

## FORMAL COOPERATIVE PURCHASE AGREEMENT

THIS AGREEMENT (Agreement) is made and entered into, effective on \_\_\_\_\_, by and between CITY OF FRESNO, a California municipal corporation (City), and AMS.NET, LLC., a Delaware corporation (Vendor).

### AGREEMENT

NOW, THEREFORE, in consideration of the foregoing and of the covenants, conditions, and promises hereinafter contained to be kept and performed by the respective parties, it is mutually agreed as follows:

1. The Charter for the City allows for cooperative purchase agreements for materials, supplies, and equipment. The City may use another government agency's agreement, as an exception to the competitive bid process. The Parties agree that the Vendor has entered a contract with Merced County FOCUS (Original Government Contract). The solicitation for the Original Government Contract is attached as **Exhibit A**.
2. Vendor's Obligation. Vendor shall provide those services and carry out that work described in the Original Government Contract, which is attached hereto as **Exhibit B** and is incorporated herein by reference, subject to all the terms and conditions contained or incorporated herein.
3. City's Obligation. City shall make to the Vendor those payments described in **Exhibits A and B**, subject to all the terms and condition contained or incorporated herein
4. Notwithstanding the requirements that the Original Government Contract is fully binding on the Parties, the parties have agreed to modify certain non-material provisions of the Original Government Contract as applied to this Agreement between the Vendor and the City, as follows:
  - a) City's Insurance and Indemnity provisions attached as **Exhibit C**.
  - b) Address change for the City: Notwithstanding the address and contract information for the government entity as set out in **Exhibit B**, the Vendor agrees that notices and invoices will be sent to:

City of Fresno  
Attention: Armen Megerdichian  
2600 Fresno St Rm 1059  
Fresno, CA 93721  
Phone: (559) 621-7128  
FAX: (559) 457-1045  
E-mail: Armen.Megerdichian@fresno.gov
  - c) Notwithstanding anything in **Exhibits A and B** to the contrary, this Agreement shall be governed by, and construed and enforced in accordance with , the laws of the State of California, excluding however, any conflict of laws rule which would apply the law of another jurisdiction.

Venue for purposes of the filing of any action regarding the enforcement or interpretation of this Agreement and any rights and duties hereunder shall be Fresno County, California.

- d) All other provisions in the Original Government Contract are fully binding on the parties and will represent the agreement between the City and the Vendor.
- 5. The City Manager, or designee, is hereby authorized and directed to execute and implement this Agreement. The previous sentence is not intended to delegate any authority to the City Manager to administer the Agreement, any delegation of authority must be expressly included in the Agreement.

**[Signatures follow on the next page.]**

IN WITNESS WHEREOF, the parties have executed this Agreement at Fresno, California, the day and year first above written.

CITY OF FRESNO,  
a California municipal corporation

By: \_\_\_\_\_  
Melissa Perales  
Purchasing Manager  
General Services Department

APPROVED AS TO FORM:  
ANDREW JANZ  
City Attorney

Signed by:  
By: Christine Christner 5/15/2025  
66086C14193B4F5... Date  
Sup./Sr. Deputy City Attorney

ATTEST:  
TODD STERMER, CMC  
City Clerk

By: \_\_\_\_\_  
Deputy

Attachments:  
Exhibit A - Original Solicitation & Contract  
Exhibit B - Original Government Contract  
Exhibit C - City's Insurance and Indemnity

AMS.NET, LLC., A Delaware corporation

Signed by:  
By: Robert Tocci 5/8/2025  
3433D16338BF446...  
Name: Robert Tocci

Title: Senior Vice President  
(If corporation or LLC., Board Chair,  
Pres. or Vice Pres.)

Signed by:  
By: Diana Monaghan 5/14/2025  
A6020933DA67491...  
Name: Diana Monaghan

Title: Secretary  
(If corporation or LLC., CFO, Treasurer,  
Secretary or Assistant Secretary)

VENDOR:  
AMS.NET, LLC.  
Attention: Ryan Snedden  
502 Commerce Way,  
Livermore, CA 94551  
Phone: (559) 548-1828  
E-mail: rsnedden@ams.net

**EXHIBIT A**

**Original Solicitation**

## **Exhibit A**

### **SECTION 1**

#### **INTRODUCTION**

##### **1.1 INTENT OF THE REQUEST FOR PROPOSAL**

It is the intention of Merced County to establish national contracts that satisfy the needs of participating governmental entities in the purchase of technology solutions. Agencies will be able to purchase on an “as needed” basis from competitively awarded contracts. Respondents are requested to submit their catalog of available products and services as requested in Exhibit 1.

Specifically, the purpose of this Fast Open Contracts Utilization Services (FOCUS) request is to solicit proposals from firms specializing in providing technology solutions that consist of equipment and services. Respondents are encouraged to submit an offering on any and all products or services available that they currently perform in their normal course of business for the opportunity to participate in an innovative County public-private relationship that has national opportunities. Selected firms will enter into contractual relationships with Merced County. It is anticipated that multiple providers will be selected.

