

Attachment #1

20060217-02

Master Agreement

This Master Agreement (the "Agreement") is between SBC Global Services, Inc. dba AT&T Global Services, a Delaware corporation with offices at One SBC Plaza, Dallas, Texas 75202, on behalf of itself and those Affiliates identified in those Addenda, Attachments, Orders, and/or SOWs that may be entered into from time to time and incorporated by reference into this Agreement (individually and collectively, "AT&T") and Mount Diablo Unified School District ("Customer"), a California government agency, with offices at 1936 Carlotta Dr, Concord, CA 94519, is effective on the date of last execution ("Effective Date"). AT&T and Customer are sometimes referred to herein collectively as the "Parties" or individually as a "Party."

References to "Agreement" refer to this Agreement, any applicable tariff or guidebook, and the documents listed in the Addendum and Attachment List, including any Statement of Work ("SOW"). New or revised Addenda, Attachments, Orders, and/or Statements of Work must be signed by Customer and AT&T Affiliate. The following order of precedence applies to the documents comprising an Agreement: (1) any applicable guidebook and tariff(s), (2) Addenda (and related SOWs and Attachments), (3) this Agreement, and (4) Orders.

Notices from a Party concerning this Agreement must be written and delivered to the other Party at the address(es) below (i) in person, (ii) by certified mail, return receipt requested, (iii) by traceable overnight delivery, or (iv) by facsimile, electronically confirmed and followed immediately by U.S. Mail. Notice will be effective upon delivery.

To Customer: Mount Diablo Unified School District  
1936 Carlotta Drive  
Concord, CA 94519  
Fax: 925-680-2505  
Attention: Joe Estrada, IT Director

To AT&T: AT&T Sales Team - Contract Notice  
2600 Camino Ramon, Room 1S250X  
San Ramon, CA 94583  
Fax: 925-790-0210  
Attention: AT&T Account Team for Mount Diablo Unified School District

SO AGREED by the Parties' respective authorized signatories:

MOUNT DIABLO UNIFIED SCHOOL DISTRICT		AT&T GLOBAL SERVICES ON BEHALF OF ITS AFFILIATES	
By:	<u>Brian Slaughter</u>	By:	<u>Kathleen Jenkins</u>
Name:	<u>Brian Slaughter</u>	Name:	<u>KATHLEEN JENKINS</u>
Title:	<u>Director, Purchasing &amp; Warehouse</u>	Title:	<u>Contract Management</u>
Date:	<u>Feb. 16, 2006</u>	Date:	<u>2/16/06</u>

CONFIDENTIAL INFORMATION

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## Master Agreement Terms and Conditions

### 1. DEFINITIONS

- 1.1 "Affiliate" means an entity that controls, is controlled by, or is under common control with a Party.
- 1.2 "Confidential Information" means ideas, know-how, trade secrets, computer programs, technical information, and other confidential information which is disclosed by a disclosing Party to a receiving Party under this Agreement. The terms of this Agreement shall be deemed Confidential Information by the Parties.
- 1.3 "Cutover" occurs (except as otherwise described herein or in an Addendum/Attachment/SOW) (a) for a Service when the Service is first provisioned or otherwise available for Customer's use at any single Site; and/or (b) for Equipment when the Equipment is delivered to the carrier for shipment, or if installation by AT&T is provided as part of the Services, then upon AT&T's installation of the Equipment.
- 1.4 "Equipment" means equipment that AT&T sells or leases to Customer under this Agreement.
- 1.5 "Software" means computer programs and related object code licensed by AT&T to Customer, including any software licensed with or separately from Equipment.
- 1.6 "Normal Business Hours" means Monday through Friday, 8:00 a.m. to 5:00 p.m. (local time), excluding AT&T recognized holidays.
- 1.7 "Order" means any purchase order for Equipment or Services that references this Agreement (or an Addendum).
- 1.8 "Service(s)" means any or all services provided by AT&T, as further described in this Agreement or an Addendum.
- 1.9 "Site(s)" means Customer locations where AT&T is to perform Services.

### 2. SERVICE-SPECIFIC TERMS AND CONDITIONS

- 2.1 Limitation on Service; Applicability of Tariffs. Service is offered subject to the availability and operational limitations of the necessary systems, facilities, and equipment. Except as otherwise specified in an Addendum, regulated Services (e.g., local or long distance telephone service) are subject to applicable tariffs and/or guidebooks (generally available at [www.sbc.com](http://www.sbc.com) or from an AT&T sales representative). Customer and any Customer end-user use of Service shall at all times comply with applicable laws, regulations and any AT&T written or electronic instructions for use.
- 2.2 Payment and Billing. Customer will pay AT&T (i) the monthly fees and nonrecurring charges set forth in the applicable Addendum (or, in the case of regulated services, at the charges set forth in the applicable tariff and/or guidebook), and (ii) applicable taxes, surcharges, and recovery fees (including universal service fees), and customs and duties. Except as otherwise provided in the applicable Addendum or invoice, (i) billing commences on Cutover; (ii) payment is due within 30 days after the date of invoice; and (iii) payment is subject to AT&T's credit requirements and AT&T may require a security deposit to ensure prompt payment. Customer will advise AT&T of any billing dispute within 30 days after receipt of invoice or the invoice shall be deemed correct. In addition to recovering attorneys' fees and costs of collection, AT&T may assess a late payment fee equal to the lesser of 1.5% per month or the maximum amount allowed by law.

