

**AGREEMENT FOR SPECIAL SERVICES  
BETWEEN  
AT&T CORPORATION  
AND  
MERCED COUNTY  
CONTRACT NO. 2021246**

**THIS AGREEMENT**, is made and entered into by and between the County of Merced, a political subdivision of the State of California, (hereinafter referred to as "County"), and AT&T, Corp., a New York Corporation, located at One AT&T Way, Bedminster, New Jersey, 07921-0752 (hereinafter referred to as "Contractor").

**WHEREAS**, County desires to retain Contractor to perform the services in connection with the Fast Open Contracts Utilization Services (FOCUS) pursuant to Government Code Sections 25330 - 25338; and,

**WHEREAS**, Contractor represents it has considerable knowledge and experience relating to the performance of such services; and,

**WHEREAS**, the parties desire to set forth herein the terms and conditions under which said services shall be furnished.

**NOW, THEREFORE**, in consideration of the mutual covenants and promises herein contained, the parties hereby agree as follows:

**1. SCOPE OF SERVICES**

1.1 FOCUS Program Overview

The purpose of this FOCUS Agreement will be to provide the means for counties, cities, schools, special districts and other governmental entities in California and nationally to purchase their needed telecommunications technology solutions through a formally bid contractual relationship. FOCUS also provides the means for governments to reduce their costs of procurement while leveraging their dollars with other governments to achieve greater buying power. FOCUS offers the possibility of choosing more than one provider in each category.

1.2 FOCUS Program Design for Contractor

The program design shall incorporate the principles as they apply to the following awarded telecommunications technology categories:

Communications Services:

- Call Center Solutions (with ACD)
- Engineering/Consulting Services

- Integrated Voice Response (IVR)
- Voice over Internet Protocol (VOIP)
- Unified Messaging (UM)
- Telecommunications Systems (PBX)
- Telephone Handsets
- Voice Mail Solutions
- Wireless Voice Communication Services

Application Systems:

- Development
- Installation Solutions
- Version Control Solutions

Infrastructure:

- Battery Backup Systems
- Cabling Services

Enterprise Mobility Solutions:

- Mobile Applications

Network & Enterprise Security Solutions:

- Firewall and Virtual Private Network (VPN)
- Intrusion Detection/Prevention Solutions
- Network, Host and Enterprise Management Solutions
- Transport Solutions (PRI, MPLS, Super-trunks, CO Business Lines, Optical, Satellite, Wireless)
- Video Solutions
- Wireless Solutions (Wi-Fi)

Enterprise Systems:

- Virtualization (Servers)
- Virtual Desktop Infrastructure (VDI)
- Helpdesk Solutions
- Hosting Services and Applications (Cloud and SaaS)
- Telepresence/Video Conferencing

Consulting Services

Other Goods and Services

### 1.3 Services

Contractor shall provide such services in a good and professional manner in accordance with the terms and conditions stated herein, and any specifically referenced attachments hereto. The following exhibits are

specifically incorporated by reference, attached hereto, and made a part hereof, except when in conflict with this Agreement or modified herein:

- Exhibit A - County's Request for Proposal #7370
- Exhibit B - Contractor's Responding Proposal
- Attachment 1 – Subcontractors
- Attachment 2 – Ordering, Reporting, and Reconciliation Procedures

Services shall include all activities of Contractor necessary to its performance of the work included in the scope herein described and shall perform all services as an independent contractor; not as an agent or employee of the County.

In the performance of Contractor's duties to perform such services, Contractor's services include, but are not limited to, the following:

- a. Provide telecommunications products and services, using a competitively bid procurement tool, to public entities nationally.
- b. Offer superior products and services, at competitively bid prices, to insure public entity telecommunications goals are being achieved.
- c. Service FOCUS needs in specifically awarded telecommunications technology categories as listed in Section 1.2.

#### 1.4 Contractor Commitments

- a. Selected FOCUS partners are authorized to add new product lines as needed to replace discontinued product lines. County will be notified in writing of such product changes (with pricing) as they occur.
- b. Not Specifically Priced Items (NSP) – FOCUS users may order non-contracted products and services that are in support of the contracted items listed on the Purchase Order. Any NSP items must be peripheral and subordinate to the contracted items. The total value of all NSP items shall not exceed ten percent (10%) of the total price of the Purchase Order.
- c. County reserves the right to receive and process all orders at a future date.
- d. Corporate level management support and resource commitment to the FOCUS Program.