##### **1.2 BACKGROUND INFORMATION**

For Public Entities: The Fast Open Contracts Utilization Services (FOCUS) program established over two decades ago, and under State of California procurement guidelines (Gov. Code §25330 – 25338), is a competitively bid procurement vehicle for counties, cities, schools, special districts as well as Federal and state governments to use in the direct purchase of their technology needs through established public entity (County) contracts.

Purpose of FOCUS:

- Provide governmental agencies opportunities for greater efficiency and economy in procuring technology goods and services.
- Take advantage of state-of-the-art purchasing procedures to insure the most competitive contracts are available.
- Provide competitive price and bulk purchasing for multiple government agencies that yields economic benefits unobtainable by the individual entity.
- Provide quick and efficient delivery of goods and services.
- Equalize purchasing power for smaller agencies that are unable to command the best contracts for themselves.
- Help in assisting with use of best business practices.

For Firms: Under existing FOCUS contracts which begin to expire in 2021, Merced County provides its standing as a governmental jurisdiction offering a contract for government purchasing, marketing assistance, and advocacy at appropriate meetings, conferences, or similar events in return for an administration/marketing fee. In addition, Merced County is authorized to provide and offer, for a fee, consulting services/expertise to a vendor for preparing responses to other government's bids, general or specific management assistance and other selected areas. Authority for Merced County to engage in these innovative and non-traditional activities is granted under California Government Code.

Respondents shall provide pricing based on a discount from a manufacturer's price list. A multiple percentage discount structure is also acceptable. Please specify where different percentage discounts apply. Additional pricing and/or discounts may be included. If respondent has existing cooperative contracts in place, Merced County requests equal or better than pricing to be submitted.

Each category proposed is to be priced separately with all ineligible items identified. Services may be awarded to multiple vendors. Respondents may elect to limit their proposals to a single service within any category, or multiple services within any or all categories.

Merced County is seeking service providers that have the depth, breadth and quality of resources necessary to complete all phases of technology projects. In addition, Merced County also requests any value add commodity or service that could be provided under this contract.

### **1.3 AGREEMENT TERM**

The Agreement term shall be for a period of three (3) years. The start date shall commence upon Merced County Board of Supervisors written approval. Through mutual written agreement, contract term may be extended for two (2) additional, one (1) year terms, not to exceed five (5) years in total, contingent on appropriate and sufficient funding.

A Sample Agreement is included as an attachment to this proposal. This agreement will become part of the final agreement with successful Bidder awarded the proposal. Any exceptions to the terms and conditions as stated herein and in the Sample Agreement must be identified separately. The County will execute the Agreement upon final selection of successful Bidder with the approval of the County's Board of Supervisors.

## **REQUIREMENTS**

### **1.4 SCOPE OF WORK**

The purpose of this FOCUS RFP is to provide the means for counties, cities, schools, special districts and other governmental entities in California and nationally to purchase their needed 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. Further, this competitively bid program offers an alternative to existing non-competitively bid programs that may charge the buyer for administrative handling.

Merced County may select multiple vendors in each category for use by other governmental entities. This will allow agencies to pick and choose vendors that best suit their specific needs.

The program design shall incorporate the following requirements and principles to support the proposed technology goods and services described in Exhibit 1, "Category of Services":

- 1.4.1. The categories reflect a wide array of requirements under which vendors may propose creative ideas to assist governmental needs with technology solutions.
- 1.4.2. Organizations/businesses may choose to respond to this Proposal in one or more of the categories. Merced County may choose more than one respondent per category to participate in FOCUS.
- 1.4.3. Selected FOCUS partners are authorized to add new product lines as needed to replace discontinued product lines. Merced County will be notified in writing of such product changes (with pricing) as they occur with all pricing evaluated by researching the General Services Administration's online "GSA Advantage!"
- 1.4.4. 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 10% of the total price of the Purchase Order.
- 1.4.5. Merced County reserves the right to receive and process all orders at a future date.

