. Miscellaneous Provisions

AT&T is entitled to increased compensation and/or time for completion where AT&T encounters concealed physical conditions which differ materially from those indicated in any documents provided under this Agreement or otherwise represented by Customer, or latent physical conditions which differ materially from those ordinarily found to exist and generally recognized as inherent in the installation and/or maintenance activities contemplated by this Agreement, where such conditions would materially interfere with, delay or increase cost of performance under this Agreement.

Unless local law would require otherwise, the construction, interpretation and performance of this Agreement shall be governed by the substantive law of the State of New York, excluding its choice of law rules, and applicable laws and regulations of the United States of America. The parties consent to the exclusive jurisdiction of the courts located in New York City, USA.

If any provision of this Agreement or any remedy provided in it is declared invalid under any applicable law, such provision shall be modified to the extent necessary to make it valid and enforceable. The remaining provisions of this Agreement shall continue in full force and effect.

Export of Equipment is subject to the Export Control Laws of the United States. Customer agrees not to export the Equipment in violation of those laws.

Any obligation arising under this Agreement or any Order which by its nature continues beyond termination or expiration, including, but not limited to Limitation of Warranties, Limitation of Liabilities and Limitation of Remedies, and Confidentiality shall survive termination or expiration of this Agreement.

This Agreement, all Exhibits attached, and all Orders issued under this Agreement, represent the entire

agreement between Customer and AT&T concerning the Equipment and Services, and supersedes all prior negotiations, representations, and agreements, either written or oral, concerning the Equipment and Services. In the event of a conflict between the contract documents, this Agreement shall take precedence. Any information, terms and/or conditions, or other language contained in any document(s) or purchase order(s) furnished by Customer to AT&T in excess of or outside of such information or in conflict with any terms and conditions contained in this Agreement and/or the applicable SOW or attachment hereto shall be considered void.

21. CISCO SOFTWARE LICENSE; WARRANTY; RMA PROCEDURES.

(a) Software License. For Equipment manufactured by Cisco, the software is provided subject to the software license found at:

http://www.att.com/cpe/docs/software_license.doc. This license is a separate agreement between Customer and Cisco. Customer's assent to the terms and conditions of this Agreement binds Customer to the terms and conditions of this Cisco license, as if the terms and conditions of the license were fully set forth in this Attachment. Customer agrees that it shall comply with the terms and conditions of this license and associated documentation. **(b) Warranty.** The applicable warranty passed through hereunder with respect to such Equipment manufactured by Cisco is included in the Equipment package. A sample of the Cisco limited warranty can be reviewed at:

http://www.cisco.com/en/US/products/prod_warranties_listing.html. **(c) RMA Procedures.** The terms and conditions applicable to the Cisco RMA process can be reviewed at: http://www.att.com/cpe/docs/return_material_authorization.doc.

22. CISCO SMARTNET SERVICES.

Cisco SMARTnet services provided in connection with Equipment are provided directly to Customer by Cisco pursuant to the terms of Cisco End User Support Agreement ("EUSA") which can be accessed by Customer at <http://www.cisco.com/legal/cbr.html>. The EUSA is a separate agreement between Cisco and the Customer. By Customer assenting to the terms and conditions of this Agreement, Customer is also bound to the terms and conditions of EUSA, as if the terms and conditions of the EUSA agreement were fully set forth in this Attachment. Customer agrees that it shall comply with the terms and conditions of the EUSA. AT&T will invoice Customer for the charges associated with such SMARTnet services. Cisco shall be solely responsible for the provision of the SMARTnet services and Customer releases AT&T from any loss, damages or other claims relating to the SMARTnet services.