### 3. GENERAL TERMS AND CONDITIONS

- 3.1 Term and Termination. This Agreement will start on the Effective Date and remain in effect until terminated by either Party as provided herein (the "Term"). Each Addendum is coterminous with this Agreement, unless the Addendum specifies a different term. Upon expiration of the term specified, each Addendum shall remain in effect on a month-to-month basis at AT&T's then current monthly pricing. Customer, and AT&T (in the case of Services that are no longer under a term commitment), may terminate this Agreement or an Addendum without cause and for convenience upon 30 days' prior written notice. If Customer terminates an Addendum with a specified term or term commitment, Customer shall pay the termination liability (i) specified in the Addendum; or (ii) if no termination liability is specified, an amount equal to (a) 50% of the remaining monthly recurring charges due under the Addendum; and (b) any charges imposed on AT&T by any third party as a result of Customer's early termination. Customer may cancel an Order for Equipment prior to Cutover, subject to payment of any non-recoverable restocking fees or costs incurred by AT&T. Customer may not cancel an Order for Equipment after Cutover.
- 3.2 Termination for Breach. This Agreement (or applicable Addendum) may be terminated immediately by either Party or AT&T may suspend performance hereunder or thereunder, upon written notice to the other Party if the other Party (i) is in material breach (including but not limited to failure to make timely undisputed payments) and such failure or breach is not remedied within 30 days after the terminating Party provides written notice to the breaching Party specifically describing such breach; (ii) ceases to carry on business as a going concern, becomes the object of voluntary or involuntary bankruptcy or liquidation, or a receiver is appointed with respect to a substantial part of its assets; (iii)

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- engages in fraud, criminal conduct, or willful misconduct; or (iv) breaches the confidentiality obligations under this Agreement.
- 3.3 **Force Majeure.** Except in the case of payment of amounts due, neither Party will be liable to the other Party for any failure of performance due to any cause beyond that Party's reasonable control, including acts of God, fire, explosion, vandalism, terrorism, cable cut, storm, or other similar occurrence, any law, order, regulation, direction, action, or request by any government, civil, or military authority, national emergencies, insurrections, riots, wars, labor difficulties, supplier failures, shortages, breaches, or delays, or preemption of existing Service to restore Service in compliance with the regulatory rules and regulations, or, in the case of AT&T, delays caused by Customer or Customer's service or equipment vendors.
- 3.4 **Assignment.** Neither this Agreement nor any portion or interest in this Agreement may be assigned, sublet, or in any manner transferred by a Party without the prior written consent of the other Party, which consent will not be unreasonably withheld. Notwithstanding the foregoing, AT&T may assign all or any part of this Agreement to an AT&T Affiliate or use subcontractors to perform Services.
- 3.5 **Use of Confidential Information.** During the Term, each Party may obtain Confidential Information from the other Party. Written or other tangible Confidential Information must at the time of disclosure be identified and labeled as Confidential Information belonging to the disclosing Party. When disclosed orally or visually, Confidential Information must be identified as confidential at the time of the disclosure, with subsequent confirmation in writing within 15 days after disclosure. Neither Party may during the Term and for 3 years thereafter disclose any of the other Party's Confidential Information to any third party. Neither Party may use the other Party's Confidential Information except to perform its duties under this Agreement. The Confidential Information restrictions will not apply to Confidential Information that is (i) already known to the receiving Party, (ii) becomes publicly available through no wrongful act of the receiving Party, (iii) independently developed by the receiving Party without benefit of the disclosing Party's Confidential Information, or (iv) disclosed by the disclosing Party to a third party without an obligation of confidentiality. Upon termination of this Agreement or an applicable Addendum, each Party will return the other Party's Confidential Information.
- 3.6 **Customer Information; Access and Safe Working Environment.** AT&T may rely on any information provided by Customer and assumes no liability for any damages or costs that result from errors or omissions in such information. Customer shall provide AT&T with timely access to Customer information, facilities or equipment as AT&T reasonably requires to provide the Services and keep AT&T informed on developments in Customer's business or operations that may impact Service. AT&T may share Customer information and Confidential Information (including billing and usage information for Services purchased) with AT&T Affiliates and inform Customer of other AT&T product/service offerings. Customer shall maintain the Site in a suitable and safe working environment, free of Hazardous Materials. Customer represents and warrants that the area of the Site where AT&T performs Services is free of Hazardous Materials. AT&T does not handle, remove or dispose of, nor does AT&T accept any liability for, any Hazardous Materials at the Site. Customer shall pay AT&T for any damages, costs, fines or penalties AT&T incurs as result of the presence or release of such Hazardous Materials. If AT&T encounters any such Hazardous Materials, AT&T may terminate this Agreement or suspend performance until Customer removes and cleans up at its expense Hazardous Materials in accordance with this Agreement and applicable law. For purposes hereof, "Hazardous Materials" means any substance whose use, transport, storage, handling, disposal, or release is regulated to any law related to pollution, protection of air, water, or soil, or health and safety.
- 3.7 **Publicity.** During the Term, 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.
- 3.8 **Limitation of Liability.** NEITHER PARTY SHALL BE LIABLE TO THE OTHER FOR ANY INDIRECT, INCIDENTAL, PUNITIVE, EXEMPLARY, SPECIAL OR CONSEQUENTIAL DAMAGES (INCLUDING WITHOUT LIMITATION DAMAGES RELATED TO LOST PROFITS, TOLL FRAUD, LOSS OF USE, AND LOSS OF DATA, OR FAILURE TO REALIZE SAVINGS OR BENEFITS) ARISING UNDER THIS AGREEMENT, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH LOSS. EXCEPT AS OTHERWISE PROVIDED IN ANY APPLICABLE TARIFF OR GUIDEBOOK, THE TOTAL AGGREGATE LIABILITY OF AT&T, ITS SUPPLIERS, LICENSORS, AFFILIATES, DIRECTORS, OFFICERS, AND/OR EMPLOYEES UNDER OR IN CONNECTION WITH THIS AGREEMENT WILL BE LIMITED TO PROVEN DIRECT DAMAGES NOT TO EXCEED AMOUNTS ACTUALLY PAID BY CUSTOMER DURING THE 3-MONTH