- e. Corporate level dedication to at least a California marketing program.
- f. Corporate level commitment to their sales force in promoting the FOCUS Program and rewarding successes.
- g. An aggressive marketing strategy.
- h. Excellence in customer support and service.
- i. A commitment to use local providers and/or contracted services where a corporate presence does not exist.
- j. A product and service quality assurance program that meets or exceeds industry excellence standards.
- k. The most competitive pricing given to a state/local government agency for the array of products and/or services offered.
- l. An ability to include industry leaders in the corporate and product suites offered through subcontractor relationships.
- m. An on-line order placement/tracking system for immediate input or retrieval of information/acknowledgments by vendor.
- n. As required, a customer help desk (800 number/on-line access) to assist customer technical and administrative issues.
- o. Product, service, and installation excellence to any location that meets industry's highest standards.
- p. The availability and inclusion of product supplies, product training, networking services (if appropriate), and product maintenance.
- q. All product installations and modifications performed by supplier will be by manufacturer-authorized personnel and meet manufacturer-documented specifications, unless otherwise specifically stated in the purchase order/Statement of Work.
- r. All contractors offering technology services must be certified by the California Public Utilities Commission (CPUC) to offer those services. Evidence of certification from CPUC is required.
- s. All products offered as a part of FOCUS must meet or exceed the specifications of the referenced brands.

## 1.5 Mandatory Administrative Requirements

1. Notify County of all sales made under FOCUS, including order/delivery progress, within fourteen (14) business days of order.
2. Quarterly and annual sales reports.
3. A product/service document, paper or electronic — to be produced at least four (4) times per year. Electronic documents shall be updated immediately for price reductions. The document must show the array of product/service offerings, product/service descriptions, and pricing schedules based on single item purchases. If appropriate, greater price reductions are expected as volume on identical items is increased. A percent of volume discount must be provided prior to order.
4. Price increase/price decline policies. All price reduction changes must be published within seventy-two (72) hours.
5. Quarterly Administrative fees for County.
6. Subcontractor list (See Agreement Attachment 1).
7. Ordering (including invoices, payments, taxes on sales and services, and return procedures), reporting, and reconciliation procedures (See Agreement Attachment 2).
8. Support services including help desk phone numbers.
9. Warranty statements.
10. Point of contact including phone/fax/e-mail information.

## 2. TERM

The term of this Agreement shall commence on the 13th day of July, 2021, and continue until the 12th day of July, 2024, unless sooner terminated in accordance with the sections entitled "TERMINATION FOR CONVENIENCE", "TERMINATION FOR CAUSE", or "CONDITION SUBSEQUENT/NON-APPROPRIATION OF FUNDING", as set forth elsewhere in this Agreement.

## 3. ADMINISTRATIVE FEES

Contractor agrees to pay County administrative fees in accordance with the following schedule on a quarterly basis. Payment is to be made not later than 30 days following the end of the quarter (April 30, July 31, October 31, January 31).

*(Sales will be calculated for fiscal year of January 1st through December 31st and reset each year)*

Annual Sales Through Contract	Administrative Fee
\$0 - \$2,000,000	1%
\$2,000,000+	0.5%

**4. PUBLIC AGENCY PARTICIPATION**

Any public agency, i.e., city, district, public authority, public agency, municipality and other political subdivision or a public corporation of California (hereinafter referred to as public agency) located in the State of California or any other state shall have the option of participating in any award made as a result of this proposal at the same prices, F.O.B. destination, and terms and conditions. The public agency shall make purchases in their own name, have deliveries made to their facilities, and be responsible for tax liability and payments directly to the Contractor. The public agency will hold harmless the County from all claims, demands, actions, or causes of actions of every kind resulting directly or indirectly, arising out of, or in any way connected with use of this Contract.

**Public Agencies may not qualify vendors for their contract offerings by using FOCUS Terms and Conditions.**

**5. PROGRAM UTILIZATION REQUIREMENTS**

In order for a public agency to utilize FOCUS contracts, the public agency must first complete an agreement with Merced County. Agreements are accomplished by referencing vendor's specific FOCUS contract number on each public agency's purchase order, forwarding original to Contractor, and providing an information copy to the Merced County Department of Community and Economic Development via U.S. Mail, fax, or e-mail. For ordering, reporting, and reconciliation procedures, see Contract Attachment 2.