- 1.4.6. **VENDORS NOT SELECTED FOR A FOCUS CONTRACT MAY NOT USE ANOTHER FIRM'S FOCUS CONTRACT TO QUALIFY FOR OTHER POLITICAL JURISDICTION CONTRACTS OR SALES AUTHORITY WITHOUT THE EXPRESS WRITTEN CONSENT FROM THE COUNTY OF MERCED.**
- 1.4.7. Corporate level management support and resource commitment to the FOCUS program.
- 1.4.8. Corporate level dedication to at least a California marketing program.
- 1.4.9. Corporate level commitment to their sales force in promoting the FOCUS program and rewarding successes.
- 1.4.10. An aggressive marketing strategy.
- 1.4.11. Excellence in customer support and service.
- 1.4.12. A commitment to use local providers and/or contracted services where a corporate presence does not exist.
- 1.4.13. A commitment to include Merced County in semi-annual FOCUS planning/strategy meetings.
- 1.4.14. A commitment to meet on FOCUS progress each quarter.
- 1.4.15. A product and service quality assurance program that meets or exceeds industry excellence standards.
- 1.4.16. The most competitive pricing given to a state/local government agency for the array of products and/or services offered. All pricing is evaluated by researching the General Services Administration's online "GSA Advantage!"
- NOTE: Pricing offered must reflect across the board percentages of discount for every item/service submitted. Bidder must state in their proposal what percentages of discount are being offered in their proposal.***
- 1.4.17. An ability to include industry leaders in the corporate and product suites offered through subcontractor relationships.
- 1.4.18. An on-line order placement/tracking system for immediate input or retrieval of information/acknowledgments.
- 1.4.19. Describe the level of availability for access and customer support.
- 1.4.20. As required, a customer help desk (800 number/on-line access) to assist customer technical and administrative issues.



- 1.4.21. Product, service, and installation excellence to any location that meets industry's highest standards.
- 1.4.22. The availability and inclusion of product supplies, product training, networking services (if appropriate), and product maintenance.
- 1.4.23. 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.
- 1.4.24. All respondents offering technology services must be certified by the California Public Utilities Commission (CPUC) to offer those services. Evidence of certification from CPUC must be provided with response.
- 1.4.25. All products offered in response to this FOCUS RFP must meet or exceed the specifications of the referenced brands.

## **1.5 PROGRAM REQUIREMENTS:**

The following are the minimum requirements in Bidder's administration of the program and must fully demonstrate an understanding and commitment to this creative business (public-private) alliance.

### **1.5.1. MANDATORY ADMINISTRATIVE REQUIREMENTS**

- 1.5.2. Notify Merced County of all sales made under FOCUS, including order/delivery progress, within fourteen (14) business days of order.
- 1.5.3. Quarterly and annual sales reports.
- 1.5.4. A product/service documents, paper or electronic – to be produced at least four (4) times per year. NOTE: 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.
- 1.5.5. Price increase/price decline policies. Note: All price reduction changes must be published within 72 hours.
- 1.5.6. Ordering, reporting, and reconciliation procedures: All FOCUS purchase orders must state F.O.B. Destination. In the event that a FOCUS user requests expedited shipping, only the expedited shipping charges may be passed through to that specific FOCUS user.
- 1.5.7. New product/service offerings expected within six (6) months.
- 1.5.8. Support services including help desk phone numbers.

- 1.5.9. Warranty statements.
- 1.5.10. Return procedures, if applicable.
- 1.5.11. Point of contact including phone/fax/e-mail information.

**1.6 ELECTRONIC CATALOG CONFIGURATION**

The following are the minimum requirements in respondent’s electronic document configurations:

- 1.6.1. Ordering procedures.
- 1.6.2. Product listing/pricing.
- 1.6.3. System configurations, if applicable.

**1.7 OTHER ADMINISTRATIVE REQUIREMENTS**

In order to make the FOCUS a complete procurement tool for all governmental entities, the respondent to the Proposal must concisely address their policies regarding:

- 1.7.1. Invoices and payments.
- 1.7.2. Taxes on sales and services.

**1.8 ADMINISTRATIVE FEES**

The awarded vendor agrees to pay quarterly administrative fees to County as calculated as follows:

*(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%

## SECTION 2

### **RESPONSE FORMAT AND CONTENT**

#### **2.1 GENERAL INFORMATION**

This section describes the required response format and content. The response should contain the requested information organized by the prescribed section and subsection numbers and titles. Any information provided beyond that required in the response should be contained in a section entitled "Optional Exhibits and Attachments".

Each Bidder shall submit a complete response, providing all information requested and a complete description of the functional operation of the program/project proposed. Failure to follow the prescribed format may result in rejection of your response.

Responses must be complete in all aspects. A response may be rejected if it is conditional or incomplete, or if it contains any alteration of form or other irregularities of any kind. A response may be rejected if any such defect or irregularity constitutes a material deviation from the proposal requirements. The response must contain all costs required by the proposal.

#### **2.2 RESPONSE FORMAT**

The response must be developed on the forms provided in this package, or must follow the proposal content requirements in the order in which they appear in the proposal. Responses that do not conform to this format may not be considered for evaluation. All responses must be submitted in the name of the legal entity or authorized agency. Responses must be signed in ink by the officer or officers legally authorized to bind the company, partnership or corporation.

The content and sequence of the response will be as follows:

- 2.2.1 Signature Page (Attachment A)
- 2.2.2 Bond(s) (If any)
- 2.2.3 Table of Contents
- 2.2.4 Executive Summary
- 2.2.5 Exceptions
- 2.2.6 Approach
- 2.2.7 Bidder's Qualifications
- 2.2.8 Cost Proposal

##### **2.2.1 Signature Page**

Bidder must complete and return the enclosed Signature Page (**Attachment A**, "Signature Page"). The Signature Page must be signed in blue ink by the officer or officers legally authorized to bind the company, partnership, or corporation.