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PERIOD IMMEDIATELY PRECEDING THE DATE OF THE CIRCUMSTANCES GIVING RISE TO THE FIRST CLAIM FOR DAMAGES UNDER THIS AGREEMENT.

- 3.9 Warranties; Disclaimer of Other Warranties. With respect to maintenance or professional Services, AT&T warrants that the Services will be performed in a professional and workmanlike manner. AT&T further warrants that it has good title to the Equipment and that the Equipment will perform in accordance with the manufacturer's published specifications during the warranty period set forth by such manufacturer and AT&T will use commercially reasonable efforts to subrogate any AT&T claims or rights against the Equipment manufacturer to Customer. AT&T makes no warranties and assumes no liability for any defects or nonconformities caused by non-AT&T approved modifications or alterations; misuse, accident or neglect; or Customer failure to comply with AT&T or AT&T vendor specifications or requirements for use. These warranties do not cover and AT&T has no responsibility for (a) installation, maintenance or operation of non-AT&T provided equipment or software or impairment caused by such equipment/software; (b) compatibility of such equipment/software with AT&T-provided Equipment or Software; or (c) modifications, alterations or repairs to Equipment or Software by persons other than AT&T or its authorized agents. EXCEPT FOR THE FOREGOING, OR AS EXPRESSLY SET FORTH IN AN ADDENDUM, AT&T MAKES NO OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION ALL WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND WARRANTIES RELATED TO THE MATERIALS, SERVICE, EQUIPMENT OR SOFTWARE. ALL OF WHICH ARE PROVIDED "AS IS" TO THE FULL EXTENT PERMITTED BY LAW.
- 3.10 Indemnities. Customer will indemnify and defend AT&T, its directors, officers, employees, agents and their successors ("Agents") from and against any and all third party claims and related loss, liability, damage and expense, including attorneys' fees, (collectively "Damages") arising from improper use of Services or information or any content or data transmitted over any AT&T network or facilities. AT&T will indemnify and defend Customer and its Agents from and against any Damages finally awarded or paid in settlement based on a claim that any Service, or AT&T-provided Equipment and Software (collectively, "Materials"), infringe a U.S. patent or copyright. If a final injunction or judgment is awarded against Customer prohibiting use of Service/Materials by reason of infringement of a U.S. patent or copyright, AT&T will at its option and expense either (a) procure the right for Customer to continue using the Service/Materials; (b) obtain and deliver equivalent non-infringing Service/Materials; or (c) terminate the infringing Service/Materials and refund to Customer amounts paid for infringing Service/Materials, less a reasonable charge for use. An indemnified Party shall provide the indemnifying Party with notice for any claim of indemnity and the indemnifying Party shall have complete authority to assume the sole defense and settlement of such claim. The indemnified Party may participate in the settlement or defense at its own expense and shall reasonably cooperate to facilitate the defense and settlement of such claims.
- 3.11 Equipment. To the extent that Customer purchases Equipment under an Addendum/Attachment/SOW, the following additional terms apply: AT&T will deliver the Equipment FOB shipping point, freight prepaid and charged and title to Equipment and all risk of loss to the Equipment shall pass to Customer at Cutover. Upon Cutover, AT&T hereby grants to Customer a personal, nontransferable, non-exclusive license to use the Software on or with the corresponding Equipment and AT&T (or its licensors) shall retain and continue to own all right, title and interest in any Software and all copies. Customer will furnish any conduit, holes, wireways, wiring, plans, equipment, space, power/utilities, and all other items reasonably required to perform installation and other Services related to the Equipment and obtain any necessary licenses, permits and consents to do so. Customer has 30 days after Cutover to test the Equipment and provide AT&T with written notice if the Equipment is defective and does not conform to manufacturer's specifications. AT&T will repair or replace (at its option and expense) any such non-conformity and if the Equipment fails to conform after a reasonable number of attempts to do so, AT&T will (at its option and expense) provide replacement Equipment or refund payments for non-conforming Equipment. AT&T is not responsible for and shall have no liability for, or any impairment caused by (a) any non-conformity caused by improper use or environmental or electrical conditions or attachment of non-AT&T or manufacturer materials or devices; or (b) installation, operation or maintenance of non-AT&T hardware/software. Customer is responsible for ensuring that such non-AT&T hardware/software is compatible with the Services, Equipment or Software. If Customer does not deliver a written certificate of acceptance or written notice of non-conformity within 30 days after Cutover, the Equipment shall be deemed accepted.
- 3.12 Miscellaneous. This Agreement sets forth the entire understanding of the Parties and supersedes any and all prior agreements, representations, and understandings relating to the subject matter hereof. No modifications or subsequent agreements concerning the subject matter of this Agreement will be effective unless made in writing and signed by the Parties. AT&T shall not be bound by any electronic or pre-printed terms additional to, or different from, those in this Agreement that may appear in Customer's form documents, orders, acknowledgments or other communications. Customer shall not resell any Services without AT&T's written consent. Any legal action arising under this Agreement must commence within 2 years after the cause of action arises. AT&T, its employees, agents, and representatives are not employees, servants, partners, or joint venturers of or with Customer. AT&T is an independent contractor and will at all times direct, control, and supervise all of its employees. This Agreement will be governed by the laws of Texas, without regard to its conflicts of law rules. The Parties specifically disclaim the United Nations Convention on Contracts for the International Sale of Goods and the Uniform Computer Information Transactions Act. If any provision of this