**6. NOTICES**

All notices, requests, demands or other communications under this Agreement shall be in writing. Notice shall be sufficiently given for all purposes as follows:

- A. Personal Delivery. When personally delivered to the recipient, notice is effective upon delivery.

- B. First Class Mail. When mailed first class to the last address of the recipient known to the party giving notice, notice is effective three mail delivery days after deposit in a United States Postal Service office or mailbox.
- C. Certified Mail. When mailed by certified mail, return receipt requested, notice is effective upon receipt, if delivery is confirmed by a return receipt.
- D. Overnight Delivery. When delivered by an overnight delivery service, charges prepaid or charged to the sender's account, notice is effective on delivery, if delivery is confirmed by the delivery service.

Any correctly addressed notice that is refused, unclaimed or undeliverable because of an act or omission of the party to be notified shall be deemed effective as of the first date that the notice was refused, unclaimed or deemed undeliverable by the postal authorities, messengers or overnight delivery service.

Information for notice to the parties to this Agreement at the time of endorsement of this Agreement is as follows:

County of Merced c/o  
 Director  
 Community & Economic Development  
 Merced County  
 2222 M Street  
 Merced, CA 95340

Contractor  
 AT&T Corp.  
 Donnie Powell  
 208 S Akard St  
 Dallas Tx, 75202

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Any party may change its address by giving the other party notice of the change in any manner permitted by this Agreement.

**7. TERMINATION FOR CONVENIENCE**

This Agreement, notwithstanding anything to the contrary herein above or hereinafter set forth, may be terminated by County at any time without cause or legal excuse by providing the other party with thirty (30) calendar days written notice of such termination.

Upon effective date of termination, County shall have no further liability to Contractor except for payment for actual services incurred during the performance hereunder. Such liability is limited to the time specified in said notice and for services not previously reimbursed by County. Such liability is further limited to the extent such costs are actual, necessary, reasonable, and verifiable costs and have been incurred by Contractor prior to, and in connection with, discontinuing the work hereunder.

**8. TERMINATION FOR CAUSE**

If Contractor shall fail to comply with any of Contractor's obligations under this Agreement, or otherwise breach this Agreement, County shall provide ten (10) calendar days written notice to Contractor in the manner set forth under Section 7, "NOTICES." During this time, Contractor may attempt to remedy its breach of this Agreement. If not remedied, then in addition to any other remedies it may have, County may terminate for cause. In the event of any proceedings by or against the Contractor, i.e. bankruptcy, insolvency, appointment of a receiver or trustee, or any assignment for the benefit of creditors, the County shall exercise its right of cancellation under this section.

**9. MODIFICATION OF THE AGREEMENT**

Notwithstanding any of the provisions of this Agreement, the parties may agree to amend this Agreement. No alteration or variation of the terms of this Agreement shall be valid unless made in writing and signed by the parties hereto. No oral understanding or agreement not incorporated herein shall be binding on any of the parties hereto

**10. INSURANCE**

Prior to the commencement of work, and as a precondition to this Agreement, Contractor shall purchase and maintain the following types of insurance for the stated limits indicated during the term of this Agreement. Contractor shall provide a certificate of insurance and required endorsements on each policy as required in this section. Each certificate of insurance shall specify if Contractor has a self-insured retention (SIR). All SIRs shall be disclosed in the certificates of insurance.

1. Commercial General Liability: based on ISO form CG 00 01 or equivalent with limits of \$2,000,000 per occurrence and \$4,000,000 annual aggregate covering products and completed operations, bodily injury, personal injury and property damage. The County and its officers, employees and agents shall be included on the required above policy as additional insured, using ISO form CG2026 or an alternate form that is at least as broad as form CG2026, as to any liability caused, in whole or in part, by the performance of this Agreement.
2. Automobile Liability: \$2,000,000 per accident for bodily injury and property damage.
3. Workers Compensation: Statutory coverage, if and as required according to the California Labor Code, including Employers' Liability limits of \$2,000,000 per accident, \$2,000,000 per disease



per employee, \$2,000,000 per disease policy limit. The policy shall be endorsed to waive the insurer's subrogation rights against the County.