### 2.2.2 Bond(s)

Bidder must enclose any bonds as required in the RFP.

### 2.2.3 Table of Contents

The Table of Contents must be a comprehensive listing of the contents included in your response. This section must include a clear definition of the material, exhibits and supplemental information identified by sequential page numbers and by section reference numbers.

### 2.2.4 Executive Summary

The Executive Summary shall condense and highlight the contents of the Bidder's Business Response to provide the Evaluation Committee with a broad understanding of the Bidder's approach, qualification, experience and staffing.

### 2.2.5 Exceptions

This portion of the response will note any exceptions to the requirements and conditions taken by the Bidder. Exceptions should clearly explain why the Bidder is taking exception to the requirements. If exceptions are not noted, the County will assume that the Bidder's response meets those requirements as specified herein and that the Bidder accepts and intends to abide by all stated terms, conditions, and requirements. Exceptions will be considered by the County, and will form a part of any resulting Agreement, only if the County explicitly so states in writing.

Exceptions shall be noted as follows:

- Exceptions to the Requirements
- Exceptions to any other part of this RFP
- Exceptions to terms in the Sample Agreement

### 2.2.6 Approach

The Bidder's response shall clearly describe in detail how the Bidder will meet the requirements of this proposal and perform the Requirements.

Additionally, the response should provide any special or unique qualifications which the Bidder believes it possesses to meet the requirements of this proposal. Only those levels of performance the Bidder actually believes can be accomplished should be stated as measurable objectives. Each of the major tasks, or activities to be undertaken, as a means of reaching such objectives, must be specifically identified. Display the essential points of activity in a time sequence showing the amount of time allotted to each activity.

The merit of each response received in response to this proposal will be judged largely on the basis of each Bidder's narrative description as described in the Approach of their response. It is important that your response contain all information required for an effective review process. The response should be written in such a manner to provide sufficient detail to enable the Evaluation Committee members to know what is planned at every stage, and to make a judgment as to the probable success of the proposed effort.

(A benchmark chart may be completed to display the time frame for achieving and accomplishing each major program/project task or activity. Flowcharts and other related graphics may accompany this section.)

#### 2.2.7 Bidder's Qualifications

Bidder shall provide a concise statement demonstrating that the Bidder's company has the qualifications, experience, and capability to perform the requirements of this proposal. The following sections must be included:

##### a) History

Provide a brief history of your company, including the number of years in business. State whether your organization is an individual proprietorship, partnership, corporation, or private nonprofit organization, and the date your company was formed or incorporated. Provide a statement as to any judgment, litigations, licensing violations, or other violations, outstanding or resolved, against your company in the past five (5) years.

##### b) Background and Experience

A summary of relevant background information describing your company's experience of major accomplishments and/or activities similar to the requirements set forth under this proposal, which demonstrates your company's ability to provide the service described in your response.

##### c) References

Provide a list of at least three (3) customer references. Include the firm's name; the name, title, and telephone number of a contact person; the dollar amount of the Agreement; and the dates that these services were completed. Bidder may provide sample material of your company's work to substantiate your previous experience.

##### d) Staff Assignment

A brief description of the experience and qualifications of the proposed key staff members assigned to this program/project and what percentage of their time will be devoted to the program/project. Show their function, level of education, degree and license, if appropriate, and a detailed resume for each

person. Additionally, the Bidder must specify where the staff will be located and identify the program/project manager.

#### 2.2.8 Cost Proposal

It is essential that all responding Bidders include and clearly detail all costs, payment schedules, categorization of line items, and/or other related costs associated with your response. All responses must have a narrative providing a thorough and clear explanation of your costs.

## SECTION 3

### **BASIS OF AWARD, SELECTION PROCESS AND EVALUATION CRITERIA**

#### **3.1 BASIS OF AWARD**

Award will be made to the Bidder(s) whose response demonstrates to be the most qualified, responsive and advantageous to the County. **The County shall not be obligated to accept the lowest cost response or limit their award to a single Bidder, but will make an award in the best interests of the County after all factors have been evaluated (“most responsive response(s)”).**

THE COUNTY RESERVES THE RIGHT, AT ITS SOLE DISCRETION, TO REJECT ANY OR ALL RESPONSES OR ANY PART THEREOF, OR TO WAIVE ANY INFORMALITIES IN THE RESPONSE AND MINOR IRREGULARITIES, TECHNICAL DEFECTS OR CLERICAL ERRORS, TO MAKE AN AWARD ON THE BASIS OF SUITABILITY, QUALITY OF SERVICE(S) TO BE SUPPLIED, THEIR CONFORMITY WITH THE SPECIFICATIONS AND FOR THE PURPOSES FOR WHICH THEY ARE REQUIRED, AND NOT CONFINED TO COST ALONE. THE COUNTY SHALL NOT BE LIABLE FOR ANY COSTS INCURRED BY THE BIDDER IN CONNECTION WITH THE PREPARATION AND SUBMISSION OF THIS OR ANY OTHER RESPONSE.