ATT 2008 Maintenance proposal Carson City Nevada

Category	Line Item	Item Description	Ports Per Card	Part Number	Unit Price	Install	Monthly Maint Years 2-5	New Qty	Reuse Qty	Total Equip	Total Install	Total Maint	Line Total
ADD-ONS	NC-024	Optional Power Supply for PI1115A converter	0	PS1002	\$ 198.00	\$ -	\$ -	0	1	\$ -	\$ -	\$ 46.00	\$ 138.00
ADD-ONS	PEI-008	Connect Air 25 pair cable (10' male to male)	0	04000-01010	\$ 8.40	\$ 0.70	\$ 0.04	0	1	\$ -	\$ -	\$ 2.40	\$ 7.20
ADD-ONS	PEI-019	Delta 44 soundcard	0	04000-00544	\$ 604.80	\$ -	\$ 2.85	0	6	\$ -	\$ -	\$ 1,026.00	\$ 3,078.00
ADD-ONS	PEI-031	CPQ Hard drive, 36GB 15K used for ML370 BASE or ENHANCED servers	0	64001-20035	\$ 410.76	\$ 35.72	\$ 2.19	0	3	\$ -	\$ -	\$ 394.20	\$ 1,182.60
ADD-ONS	PEI-067	Plant Cable for Delta 44 sound card	0	830801-02101	\$ 75.60	\$ 5.25	\$ 0.32	0	6	\$ -	\$ -	\$ 115.20	\$ 345.60
ADD-ONS	PEI-070	Plant Circuit Board, PCI ComCentrex emulation	0	830811-01706	\$ 882.00	\$ 61.29	\$ 3.76	0	6	\$ -	\$ -	\$ 1,353.60	\$ 4,060.80
ADD-ONS	PEI-071	Plant Circuit Board, ELAN with PCI connection	0	830811-02103	\$ 567.00	\$ 39.40	\$ 2.41	0	6	\$ -	\$ -	\$ 867.60	\$ 2,602.80
ADD-ONS	PEI-363	Remote Management Console Client	0	660005-90010	\$ 2,365.00	\$ -	\$ -	0	1	\$ -	\$ -	\$ -	\$ -
ADD-ONS	PEI-432	CD/RW drive for workstations	0	64000-30013	\$ 109.12	\$ 6.00	\$ -	0	1	\$ -	\$ -	\$ -	\$ -
ADD-ONS	PEI-547	Audio Control Unit (ACU), w/ delta 44 sound card cables	0	850808-00702	\$ 2,457.90	\$ 420.00	\$ 4.10	0	6	\$ -	\$ -	\$ 1,476.00	\$ 4,428.00
ADD-ONS	SBC-060	Serial to parallel converter for Magic, Black Box	0	PI1115A-US	\$ 236.25	\$ 11.59	\$ 0.75	0	1	\$ -	\$ -	\$ 45.00	\$ 135.00
BACKROOM HARDWARE	SBC-051	Henry Double sided CPU shelf BLACK 23"	0	40108-723	\$ 169.48	\$ 10.30	\$ 0.63	0	1	\$ -	\$ -	\$ 37.80	\$ 113.40
BRIDGES, HUBS	PEI-048	General Cable, patch, 3' (panel to hub)	0	65000-00002	\$ 10.08	\$ 0.79	\$ 0.05	0	2	\$ -	\$ -	\$ 6.00	\$ 18.00
CABLES	PEI-012	Connect Air Cable serial 100FT DB25F/DB9F	0	04000-01067-100	\$ 57.96	\$ 3.85	\$ 0.24	0	1	\$ -	\$ -	\$ 14.40	\$ 43.20
CABLES	PEI-014	Connect Air Cable serial 25FT DB25F/DB9F	0	04000-01067-25	\$ 27.72	\$ 1.93	\$ 0.12	0	1	\$ -	\$ -	\$ 7.20	\$ 21.60
CABLES	PEI-556	CBL, PRINT PARALLEL 10 FT	0	65000-00065	\$ 21.00	\$ 1.75	\$ -	0	1	\$ -	\$ -	\$ -	\$ -
CABLES	SBC-025	Raritan Cable for arbitrator, 6.5 foot	0	CCPT20	\$ 52.50	\$ 5.96	\$ 0.39	0	12	\$ -	\$ -	\$ 280.80	\$ 842.40
CABLES	SBC-026	Raritan Cable for arbitrator, 13 foot	0	CCPT40	\$ 67.50	\$ 5.96	\$ 0.39	0	12	\$ -	\$ -	\$ 280.80	\$ 842.40
CABLES	SBC-031	BLUE Berk-Tek LAN cable, cat 5 plenum, 1000' roll	0	10032065	\$ 232.50	\$ 17.84	\$ 1.16	0	1	\$ -	\$ -	\$ 69.60	\$ 208.80
MISC SERVER HARDWARE	PEI-672	HARD DRIVE, 147GB 10K BU	0	6400C-20015	\$ 1,170.40	\$ 66.36	\$ 4.07	0	1	\$ -	\$ -	\$ 244.20	\$ 732.60
MONITORS	PEI-109	NEC Monitor 19" LCD BLACK	0	63002-192802	\$ 1,097.47	\$ 67.85	\$ 4.16	0	6	\$ -	\$ -	\$ 1,497.60	\$ 4,492.80
MONITORS/SERVERS	PEI-106	Compaq V710 Monitor, 17 inch	0	63001-172802	\$ 349.69	\$ 19.87	\$ 1.22	0	1	\$ -	\$ -	\$ 73.20	\$ 219.60