4. Professional Liability insurance: \$2,000,000 limit per claim and \$10,000,000 annual aggregate limit covering Contractors wrongful acts, errors and omissions. Any aggregate limit for professional liability must be separate and in addition to any CGL aggregate limit. Contractor warrants that continuous coverage will be maintained or an extended reporting period will be exercised for a total period of three (3) years beginning from the time the work is completed.
5. Technology Professional Liability Errors and Omissions coverage under the Professional Liability Insurance appropriate to the Contractor's profession and work hereunder, with limits of \$2,000,000 per claim and in the aggregate. Coverage shall be sufficiently broad to respond to the duties and obligations as is undertaken by the Contractor in this agreement and shall include claims involving invasion of privacy violations, information theft, release of private information, and network security. The policy shall provide coverage for breach response costs as well as regulatory fines and penalties where insurable by law as well as credit monitoring expenses with limits sufficient to respond to these obligations.

The Policy shall include, or be endorsed to include, coverage for damage to, alteration of, loss of, or destruction of electronic data and/or information of the Agency in the care, custody, or control of the Contractor. If not covered under the Contractor's liability policy, coverage of the Agency may be endorsed onto the Contractor's Cyber Liability Policy as covered property as follows:

Cyber Liability coverage under the Professional Liability insurance of \$4,000,000 per claim and in the aggregate, to cover, the damage to, alteration of, loss of, or destruction of electronic data and/or information of the Agency that will be in the care, custody, or control of Contractor.

#### B. INSURANCE CONDITIONS

1. Insurance is to be primary and non-contributory with any insurance of the County and placed with admitted insurers rated by A.M. Best Co. as A-: VII or higher. Lower rated, or approved but not admitted insurers, or any other requirement changes (such as limits) are subject to the prior approval of the County Risk Manager.

2. Contractor shall provide County with thirty (30) days prior written notice of cancellation of any required coverage that is not replaced. County is not liable for the payment of premiums or assessments on the policy. No cancellation provisions in the insurance policy shall be construed in derogation of the continuing duty of Contractor to furnish insurance during the term of this Agreement.
3. If the Contractor uses Sub-Contractors or others to perform work under this Agreement, such Sub-Contractor or other persons shall be Additionally Insured to the Contractor's required insurance coverage, or endeavor to be required by the Contractor to comply with equivalent insurance and conditions of this Section.
4. County's additional insured status shall (i) not extend to claims for punitive or exemplary damages arising out of the acts or omissions of County, its employees, agents or independent contractors or where such coverage is prohibited by law or to claims arising out of the gross negligence of County, its employees, agents or independent contractors; and, (iii) not exceed Contractor's indemnification obligation under this Agreement, if any.

## **11. INDEMNIFICATION**

Contractor has the contracted duty (hereinafter "the duty") to indemnify, defend and hold harmless, County, its Board of Supervisors, officers, employees, agents and assigns from and against any and all claims, demands, liability, judgments, awards, interest, attorney's fees, costs, experts' fees and expenses of whatsoever kind or nature, at any time arising out of or in any way connected with the performance of this Agreement, whether in tort, contract or otherwise. This duty shall include, but not be limited to, claims for bodily injury, property damage, personal injury, and contractual damages or otherwise alleged to be caused to any person or entity including, but not limited to employees, agents and officers of Contractor.

Contractor's liability for indemnity under this Agreement shall apply, regardless of fault, to any acts or omissions, willful misconduct or negligent conduct of any kind, on the part of the Contractor, its agents, subcontractor and employees. The duty shall extend to any allegation or claim of liability except in circumstances found by a jury or judge to be the sole and legal result of the willful misconduct of County. This duty shall arise at the first claim or allegation of liability against County. Contractor will on request and at its expense defend any action suit or proceeding arising hereunder. This clause for indemnification shall be interpreted to the broadest extent permitted by law. Contractor shall not be liable under this Section "INDEMNIFICATION" for damages caused by service or equipment that is not furnished by Contractor under this Agreement.

The Contractor shall hold the County, its officers, agents, and employees, harmless from liability of any nature in kind, including costs and expenses, from infringement or use of any copyrighted or un-copyrighted composition, secret process, patented or unpatented invention, article, or appliance furnished or used in connection with this Agreement. The Contractor may also be required to furnish a bond or other indemnification to the County against any and all loss, damage, costs, expenses, claims, and liability for patent or copyright infringement.