False, incomplete, or nonresponsive statements in connection with the response may be deemed sufficient cause for rejection. The County shall be the sole judge in making such determination. The County reserves the right to cancel or discontinue with the response process and reject any or all responses in the event it determines that there is no longer a requirement for the furnishing of such items, materials, equipment and/or services, funding is no longer available for this proposal, or it is otherwise in the County's best interest to cancel the proposal process.

#### **3.2 EVALUATION PROCESS**

The Evaluation Committee will consider only those responses which have been considered responsive to the proposal. Any response which fails to meet the requirements of the proposal will be considered non-responsive and may be rejected. Responsiveness includes attention to detail in following the proposal format. The Evaluation Committee may also contact and evaluate the Bidder's and the Sub-Contractors references; contact any current users of a Bidder's services; solicit information from any available source concerning any aspect of a response; and seek and review any other information deemed pertinent to the evaluation process. The Evaluation Committee shall not be obligated to accept the lowest priced response, but shall recommend such response that is the most qualified, responsive and cost-effective response and in the best interest of the County (“most responsive response”).

The RFP responses will be evaluated based on the below scoring criteria and county may award to multiple bidders, if necessary:

	<b>CRITERIA</b>	<b>POINTS</b>
1.	Overall responsiveness to the Request for Proposal; which includes clarity, completeness and general quality of the proposal submitted.	10
2.	Comprehensiveness of the Bidder's submitted proposal; which takes into account the Bidders understanding of the desired "Scope of Work" and the ability to perform such work as evidenced by Bidder's proposal response.	30
3.	Related technical capability, expertise and experience of the Bidder and staff personnel in providing similar services; which includes current and past experience.	20
4.	Performance capabilities, reputation, reliability and service history as determined by reference validations.	10
5.	Capability of the Bidder to complete the "Scope of Work" within time frames required.	10
6.	Bidder's acceptance of Terms and Conditions of the RFP.	10
7.	Pricing.	10
	<b>Total Possible Points</b>	<b>100</b>



## **SECTION 4**

### **TERMS AND CONDITIONS**

#### **4.1 REQUEST FOR PROPOSAL CLOSING DATE**

Without law or policy to the contrary, if the Bidder took reasonable steps to submit the response in due time, and failure of the response to be on hand at the time of closing was not the result of negligence or other fault of the Bidder, but was the result of negligence by the County, the County reserves the right to accept such response.

All responses shall remain firm for at least one hundred twenty (120) days following the proposal closing date. The County reserves the right to withhold an award of the proposal for one hundred twenty (120) days from date of closing.

All responses and accompanying documentation submitted by the Bidders, will become the property of the County. Responses shall be based on the material contained in the proposal. Bidders are instructed to disregard any prospective oral representations it may have received prior to the solicitation of the proposal.

Cost for developing and preparing the response is solely the responsibility of the Bidder whether or not any award results from this solicitation. Further, the cost of developing and preparing responses to the proposal will not be allowed as direct or indirect charges under any resulting Agreement.

No alteration in any of the terms, conditions, delivery, price, quality, quantities, or specifications will be effective without prior written consent of the County.

THE COUNTY RESERVES THE RIGHT, AT ITS SOLE DISCRETION, TO REJECT ANY OR ALL RESPONSES OR ANY PART THEREOF, OR TO WAIVE ANY INFORMALITIES IN THE PROPOSAL AND MINOR IRREGULARITIES, TECHNICAL DEFECTS OR CLERICAL ERRORS, TO MAKE AN AWARD ON THE BASIS OF SUITABILITY, QUALITY OF SERVICE(S) TO BE SUPPLIED, THEIR CONFORMITY WITH THE SPECIFICATIONS AND FOR THE PURPOSES FOR WHICH THEY ARE REQUIRED, AND NOT CONFINED TO PRICE ALONE. THE COUNTY SHALL NOT BE LIABLE FOR ANY COSTS INCURRED BY THE BIDDER IN CONNECTION WITH THE PREPARATION AND SUBMISSION OF THIS OR ANY OTHER PROPOSAL.

#### **4.2 ANNOUNCEMENT OF RESPONSES**

All responses received by the published date and time for submission will be publicly displayed at the Department of Administrative Services-Purchasing at 2222 "M" Street, Merced, California 95340 and our Supplier Portal Site. All information contained in the responses shall be confidential to avoid disclosure of contents prejudicial to competing Bidders during the evaluation process. No award decision, pricing, or exchange of views will be discussed at time of opening.