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Agreement is determined to be invalid or unenforceable, this Agreement will be construed as if it did not contain such provision. The failure of a Party to insist upon strict performance of any provision of this Agreement in any one or more instances will not be construed as a waiver or relinquishment of such provision and the same will remain in full force and effect.

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CONFIDENTIAL INFORMATION TO BE KEPT  
CONFIDENTIAL TO CUSTOMER

**Addendum and Attachment List**

This Addendum and Attachment List to the Master Agreement (the "List") between AT&T and Customer, current as of the Effective Date, is incorporated into the Agreement by this reference. All Addenda and Attachments shall be attached to the Agreement.

Addendum No. 1 to the Master Agreement

This List may be amended from time to time in writing and signed by the Parties.

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**Addendum No. 1 to Master Agreement**

**1. PREAMBLE**

This Addendum No. 1 ("Addendum") is incorporated by reference to the Master Agreement between SBC Global Services, Inc. dba AT&T Global Services and Mount Diablo Unified School District ("Customer") entered into contemporaneously with this Addendum ("Agreement"). This Addendum is between Customer and SBC Global Services, Inc. dba AT&T Global Services on behalf of Pacific Bell Telephone Company dba SBC California ("AT&T"). This Addendum supercedes and replaces in its entirety Addendum No. 1 executed on February 18, 2005. This Addendum is effective upon execution ("Effective Date"). The term of this Addendum shall begin on the Effective Date and shall end five (5) years after all Services are installed and available for use or five (5) years and six (6) months after the Effective Date, whichever is sooner (the "Term"). The term of this Addendum will be automatically extended at the prices, terms and conditions set forth herein for two additional one year terms (each a "Renewal Term") unless Customer provides to SBC California a written notice of Customer's intent not to renew this Addendum at least 30 days' prior to the scheduled expiration date and each Renewal Term expiration date of this Addendum, as applicable.

**2. SCOPE AND LOCATIONS OF SERVICE**

**A. Scope of Service**

Customer elects to subscribe to and AT&T agrees to provide its service(s) as indicated herein (collectively referred to as "Service") for Customer's use pursuant to the terms and conditions set forth in the Agreement, this Addendum, and in AT&T's tariffs for the applicable service. In consideration for receiving the price discounts set forth herein, Customer has agreed to subscribe to the Service and maintain a minimum quantity of Service, as described in Section 3 below, for a specified term.

**B. Locations of Service**

Subject to the availability of equipment and facilities (including outside plant, cable, capacity and memory), AT&T shall provide and Customer shall subscribe to Service at Customer's locations within AT&T's franchise territory in the State of California.

OPT-E-MAN® Service shall be provided only at the following locations:

Clayton Valley High	1101 Alberta Way	Concord
El Dorado Middle	1750 West Street	Concord
Valley View Middle	181 Viking Drive	Pleasant Hill
District Office	1986 Carlotta Drive	Concord
College Park High	201 Viking Drive	Pleasant Hill
Riverview Middle	205 Pacifica Avenue	Bay Point
Oak Grove Middle	2050 Minert Road	Concord
Glenbrook Middle	2351 Olivera Road	Concord
Mt. Diablo High	2450 Grant Street	Concord
Sequoia Middle	265 Boyd Road	Pleasant Hill
Foothill Middle	2775 Cedro Lane	Walnut Creek
Diablo View Middle	300 Diablo View Lane	Clayton
Pleasant Hill Middle	3100 Oak Park Boulevard	Pleasant Hill
Concord High	4200 Concord Boulevard	Concord
Northgate High	425 Castle Rock Road	Walnut Creek
Pine Hollow Middle	5522 Pine Hollow Road	Concord
Ygnacio Valley High	755 Oak Grove Road	Concord

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3. SERVICE DESCRIPTION

A. General Description of Service

OPT-E-MAN® Service. OPT-E-MAN® Service provides a fiber-based service that transparently interconnects two or more Customer locations within a Metropolitan Area Network (MAN) as if they were segments on the same LAN using packet-based switching technologies. The Service provides dedicated bandwidth from 5 Mbps up to 1 Gbps. The handoff to Customer will be a 10/100 Mbps or 1 Gbps Ethernet interface.