## **12. INDEPENDENT CONTRACTOR**

It is mutually understood and agreed that Contractor is an independent Contractor in the performance of the work duties and obligations devolving upon Contractor under this Agreement. County shall neither have, nor exercise any control or direction over the methods by which Contractor shall perform the assigned work and functions. The contractual interest of County is to assure that the services covered by this Agreement shall be performed and rendered in a competent, efficient and satisfactory manner.

It is agreed that no employer-employee relationship is created and Contractor shall hold County harmless and be solely responsible for withholding, reporting and payment of any federal, state or local taxes; any contributions or premiums imposed or required by workers' compensation; any unemployment insurance; any social security income tax; and any other obligations from statutes or codes applying to Contractor, or its subcontractors and employees, if any.

It is mutually agreed and understood that Contractor, its subcontractors and employees, if any, shall have no claim under this Agreement or otherwise against the County for vacation pay, sick leave, retirement or social security benefits, occupational or non-occupational injury, disability or illness, or loss of life or income, by whatever cause.

Contractor shall insure that all its personnel and employees, subcontractors and their employees, and any other individuals used to perform the contracted services are aware and expressly agree that County is not responsible for any benefits, coverage or payment for their efforts.

## **13. RECORDS, INFORMATION AND REPORTS**

Contractor shall maintain full and accurate records with respect to all matters covered under this Agreement. To the extent permitted by law, County shall have free access at all proper times or until the expiration of four (4) years after the furnishing of services to such records, and the right to examine and audit the same and to make transcripts therefrom, and to inspect all data, documents, proceedings, and activities pertaining to this Agreement.

**14. QUALITY OF SERVICE**

Contractor shall perform its services with care, skill, and diligence, in accordance with the applicable professional standards currently recognized by such profession, and shall be responsible for the professional quality, technical accuracy, completeness, and coordination of all reports, designs, drawings, plans, information, specifications, and/or other items and services furnished under this Agreement.

Contractor shall, without additional compensation, correct or revise any errors or deficiencies immediately upon discovery in its reports, drawings, specifications, designs, and/or other related items or services.

**15. PERSONAL SATISFACTION AS A CONDITION PRECEDENT**

The obligations of County as provided in this Agreement are expressly conditioned upon Contractor's compliance with the provisions of the Agreement.

**16. ENTIRE AGREEMENT**

This Agreement and any additional or supplementary document or documents incorporated herein by specific reference contain all the terms and conditions agreed upon by the parties hereto, and no other contracts, oral or otherwise, regarding the subject matter of this Agreement or any part thereof shall have any validity or bind any of the parties hereto.

**17. PRICING**

If the FOCUS partnering contractor's prices decline, or should Contractor, at any time during the term of this Agreement, provide the same or similar goods or services under similar quantity and delivery conditions and terms and conditions of purchase to the State of California or any county, municipality or district of the state at prices below those set forth in this Agreement, then such lower prices shall be immediately extended to Merced County and the FOCUS users up to and including date of shipment from Contractor's shipping point.

**18. COUNTY NOT OBLIGATED TO THIRD PARTIES**

County shall not be obligated or liable hereunder to any party other than Contractor.

**19. LAWS, LICENSES, PERMITS AND REGULATIONS**

Contractor and County agree to comply with all State laws and regulations that pertain to construction, health and safety, labor, minimum wage, fair employment

practice, equal opportunity, and all other matters applicable to Contractor and County, their sub-grantees, Contractors, or subcontractor, and their work.

Contractor shall possess and maintain all necessary licenses, permits, certificates and credentials required by the laws of the United States, the State of California, County of Merced and all other appropriate governmental agencies, including any certification and credentials required by County. Failure to maintain the licenses, permits, certificates, and credentials shall be deemed a breach of this Agreement and constitutes grounds for the termination of this Agreement by County.

**20. LIMITED AFFECT OF WAIVER OR PAYMENT**

In no event shall the making, by County, of any payment to Contractor constitute, or be construed as, a waiver by County of any breach of covenant, or any default which may then exist, on the part of Contractor. The making of any such payment by County while any such breach or default shall exist, shall not be construed as acceptance of substandard or careless work or as relieving Contractor from its full responsibility under this Agreement.

No waiver by either party of any default, breach or condition precedent shall be valid unless made in writing and signed by the parties hereto. No oral waiver of any default, breach or condition precedent shall be binding on any of the parties hereto. Waiver by either party of any default, breach or condition precedent shall not be construed as a waiver of any other default, breach or condition precedent, or any other right hereunder.