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Category	Line Item	Item Description	Ports Plat Card	Part Number	Unit Price	Install	Monthly Maint Years/2.5	New Qty	Reuse Qty	Total Equip	Total Install	Total Maint	Line Total
PERSONAL COMPUTERS	PEI-163	HP Integrated Workstation XP	0	61000-0001X	\$ 1,946.89	\$ 140.87	\$ 8.63	0	6	\$ -	\$ -	\$ 3,106.80	\$ 9,320.40
PERSONAL COMPUTERS	PEI-163	HP Integrated Workstation XP	0	61000-0001X	\$ 1,946.89	\$ 140.87	\$ 8.63	0	1	\$ -	\$ -	\$ 517.80	\$ 1,553.40
PERSONAL COMPUTERS	SBC-020	Genovation Keypad 683	0	64007-50014	\$ 119.94	\$ 8.10	\$ 0.53	0	6	\$ -	\$ -	\$ 190.80	\$ 572.40
PERSONAL COMPUTERS	SBC-024	Raritan CS4 Arbitrator, 4 port	0	CS4	\$ 493.75	\$ 39.85	\$ 2.59	0	6	\$ -	\$ -	\$ 932.40	\$ 2,797.20
PERSONAL COMPUTERS	SBC-024	Raritan CS4 Arbitrator, 4 port	0	CS4	\$ 493.75	\$ 39.85	\$ 2.59	0	1	\$ -	\$ -	\$ 155.40	\$ 466.20
PLANT PYXIS	PEI-649	CONTACT CLOSURE MODULE (if this part is include on the PYXIS parts list, you will need to confirm that there is a slot available in the PYXIS server to insert this card)	0	660009-000101	\$ 1,365.00	\$ 83.20	\$ 2.60	0	1	\$ -	\$ -	\$ 156.00	\$ 468.00
PLANT SERVICES	PEI-258	Plant MAGIC server configuration service	0	809800-19004	\$ 750.00	\$ 65.00	\$ 4.80	0	1	\$ -	\$ -	\$ 288.00	\$ 864.00
PLANT SERVICES	PEI-284	Plant Vesta server configuration service	0	809800-70001	\$ 862.50	\$ 86.00	\$ 6.20	0	1	\$ -	\$ -	\$ 372.00	\$ 1,116.00
PLANT SERVICES	PEI-287	Plant Vesta workstation configuration service	0	809800-90001	\$ 517.50	\$ -	\$ -	0	6	\$ -	\$ -	\$ -	\$ -
PLANT SERVICES	PEI-305	Field Engineer, Primary	0	809800-17101	\$ 52.00	\$ -	\$ -	0	32	\$ -	\$ -	\$ -	\$ -
PLANT SERVICES	PEI-307	Project Manager, Secondary	0	809800-51004	\$ 52.00	\$ -	\$ -	0	8	\$ -	\$ -	\$ -	\$ -
PLANT SERVICES	PEI-427	Magic 2.6 Administration Training per person	0	4034	\$ 325.00	\$ -	\$ -	0	6	\$ -	\$ -	\$ -	\$ -
PLANT SERVICES	PEI-534	GENERIC WORKSTATION CONFIG	0	809800-00102	\$ 750.00	\$ -	\$ -	0	1	\$ -	\$ -	\$ -	\$ -
PRINTERS	PEI-166	Hewlett Packard Printer, color	0	64040-60012	\$ 442.00	\$ 21.89	\$ 1.34	0	1	\$ -	\$ -	\$ 80.40	\$ 241.20
SERVERS	PEI-168	Server, Mini HP	0	62001-00010	\$ 1,966.90	\$ 168.53	\$ 10.33	0	1	\$ -	\$ -	\$ 619.80	\$ 1,859.40
SERVERS	PEI-169	HP Server Base Tower ML370/G4	0	62030-E102401	\$ 4,454.00	\$ 435.82	\$ 26.71	0	1	\$ -	\$ -	\$ 1,602.60	\$ 4,807.80
SERVERS	PEI-170	HP Server, ENHANCED TOWER	0	62030-F102402	\$ 4,102.95	\$ 397.48	\$ 24.36	0	1	\$ -	\$ -	\$ 1,461.60	\$ 4,384.80
SERVERS	PEI-442	36GB back up hard drive	0	64001-20019	\$ 410.76	\$ 35.72	\$ 2.19	0	1	\$ -	\$ -	\$ 131.40	\$ 394.20
SERVERS	PEI-443	73GB back up hard drive	0	6400C-20012	\$ 630.00	\$ 57.17	\$ 3.50	0	1	\$ -	\$ -	\$ 210.00	\$ 630.00
SERVERS	PEI-444	Hard drive frame and rails enclosure for 73GB BUHD & 147GB BUHD	0	65000-00085	\$ 168.00	\$ 17.07	\$ 1.05	0	1	\$ -	\$ -	\$ 63.00	\$ 189.00
SOFTWARE	FICT-009	PYXIS 3.3 WARR	0	650005-01201	\$ 1,063.75	\$ -	\$ -	0	1	\$ -	\$ -	\$ 380.00	\$ 1,140.00