Customers may connect any two or more locations together, as long as they are in the same LATA or MAN and the Service is available. The Service offers logical point-to-point or point-to-multipoint or multipoint-to-multipoint configurations that support Ethernet-to-Ethernet LAN connections. If Customer connects to the OPT-E-MAN network using a bridge or switch for Layer 2 connectivity, only 50 Media Access Control (MAC) addresses can be used per Layer 2 device, per port. Any additional MAC addresses will be assigned additional charges, with a limit of 100 MAC addresses total per port as set forth in the applicable tariff.

B. Description of Minimum Quantities of Service

OPT-E-MAN® Service

<u>Quantity</u>	<u>USOC</u>	<u>Description</u>
1	P9FGX	OPT-E-MAN® Basic Connect 1G
17	P9FEX	OPT-E-MAN® Basic Connect 100M
1	R6EQB	CIR - 250 Mbps (Bronze)
1	R6EHB	CIR - 50 Mbps (Bronze)
6	R6EBB	CIR - 10 Mbps (Bronze)
10	R6EAB	CIR - 5 Mbps (Bronze)
18	EVNAB	EVC 5 - 100 Mbps - Bronze
2	VU4	Repeater

4. QUANTITY OF SERVICE

Pursuant to this Addendum, Customer will be provided the minimum quantities set forth and described in Section 3.B. above.

5. PRICES

A. Price(s) for Minimum Quantity

OPT-E-MAN® Service

Monthly Price: \$17,256.51

Customer has elected to pay on a monthly basis for the term of this Addendum. The monthly price set forth above is for the minimum quantity of Service as set forth and described in Section 3.B. above. The price includes 1) the monthly service charge for the minimum quantities, 2) the nonrecurring charges for the initial installation of the minimum quantities as set forth in Section 3.B. above, and 3) curb to MPOE custom build charges of \$210,823.62 for the minimum quantities. If this Addendum is terminated prior to the expiration date, Customer shall pay AT&T such nonrecurring and Custom Fiber Build (including curb to MPOE charges) in addition to any amounts due under Section 8.

If Customer elects to decrease the Service to less than the minimum quantities described in Section 3.B. above, Customer will continue to pay the monthly price set forth above.

Billing for Service during the six (6) month period after the Effective Date of this Addendum ("Ramp Up-Period") shall begin upon installation of each individual location listed in Section 2.B. above at a monthly price of \$713.06 each. The Monthly Price listed above of \$17,256.51 shall begin no later than six (6) months from the completion of the installation of the first location from among those listed in Section 2.B. above. If all locations are installed before the end of Ramp-Up Period, AT&T shall bill the Customer the Monthly Price listed above at that earlier date.

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Except as specifically stated above, Customer will pay the prevailing tariff nonrecurring charge for all installations, adds, moves and changes of the Service provided hereunder at the time of installation, add, move or change.

**B. Changes in Scope**

In the event 1) AT&T determines that additional equipment and facilities (such as outside plant, cable, capacity or memory) are required; or 2) if Customer exceeds any Cable Route Mile limitations which may be set forth in Section 2.B above; or 3) Customer requests additional Service or features which are not included in this Addendum; or 4) Customer requests a transition of the Service(s) provided hereunder to new or alternate technologies offered by AT&T; or 5) Customer divests, significantly downsizes, or consolidates and the Service provided hereunder is reduced and such reduction of Service is not caused, in whole or in part, by Customer's acquisition of equivalent services from other telecommunications service providers, or if Customer's use of the Service increases significantly, AT&T shall perform a full financial study and, if appropriate, the parties shall execute a modification to this Addendum reflecting the change in Service and the agreed upon prices.

**C. Taxes and Surcharges**

The prices set forth do not include CPUC or FCC mandated surcharges or applicable taxes. Such surcharges and applicable taxes shall be billed on a monthly basis.

**D. Services Not Included**

Except as specifically stated herein, the Services set forth above do not include Simple Inside Wire, intrabuilding network cable, repair service for such wire and cable, wiring associated with Customer-provided terminal equipment, Off-Premises station mileage, or usage associated with Foreign Exchange Service.

**E. Terms of Payment**

AT&T's prices will be billed on a monthly basis and are due upon receipt of the bill. AT&T's Tariff Schedule Cal. P.U.C. No. A2.1.9 imposes a late payment charge of 1.5% per month on an unpaid balance of twenty dollars or more carried forward from one month's bill to the next. The backbilling limitations applicable to tariff services set forth in Schedule Cal. P.U.C. A2.1.9 do not apply to this Addendum and the prices shall be due and payable pursuant to the terms and conditions of this Addendum.

**6. INSTALLATION AND ACCEPTANCE**

Within thirty days of the Effective Date of this Addendum, to the extent a new Service installation or upgrade is required, AT&T will submit to Customer a specific Service implementation schedule that sets forth the installation timeline for the Service as agreed to by Customer and AT&T. AT&T shall also submit to Customer a Service test plan which sets forth the functional and performance tests to be conducted on the Service. Acceptance of the Service at each location will be made immediately following successful completion of the tests for each location.