**21. PERSONNEL**

Contractor represents that it has, or will secure at its own expense, all personnel required in performing the services under this Agreement. All of the services required hereunder will be performed by Contractor or under its supervision, and all personnel engaged in the work shall be qualified to perform such services.

**22. APPLICABLE LAW; VENUE**

All parties agree that this Agreement and all documents issued or executed pursuant to this Agreement as well as the rights and obligations of the parties hereunder are subject to and governed by the laws of the State of California in all respects as to interpretation, construction, operation, effect and performance. No interpretation of any provision of this Agreement shall be binding upon County unless agreed in writing by County and counsel for County.

Notwithstanding any other provision of this Agreement, any disputes concerning any question of fact or law arising under this Agreement or any litigation or

arbitration arising out of this Agreement, shall be tried in Merced County, unless the parties agree otherwise or are otherwise required by law.

**23. BREACH OF CONTRACT**

Upon breach of this Agreement by Contractor, County shall have all remedies available to it both in equity and/or at law.

**24. REMEDY FOR BREACH AND RIGHT TO CURE**

Notwithstanding anything else in this Agreement to the contrary, if Contractor fails to perform any obligation of this Agreement, the County may invoke this remedy for breach clause. County will provide Contractor with at least ten (10) days prior written notice specifying the obligations required to be performed and describing the action the County intends to take to cure such performance should Contractor fail to do so including, but not limited to, the County itself performing, or causing the performance of, such agreement or obligation. In the event County must take action to cure the breach, Contractor will, on written demand, fully reimburse County for all such expenditures, subject to Section 26, "BREACH OF CONTRACT".

**25. SUCCESSORS IN INTEREST**

All the terms, covenants, and conditions of this Agreement shall be binding and in full force and effect upon any successors in interest and assigns of the parties hereto. This paragraph shall not be deemed as a waiver of any of the conditions against assignment set forth herein.

**26. CONFLICT OF INTEREST**

Contractor covenants that it presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of this Agreement. Contractor shall ensure that no conflict of interest exists between its officers, employees, or subcontractors, and the County. Contractor shall ensure that no County officer or employee in a position that enables them to influence this Agreement will have any direct or indirect financial interest resulting from this Agreement. Contractor shall ensure that no County employee shall have any relationship to the Contractor or officer or employee of the Contractor, nor that any such person will be employed by Contractor in the performance of this Agreement without immediate divulgence of such fact to the County.

**27. NONDISCRIMINATION IN EMPLOYMENT, SERVICES, BENEFITS AND FACILITIES**

Contractor and any subcontractors shall comply with all applicable federal, state, and local Anti-discrimination laws, regulations, and ordinances and shall not unlawfully discriminate, deny family care leave, harass, or allow harassment against any employee, applicant for employment, employee or agent of County, or recipient of services contemplated to be provided or provided under this Agreement, because of race, ancestry, marital status, color, religious creed, political belief, national origin, ethnic group identification, sex, sexual orientation, age (over 40), medical condition (including HIV and AIDS), or physical or mental disability. Contractor shall ensure that the evaluation and treatment of its employees and applicants for employment, the treatment of County employees and agents, and recipients of services are free from such discrimination and harassment.

Contractor represents that it is in compliance with and agrees that it will continue to comply with the Americans with Disabilities Act of 1990 (42 U.S.C. § 12101 et seq.), the Fair Employment and Housing Act (Government Code §§ 12900 et seq.), and ensure a workplace free of sexual harassment pursuant to Government Code 12950 and regulations and guidelines issued pursuant thereto.

Contractor agrees to compile data, maintain records and submit reports to permit effective enforcement of all applicable antidiscrimination laws and this provision.

Contractor shall include this nondiscrimination provision in all subcontracts related to this Agreement and when applicable give notice of these obligations to labor organizations with which they have Agreements.

**28. CAPTIONS**

The captions of each paragraph in this Agreement are inserted as a matter of convenience and reference only, and in no way define, limit, or describe the scope or intent of this Agreement or in any way affect it.