#### 4.3 INTERPRETATION, CORRECTIONS AND AMENDMENTS

The Bidder must carefully examine the specifications, terms and conditions provided in the Request for Proposal and become fully informed as to the requirements set forth therein. If anyone planning to submit a response discovers any ambiguity, conflict, discrepancy, omission or error in the proposal, has any questions in relationship to the "REQUIREMENTS", or any other related matters, Bidder shall immediately submit their request for clarification or modification of the RFP no later than the Question and Answer deadline. No further requests for clarification or objections to the proposal will be accepted or considered after this date. Any change in the proposal will be made only by written amendment, issued by the Department of Administrative Services-Purchasing to each vendor on the Bidders list as well as posted on the County website, and shall be incorporated in the proposal. **Any oral communication by the County's designated contact person or any other County staff member concerning this proposal is not binding on the County and shall in no way modify this proposal or the obligations of the County or any Bidders.**

#### 4.4 DISCUSSION WITH RESPONSIBLE BIDDERS AND CLARIFICATIONS TO PROPOSAL

All Bidders submitting a response for consideration agree that their company will be willing to enter into a final Agreement if awarded this proposal. The County may, in its sole discretion, negotiate certain terms and conditions of such final Agreement after identification of the apparent successful Bidder. However, Bidders should not assume that any terms of this RFP or other applicable terms and conditions are subject to later negotiation, and should instead assume that all such terms and conditions are mandatory conditions of participation in this RFP process. Negotiated changes, if any, will not change the "Requirements".

#### 4.5 FALSE OR MISLEADING STATEMENTS

Responses which contain false or misleading statements, or which provide references which do not support an attribute or condition claimed by the Bidder, may be rejected. If, in the opinion of the County, such information was intended to mislead the County in its evaluation of the response, and the attribute, condition or capability is a requirement of this proposal, it will be the basis for rejection of the response.

#### 4.6 INDEPENDENT CONTRACTOR

It is expressly understood that in the performance of any services resulting from this proposal, Bidder is an Independent Contractor and is not an agent or employee of the County and warrants that all persons assigned to the program/project are employees, or subcontractors, of the Bidder. In the event the awarded Bidder shall employ others to complete or perform the services provided, Bidder shall be solely responsible and hold the County harmless from all matters relating to the payment of such person(s).

It is mutually understood and agreed that no employee-employer relationship will be created between County and Bidder or County and Bidder's employees, and that the awarded Bidder shall hold County harmless and be solely responsible for withholding, reporting and payment of any federal, state or local taxes, contributions or premium imposed or required by workers' compensation, unemployment insurance, social security, income tax or other statutes or codes applying to Bidder, or its sub-Contractor(s) and employees, if any. It is mutually agreed and understood that the Bidder, its Sub-Contractor(s) and employees, if any, shall have no claim under any Agreement that may result from this proposal or otherwise against 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.

#### **4.7 EXPLANATION OF USE OF SUB-CONTRACTORS**

Any Bidder using a Sub-Contractor(s) must clearly explain the use of the Sub-Contractor(s) and list the name(s) of the Sub-Contractor(s) providing work under this proposal. The selected Bidder will be fully responsible for all work performed under this proposal and will be considered as the Prime Contractor. Any Sub-Contracting, or other legal arrangements made by the Bidder are the sole responsibility of the Bidder. Any Agreement that is entered into between the selected Bidder and the Sub-Contractor(s) shall contain provisions for federal and state access to the books, documents, records, and inspection of work. Bidder awarded any Agreement as a result of this proposal shall obtain County written approval of sub-contractors identified in Bidder submittal prior to execution of Agreement.

#### **4.8 JOINT VENTURES**

In the event a response is submitted jointly by more than one organization, one legal entity must be designated as the Prime Contractor. All other participants shall be designated as Sub-Contractors.

#### **4.9 CONFIDENTIALITY**

The contents of all responses, correspondence, agenda, memoranda, or any other medium which discloses any aspect of a Bidder's response shall be held in the strictest confidence until after negotiations for the contract are negotiated. If you contend that any submission contains trade secrets or proprietary data, please be advised that the County cannot and does not give any assurances or guarantees that such information will not be released under the California Public Records Act. The Bidder should clearly mark any of the information within their response that is proprietary, however, the County will be guided by the California Public Records Act and the definition of Trade Secrets under California Civil Code Section 3426.1, but in no case will the following be considered proprietary: a) the final cost of the bid or response; b) information that is not clearly marked as proprietary in nature; c) information that, though marked as proprietary, is not actually proprietary d) information that is otherwise generally available as information or technology within the subject trade, industry or profession.

**BIDDER SHALL NOT DESIGNATE THE ENTIRE RESPONSE AS PROPRIETARY. SUCH ATTEMPTED DESIGNATION WILL NOT BE HONORED.**

Submission of a response by a Bidder shall constitute an agreement to the provision for public announcement. The County shall not be obligated to release information contained in any Bidder's RFP submittal that has been marked as proprietary, without the written consent of the Bidder. Any agency requesting such information so marked as proprietary must obtain such written authorization directly from Bidder and forwarded to County.