**7. WARRANTY AND MAINTENANCE**

AT&T warrants that its Service will be in good working order and that the Service will perform in accordance with the requirements of this Addendum. AT&T will maintain and repair the Service at no additional charge to Customer for the term of this Addendum. This warranty does not cover repairs for damage caused by an act or omission of Customer or its officers, agents or employees.

For the term of this Addendum, AT&T will perform such maintenance and repair services as may be required by AT&T to keep the Service in good working order and to ensure that the Service performs in accordance with the requirements. Such maintenance and repair services shall not unreasonably interfere with Customer's use of the Service. AT&T provides, at a minimum, the following: (a) technicians during normal business hours of 8 a.m. to 5 p.m. Monday through Friday and technicians when available outside of normal business hours; (b) dispatch service; and (c) diagnostic service and network monitoring from AT&T's central office. In the event AT&T dispatches its service technician to Customer's premises and the service problem is found to be in Customer's equipment, the maintenance charges set forth in AT&T's Tariffs will apply.

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8. TERMINATION CHARGES

A. If this Addendum is terminated or canceled prior to the Effective Date, or if new Service is installed, prior to the Cutover Date, the termination charge shall be determined as follows:

AT&T's recurring and nonrecurring costs of labor, engineering, nonreusable materials, interest, transportation, storage, manufacturer's cancellation charges and any other costs incurred by AT&T or its subcontractors prior to completion of installation, including those expenses incurred in preparation for start of installation.

B. If this Addendum is terminated or canceled on or after the Effective Date, or if installation of Service is included, after the Cutover Date, the termination charge shall be determined as follows:

70% of the monthly price X the number of months remaining in the term of this Addendum

Plus any unrecovered nonrecurring charges, Custom Fiber Build and curb to MPOE custom build charges owed to AT&T on the date of termination.

If Customer or AT&T terminates this Addendum and a termination charge is due pursuant to the Agreement, AT&T shall compute the termination charges, as set forth above, and render a bill to Customer. Customer shall pay such bill pursuant to the terms of the Agreement.

C. The termination charges set forth above shall apply if this Addendum is terminated by the Customer for convenience or canceled by AT&T for Customer's default.

9. LIMITATION OF LIABILITY

A. AT&T's liability for errors or omissions in its provision of Service is governed by Schedule Cal. P.U.C. No. A2.1, Rule 14. The relevant portion of that tariff is set forth below. (The Utility means AT&T.)

- 1) The provisions of this rule do not apply to errors and omissions caused by willful misconduct, fraudulent conduct or violations of law.
- 2) In the event an error or omission is caused by the gross negligence of the Utility, the liability of the Utility shall be limited to and in no event exceed the sum of \$10,000.
- 3) The Utility will not provide a credit allowance for interruptions of service caused by the Customer's facilities, equipment, or systems.
- 4) Except as provided in 9.A.1 and 9.A.2 above, the liability of Utility for damages arising out of mistakes, omissions, interruptions, delays, errors or defects in any of the services or facilities furnished by Utility up to and including its local loop demarcation point, including exchange, toll, private line, supplemental equipment, alphabetical directory listings (excluding the use of bold face type) and all other services, shall in no event exceed an amount equal to the pro rata charges to the Customer for the period during which the services or facilities are affected by the mistake, omission, interruption, delay, error or defect provided, however, that where any mistake, omission, interruption, delay, error or defect in any one service or facility affects or diminishes the value of any other service said liability shall include such diminution, but in no event shall the liability exceed the total amount of the charges to the Customer for all services or facilities for the period affected by the mistake, omission, interruption, delay, error or defect.

B. EXCEPT AS SET FORTH IN 9.A. ABOVE, AT&T SHALL NOT BE LIABLE FOR ANY SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES (INCLUDING LOST PROFITS) DIRECTLY OR INDIRECTLY RELATING TO OR ARISING OUT OF CUSTOMER'S INABILITY TO USE ANY OR ALL OF THE SERVICE OR RELATING TO OR ARISING OUT OF AT&T'S PERFORMANCE OR NON-PERFORMANCE OF ITS OBLIGATIONS AND RESPONSIBILITIES PURSUANT TO THIS ADDENDUM.