**29. SUBCONTRACTS - ASSIGNMENT**

Contractor shall not subcontract or assign this Agreement, or any part thereof, or interest therein, directly or indirectly, voluntarily or involuntarily, to any person without obtaining the prior written consent by County. Contractor remains legally responsible for the performance of all contract terms including work performed by third parties under subcontracts. Any subcontracting will be subject to all applicable provisions of this Agreement. Contractor shall be held responsible by County for the performance of any subcontractor whether approved by County or not.

Notwithstanding the foregoing, Contractor may, without Customer's consent, assign in whole or relevant part its rights and obligations under this Agreement to a Contractor Affiliate. In the event of any such assignment, Contractor shall remain responsible for the performance of its affiliate.

**30. SEVERABILITY**

If a court of competent jurisdiction holds any provision of this Agreement to be illegal, unenforceable or invalid, in whole or in part, for any reason, the validity and enforceability of the remaining provisions, or portion of them, will not be affected. Compensation due to Contractor from the County may, however, be adjusted in proportion to the benefit received despite the removal of the effected provision.

**31. DUPLICATE COUNTERPARTS**


This Agreement may be executed in duplicate counterparts, each of which shall be deemed a duplicate original. The Agreement shall be deemed executed when it has been signed by both parties.


*Signature page to follow*



**COUNTY OF MERCED**

**AT&T Corp.**

By   
Signature

By   
Signature

Daron McDaniel

Paula Brunson

Chairman, Board of Supervisors

Director - Market Development

JUL 13 2021  
Dated

6/16/2021  
Dated

APPROVED AS TO FORM  
FORREST W. HANSEN  
MERCED COUNTY COUNSEL

By   
Jeff Grant, Deputy County Counsel IV

**ATTACHMENT 1**  
**SUBCONTRACTORS**

Aruba Networks  
Avaya  
Checkpoint  
Ciena  
Cisco  
Cradlepoint  
Fortinet  
Infoblox  
Intrado  
Juniper  
NICE inContact  
Polycom  
RapidDeploy  
Silver Peak  
Singlewire  
UPS  
Zoom

## ATTACHMENT 2

### ORDERING, REPORTING, AND RECONCILIATION PROCEDURES

In order for a public agency to utilize FOCUS contracts, the public agency must first complete an agreement with Merced County. Agreements are accomplished by referencing vendor's specific FOCUS contract number on each public agency's purchase order, forwarding original to Contractor, and providing an information copy to the Merced County Department of Community and Economic Development via U.S. Mail, fax, or e-mail. In addition, Contractor will require end users to enter into a service contract with Contractor on the terms and conditions stated in Contractor's Master Agreement, an example of which is available upon request from Contractor, or upon such other terms and conditions as Contractor and end user may agree or have previously agreed, which shall govern the terms of sale between Contractor and end user. Contractor's Master Agreement is also available for review on the County's website at the following link: <https://www.co.merced.ca.us/3015/Gov-2-Gov-FOCUS>

**Ordering:** End user will contact its local Contractor sales representative who will work with the end user to determine the end user's needs and establish pricing based on the pricing and discounts listed under this agreement. End user will issue a purchase order that will, at a minimum, contain the following information:

- Date
- Contract designation: i.e. County of Merced Telecommunications Contract
- End user Purchase Order number
- End user name
- End user billing address
- End user ship to address
- End user contact name, address, fax and telephone number;
- Agency billing code, if applicable
- List of equipment and services to be ordered, detailing the exact product code numbers as they appear on the electronic catalog

State agencies must use a Standard Form 65 purchase order, while non-state agencies may use their own form of purchase order. End user will be required to certify that all orders placed under the contract follow Department of General Services guidelines (State end user), or local procurement rules (Non-State Public Sector end user).

**Reporting:** Contractor's Program Manager will prepare a written sales and revenue report monthly, for review by the County at the quarterly meetings with Contractor. Reports will detail the order status and actual/projected compensation due to the County. Reports may be adjusted upward or downward in the event of a change order or order termination. Taxes will not be reflected in the order totals, and will be billed to end user on a separate line item basis.

**Reconciliation:** Reconciliation reports will be prepared for the County that will enable the County accurately project monthly revenues earned from the contract. Fees due the County will be calculated based upon order total and payment date fields, in accordance with the fee calculations stated in Section 3 of this agreement.

All reports will be maintained by the Contractor's Program Manager, and will be generated by Contractor's accounting department. The quarterly report will be forwarded to Contractor's designated Program Manager who will review all information and authorize payment to be made to the County.