County shall not be required to contact any Bidder for information on behalf of any requesting agency. Merced County shall have the sole discretion and exclusive authority to determine if any other party has properly obtained the right to have access to proprietary information.

**4.10 PUBLIC AGENCY PARTICIPATION**

Any public agency, i.e., city, district, public authority, public agency, municipality and other political subdivision or a public corporation (hereinafter referred to as Public Agency) shall have the option of participating in any award made as a result of this proposal at the same prices, and terms and conditions. The County is not an agent, partner, or representative of the Public Agency, and is not obligated or liable for any financial responsibility in connection with purchase orders issued by any Public Agency. The Public Agency shall accept sole responsibility for placing orders or payments to the successful Bidder.

**4.11 PRICING CONDITIONS**

All responses shall remain firm for at least one hundred twenty (120) calendar days after RFP Submittal Deadline unless otherwise specified. Within one hundred twenty (120) calendar days after the RFP Submittal Deadline opening, a purchase order and/or an Agreement may be awarded by the County, as it may deem proper, in its absolute discretion. The time for awarding a purchase order and/or an Agreement may be extended at the sole discretion of the County, if required to evaluate responses or for such other purposes as the County may determine.

**4.12 DETERMINATION OF BIDDER'S RESPONSIBILITY**

**• Responsible Bidder**

A responsible Bidder is a Bidder who has demonstrated the attribute of trustworthiness, as well as quality, fitness, capacity, financial strength, and experience to satisfactorily perform the Agreement. It is the County's policy to conduct business only with responsible Bidders.

**• Non-responsible Bidder**

The County may declare a Bidder to be non-responsible for purposes of this proposal for a variety of reasons, some of which are listed below. This is not

an exclusive list - reasons may include the following but are limited to the below:

- Committed any act or omission which negatively reflects on the Bidder's quality, fitness, financial strength, or capacity to perform any Agreement that may be derived from this proposal with the County or an Agreement with any other public entity, or engaged in a pattern or practice which negatively reflects on same; or
- Committed an act or omission which indicates a lack of business integrity or business honesty; or
- Made or submitted a false claim against the County or any other public entity; or
- Submitted false, incomplete or unresponsive statements or omitted requested documentation in connection with this proposal.

#### 4.13 PUBLIC DISCLOSURE

All public records of the County are available for disclosure except the contents of the responses received in response to an RFP, which are not open for public review until the contract between the awarded Bidder and the County is agendized with the Board of Supervisors. In the event that an unsuccessful Bidder files an official request to view the awarded Bidder's response, the County must comply with appropriate public disclosure procedures. However, if information specifically designated in the response as proprietary is requested County may attempt to notify Bidder should Bidder wish to pursue protections against disclosure, at its own cost, so that the information will not be made available.

Pursuant to the California Public Records Act, Government Code Sections 6250 *et seq.*, any contract that eventually arises from this Request for Proposal is a public record, in its entirety. Also, all information submitted in response to this Request for Proposals is itself a public record **without exception**, and will be disclosed upon request, but only after negotiations are complete. Submission of any materials in response to this Request for Proposals constitutes your consent to release materials, and a waiver of any claim that the information is protected from disclosure. Furthermore, by submitting materials, you agree to indemnify and hold harmless Merced County for release of such information.

#### 4.14 QUALIFICATIONS OF BIDDER

The County may make such investigation as it deems necessary to determine the ability of the Bidder to provide the services requested herein, and the Bidder shall furnish to the County all information and data for this purpose as the County may request. The County reserves the right to reject any response should the evidence submitted by, or investigation of, the Bidder fails to satisfy the County that such Bidder is properly qualified to carry out the obligations of the proposal and to complete the requirements contemplated therein.

#### **4.15 DISQUALIFICATION OF BIDDER**

A Bidder may be disqualified and the response rejected, in addition to any other cause for rejection as set forth elsewhere in this proposal, for any of, but not limited to, one of the following reasons:

- Proof of collusion among Bidders, in which case all responses involved in the collusive action will be rejected and any participant to such collusion will be barred from future bidding until reinstated as a qualified Bidder.
- Lack of responsibility or cooperation as shown by past work or services provided to the County or others.
- Being in arrears on existing Agreements with the County or having defaulted on previous Agreements.
- Incomplete information or missing documents as required in the proposal.

#### **4.16 INTEGRITY OF EXPENDITURE**

The Bidder assures that every reasonable course of action will be taken to maintain the integrity of expenditure of public funds and to avoid any favoritism, questionable, or improper conduct.

#### **4.17 GRATUITIES**

Neither the Bidder nor any person, firm, or corporation employed by the Bidder shall give, directly or indirectly, to any employee or agent of the County, any gift, money, or anything of value, or any promise, obligation, or Agreement for future reward or compensation, neither during the proposal process nor during the performance of any Agreement period resulting from this proposal.