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## 10. GENERAL

- A. Customer requests that its identity be kept confidential and not be publicly disclosed by AT&T or the California Public Utilities Commission ("CPUC"), unless required by law.
- B. This Addendum and any modifications is subject to the jurisdiction of the CPUC and shall at all times be subject to such changes or modifications as the CPUC or Telecommunications Division of the CPUC may, from time to time, direct in the exercise of its jurisdiction.
- C. Customer acknowledges and warrants that it lacks requisite regulatory authority such as Certificates of Public Convenience and Necessity ("CPCN") or other like authorization to resell services, and Customer is prohibited from reselling the Service provided pursuant to this Addendum to any other customers. However, Customer may make the Services provided hereunder available to its own subsidiaries or to legally affiliated entities. If Customer obtains regulatory authority to resell services and attempts to resell the Services provided hereunder, AT&T may, on ten days written notice, terminate this Addendum.
- D. This Addendum sets forth the entire discount price applicable to the Service(s) provided hereunder and no other tariff discount plans or promotional prices shall apply.
- E. "Cutover Date" is defined as the date that a Service provided hereunder is first installed and available for Customer's use at any one location.
- F. Based on FCC Rules and Regulations, the prices detailed are offered via the C.P.U.C. No. 175T Tariffs and are based on Customer acknowledgement and certification to AT&T that the total interstate traffic (including Internet traffic) on the circuit(s) constitutes 10% or less of the total traffic on the Service. By signing this Addendum, Customer makes such acknowledgement and certification.
- G. This Addendum, the Agreement and AT&T's tariffs set forth the entire understanding of the parties and supersede any and all prior agreements, arrangements, representations or understandings relating to the subject matter hereof. No subsequent agreement between Customer and AT&T concerning the subject matter of this Addendum shall be effective or binding unless it is made in writing and signed by both parties. In the event of an inconsistency or conflict between the Agreement, this Addendum and AT&T's tariffs, and notwithstanding the order of precedence set forth in the Master Agreement, the governing order of precedence shall be (1) this Addendum, (2) the Agreement, and (3) the applicable tariff.
- H. If, after the first fiscal year in which a particular Service acquired hereunder is installed, funds are not appropriated to continue paying for that particular Service in a subsequent fiscal year or universal service discounts are not received to enable Customer to pay for that particular Service in a subsequent fiscal year, then Customer may terminate this Addendum as it relates to that particular Service as of the last day for which funds were appropriated or universal service discounts were received ("Date of Termination"), without being subject to termination charges set forth in this applicable Addendum; provided, however, that (i) Customer shall be obligated to pay all charges incurred through the Date of Termination, plus any unrecovered nonrecurring charges which may be owed AT&T on the Date of Termination, (ii) Customer shall use its best efforts to obtain funding or universal service discounts for the particular Service provided hereunder, (iii) Customer agrees not to obtain substantially similar service and/or equipment to replace those provided hereunder for a period equal to the remaining term on this Addendum as of the Termination Date, and (iv) Customer may exercise such right to terminate upon delivery to AT&T of a 30 day written notice setting forth the reason for termination and within 30 days following the delivery of such written notice, Customer shall provide AT&T a legal opinion of counsel from Customer that no funds have been appropriated or otherwise made available for payments due under this Addendum and funds have not been made available for the acquisition of substantially similar service and/or equipment to replace those provided hereunder.
- I. Customer hereby warrants that the person signing this Addendum has the authority of Customer to bind Customer to this Addendum.

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**ADDENDUM TO Opt-e-man ("Agreement") FOR  
SERVICES AND/OR PRODUCTS SUBJECT TO UNIVERSAL SERVICES ("E-RATE") FUNDING  
(PLEASE CHECK THE APPROPRIATE BOX – A OR B)**

This Addendum ("Addendum"), entered into by SBC Global Services, Inc. dba AT&T Global Services on behalf of itself and its Affiliates ("AT&T") and the MOUNT DIABLO UNIFIED SCHOOL DISTRICT ("Customer") and effective as of the date last signed below ("Effective Date"), is an attachment to that certain Agreement between the parties thereto. If there are any inconsistencies between the Agreement and this Addendum, the terms and conditions of this Addendum shall control.

**A)  NO E-RATE FUNDING REQUIRED [Agreement effective immediately; not dependent on funding.]**

Customer desires that Services commence on or about [Enter Target Service Start Date]. The Effective Date and/or the obligations of Customer and AT&T under the Agreement are not in any way dependent or contingent upon Customer's application for, or receipt of, any funding award from the Schools and Libraries Division ("SLD") of the Universal Service Administrative Company ("USAC"). In the event Customer applies for funding, Customer must notify AT&T within ten (10) business days of Customer's receipt of a Funding Commitment Decision Letter ("FCDL") from the SLD if funding has been awarded.

(Please sign below – Section B does not apply if Section A is checked)

**B)  DEPENDENT ON E-RATE FUNDING [Agreement may be terminated if funding is denied.]**

1. Scope and Term. AT&T agrees to provide Customer services and/or products that Customer has determined are eligible for universal service discounts ("Discounts") pursuant to Section 254 of the Telecommunications Act ("Act") of 1996 (47 U.S.C. § 254) and the rules and regulations promulgated thereunder. (Such Services are further described in the Agreement). This Addendum remains in effect for so long as AT&T is providing the Services or Customer is obligated to pay for such Services.
2. Eligibility of Products and Services: The identification of certain Services in the Agreement as "E-Rate Eligible" or "E-Rate Ineligible" for Universal Service ("E-Rate") funding is not dispositive, nor does it suggest that this or any other Services in this Agreement will be deemed eligible for such funding. Any conclusions regarding the eligibility of Services for E-Rate funding rests with the SLD and/or FCC as administrators of the E-Rate program. AT&T is not responsible for the outcome of these conclusions.
3. Payment for Services: Customer agrees (i) that if E-Rate funding for any Service(s) is denied or withdrawn in whole or in part, Customer is responsible for paying AT&T the full cost of such Service(s). If the Universal Service Administrative Company ("USAC") seeks reimbursement of E-Rate funds due to Customer's failure to comply with the E-Rate regulations, including Customer delays in submitting required Forms or contracts; or, due to a decision by USAC that any approved Services are ineligible (other than as the result of AT&T's failure to comply with the E-Rate requirements), Customer shall reimburse AT&T for any funds AT&T must return to USAC within ninety (90) days of notice from USAC seeking reimbursement.
4. Requested Information. If requested, Customer will provide AT&T with copies of the following E-Rate-related materials (including all attachments): (i) Form 471 and Item 21 Attachments; if appropriate, (ii) Form 500; (iii) Service Substitution Request; and, (iv) Service Certification Form. If the Customer issues purchase orders, Customer shall clearly delineate between eligible and non-eligible Services on those orders.
5. Representations, Warranties and Indemnities. Each Party represents and warrants that it has or will comply with all laws and the requirements applicable to the E-Rate Program. Each Party agrees to indemnify and hold harmless the other Party (and its employees, officers, directors and agents) from and against all third party claims (including FCC or USAC claims) and related loss, liability, damage and expense (including reasonable attorney's fees) arising out of the indemnifying Party's violation of the E-Rate Requirements or breach of the representations, warranties, and terms contained in this Addendum.