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Category	Line Item	Item Description	Ports Per Card	Part Number	Unit Price	Install	Monthly Maint Years 2-5	New Reuse Qty	Total Equip	Total Maint	Life Total
SOFTWARE	FICT-013	MG 4.0/PYXIS 3.3 INTG HF	0	871290-04801	\$ 983.90	\$ -	\$ -	0	1	\$ -	\$ 768.00
SOFTWARE	PEI-179	Microsoft Embedded SQL SVR LIC 2000	0	04000-00266	\$ 438.70	\$ 37.47	\$ 2.30	0	1	\$ -	\$ 414.00
SOFTWARE	PEI-180	Microsoft Embedded SQL CLIENT 2000	0	04000-00267	\$ 96.76	\$ 8.32	\$ 0.51	0	2	\$ -	\$ 183.60
SOFTWARE	PEI-295	Magic 2.6 Lic/Doc/Media	0	871299-00102.6	\$ 615.00	\$ 43.78	\$ 7.81	0	1	\$ -	\$ 1,405.80
SOFTWARE	PEI-296	Magic Data Collection License for SBC supplied equipment	0	871299-01101	\$ 615.00	\$ 43.78	\$ 7.81	0	6	\$ -	\$ 8,434.80
SOFTWARE	PEI-315	Server, Windows 2003 + 5 CAL	0	04000-00351	\$ 999.00	\$ 87.46	\$ 5.36	0	1	\$ -	\$ 964.80
SOFTWARE	PEI-316	Server, Windows 2003 + 10 CAL	0	04000-00352	\$ 1,200.00	\$ 105.06	\$ 6.44	0	1	\$ -	\$ 1,159.20
SOFTWARE	PEI-422	Magic Monitor License	0	871299-00201	\$ 246.00	\$ 17.51	\$ 1.07	0	1	\$ -	\$ 192.60
SOFTWARE	PEI-501	VESTA 2.2 LIC/DOC/SW UPGRADE	0	870899-00102.2U	\$ -	\$ -	\$ -	0	1	\$ -	\$ -
SOFTWARE	PEI-502	VESTA 2.2 LIC UPGRADE	0	870899-00502U	\$ -	\$ -	\$ -	0	5	\$ -	\$ -
SOFTWARE	PEI-525	CPR system preparation Workstation	0	870890-07501	\$ 500.00	\$ -	\$ -	0	1	\$ -	\$ -
SOFTWARE SUPPORT	NC-021	Plant Support Firmware five years MAARS	0	809800-16010	\$ 1,500.00	\$ -	\$ -	0	1	\$ -	\$ 4,500.00
SOFTWARE SUPPORT	NC-028	MAGIC SUPPORT THRU YR 5 PEI	0	809800-01203	\$ 1,500.00	\$ -	\$ -	0	6	\$ -	\$ 4,500.00
Miscellaneous (Cables, plugs, connectors, screws, bracing, punchdown blocks, etc. at 1% of the equipment total):											
										\$ -	
										\$ 25,613.20	
										\$ 76,839.60	
LABOR	SBC-1001	Field Engineer, hourly	0	SBC-1001	\$ 180.00	\$ -	\$ -	10	0	\$ 1,800.00	\$ -
LABOR	SBC-1002	Emergency Communications Manager, hourly	0	SBC-1002	\$ 200.00	\$ -	\$ -	10	0	\$ 2,000.00	\$ -
LABOR	SBC-1005	Technical Manager, hourly	0	SBC-1005	\$ 250.00	\$ -	\$ -	10	0	\$ 2,500.00	\$ -
										\$ 6,300.00	
										\$ -	
										\$ 6,300.00	
										\$ 83,139.60	

Equip Total	Install Total	Maint Total	Training Total	Grand Total
\$ -	\$ -	\$ 76,839.60	\$ -	\$ 76,839.60
	Waived			

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Category	Line Item	Item Description	Parts Part Card	Part Number	Unit Price	Install	Monthly Maint Years/25	New Qty	Reuse Qty	Total Equip	Total Install	Total Maint	Line Total
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