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**If Section B, above, is checked, Customer should designate the intended funding method:**

- Billed Entity Application Reimbursement ("BEAR") - Form 472\*  
 Service Provider Invoice form - ("SPI") - Form 474\*\*

\* Customer will file the Form 472 and certify that it has received and paid for Services in full and AT&T will remit the discounted portion to the customer within twenty (20) business days after receipt of payment from USAC.

\*\* AT&T will file Form 474 ("SPI" form) after Services have been provided and Customer has notification of an approved Funding Commitment Decision Letter ("FCDL") and an approved Form 486. AT&T will then provide discounts on the Customer's bill. Customer also agrees to promptly submit any AT&T or SLD Forms needed to support requests for payment of Services rendered.

**Non-appropriations of Funding**

If, after the first fiscal year in which a particular Service acquired hereunder is installed, funds are not appropriated to continue paying for that particular Service in a subsequent fiscal year or universal service discounts are not received to enable Customer to pay for that particular Service in a subsequent fiscal year, then Customer may terminate that particular Service as of the last day for which funds were appropriated or universal service discounts were received ("Date of Termination"), without being subject to termination charges set forth in the applicable Agreement; provided, however, that (i) Customer shall be obligated to pay all charges incurred through the Date of Termination, plus any unrecovered nonrecurring charges which may be owed AT&T on the Date of Termination, (ii) Customer shall use its best efforts to obtain funding or universal service discounts for the Service, (iii) Customer agrees not to obtain substantially similar service and/or equipment to replace those provided hereunder for a period equal to the remaining term for such Service under this Agreement as of the Date of Termination, (iv) Customer shall exercise such right to terminate by delivery to AT&T of a 30 day written notice setting forth the reason for termination, and (v) within 30 days following the delivery of such written notice, Customer shall provide AT&T a legal opinion of counsel from Customer that no funds have been appropriated or otherwise made available for payments due under the Agreement and funds have not been made available for the acquisition of substantially similar service and/or equipment to replace those provided hereunder.

**Board Approval Contingency**

SBC and Customer agree that Customer's governing board shall meet to approve this Contract prior to or promptly after Customer's receipt of Funding Commitment. If Customer's governing board rejects this Contract, this Contract shall immediately terminate, without penalty. Customer agrees to use best efforts to obtain approval from its governing board.

**C)  ENTRANCE FACILITIES FOR PRIORITY-ONE SERVICE [Placement of facilities on customer premise.]**

Customer desires eligible telecommunications services to be rendered to its location(s) by placing cabling within subterranean conduit facilities across Customer's premises. Customer does not wish to provide these subterranean conduit facilities themselves, but instead requests the placement of the facilities as part of the construction associated with the delivery of the underlying service. Accordingly, Customer hereby:

1. Agrees to execute a Blanket Easement, substantially in the form attached hereto, granting AT&T the right to place and maintain facilities on Customer's premise(s), in accordance with designs agreed to within the Statement of Work, Scope of Work or other appropriate engineering documents, approved by the parties in connection with the project;
2. Agrees to notify AT&T of any and all issues arising out of or related to such facilities, including the need for maintenance or repair;
3. Assumes responsibility for notifying any other contractors or persons with a need to know, of the presence of the facilities and the location of such facilities;
4. Agrees to pay AT&T, on a time and materials basis at AT&T's then prevailing rate, or such other rates as may be mutually agreed to by the parties, for all maintenance and/or repair services rendered on such facilities while in place on the premises;

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5. Agrees to indemnify, defend and hold AT&T harmless from any and all liability that may arise out of the presence and maintenance of such facilities, except for AT&T's gross negligence associated with such facilities; and
6. Grants AT&T the right, but not the obligation, to remove the facilities should Customer terminate its agreement for the underlying telecommunications services.

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SO AGREED by the Parties' respective authorized signatories:

CUSTOMER LEGAL BUSINESS NAME	AT&T GLOBAL SERVICES ON BEHALF OF ITS AFFILIATES
Customer Signature: <i>Brian Slaughter</i>	AT&T Signature: <i>KJenkins</i>
Print Name: <i>Brian Slaughter</i>	Print Name: <i>KATHLEEN JENKINS</i>
Title: <i>Director, Purchasing</i>	Title: <i>Contract Management</i>
Date: <i>Feb. 16, 2006</i>	Date: <i>2-16-06</i>

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