#### **4.18 CONFLICT OF INTEREST**

The Bidder 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 proposal. Bidder shall make all reasonable efforts to ensure that no conflict of interest exists between its officers, employees, or sub-Contractor(s), and the County. Bidder shall make all reasonable efforts to ensure that no County officer or employee, whose position in the County enables them to influence any award of this proposal or any competing offer, shall have any direct or indirect financial interest resulting from any Agreement that may be derived from this proposal or shall have any relationship to the Bidder or officer or employee of the Bidder, nor that any such person will be employed by Bidder in the performance of any Agreement that may be derived from this proposal without immediate divulgence or such fact to the County.

#### **4.19 FEDERAL, STATE, AND LOCAL TAXES**

The awarded Bidder shall pay all taxes lawfully imposed upon it with respect to this proposal or any product delivered with respect to the Agreement. The County makes



no representation whatsoever as to the exemption from liability to any tax imposed by any government entity on the awarded Bidder.

#### **4.20 OSHA REQUIREMENTS**

All material, equipment, or labor submitted under this proposal by Bidder shall meet the required standards of OSHA 1970 and CA-OSHA 1973. Bidder warrants that the described material, equipment or labor meets all appropriate OSHA safety and health requirements. Further, it warrants that the said material or equipment will not produce or discharge in any manner or form, directly or indirectly, chemicals or toxic substance that could pose a hazard to the health or safety of anyone who may use the material or equipment or come into contact with the material or equipment.

#### **4.21 ENVIRONMENTAL PROTECTION**

The Bidder awarded the Agreement resulting from this proposal shall be in compliance with all applicable standards, orders or requirements issued under Section 306 of the Clean Air Act (41 USC 1857(h)), Section 508 of the Clean Water Act (33 USC, 1368), Executive Order 11738, and Environmental Protection Agency regulations (40 CFR, Part 15) which prohibits the use under nonexempt federal Agreements, grants, and loans of facilities included on the EPA List of Violating Facilities. The Contractor shall report violations to the applicable federal agency and the US EPA Assistant Administrator for enforcement.

#### **4.22 DRUG FREE WORK PLACE**

The awarded Bidder must certify that it will provide a drug-free workplace as set forth by the Federal Drug-Free Workplace Act of 1988.

#### **4.23 PREVAILING WAGE RATES**

Should the proposal call for the Bidder to be responsible for any site preparation activities, the Bidder will be required to certify adherence to the requirements of all state and federal laws relating to the payment of prevailing wage rates for work performance under public works project laws, specifically, as covered by the federal Davis-Bacon Act and California Labor Code 1720 et seq. A copy of this wage scale may also be obtained from the office of the Director of Industrial relations, State of California, or <http://www.dir.ca.gov/DLSR/PWD/mer.xls>

It shall be mandatory upon the Bidder to whom the Agreement is awarded, and upon all sub-Contractor under him, to ascertain and pay not less than the latest general prevailing hourly rates for Saturday, Sunday, holidays, and overtime work for each workman or mechanic employed in the execution of the work of this project as per determination made by the Director of Industrial Relations, California Labor Code, Part 7, Chapter 1, Article 2, Sections 1770, 1773, and 1773.1.

#### **4.24 COMPLIANCE WITH APPLICABLE LAWS**

The successful Bidder shall otherwise perform all obligations under the resulting Agreement in compliance with all applicable federal, state, and local laws, rules, regulations, and policies.

No Contractor or sub-Contractor(s) may be listed on a bid response for a public works project (submitted on or after March 1, 2015) unless registered with the Department of Industrial Relations pursuant to Labor Code section 1725.5 [with limited exceptions from this requirement for bid purposes only under Labor Code section 1771.1(a)].

No Contractor or sub-Contractor(s) may be awarded an Agreement for public work on a public works project (awarded on or after April 1, 2015) unless registered with the Department of Industrial Relations pursuant to Labor Code section 1725.5.

This project is subject to compliance monitoring and enforcement by the Department of Industrial Relations.

#### **4.25 LEGAL CONSIDERATIONS**

Any Bidder, by submission of a response to this proposal, and any subsequent Agreement that may be derived from this proposal, shall be deemed and have agreed to be bound by the laws of the State of California in all respects as to interpretation, construction, operation, effect and performance.

Notwithstanding any other provisions of this proposal, any dispute concerning any question of fact or law arising under this proposal, or arbitration arising out of any Agreement that may be awarded as a result of this proposal, shall be tried in Merced County, unless the parties agree otherwise or are otherwise required by law.

#### **4.26 OUT-OF-STATE BIDDER**

Where the Bidder is an Out-Of-State Bidder, not doing business in the State of California, the package bid or purchase price, for the purpose of determining the lowest price bid, shall be increased by applicable retail rate of general sales tax and use tax when and where applicable.

#### **4.27 LOCAL BUSINESS PURCHASING PREFERENCE**

Notwithstanding any other provision contained herein to the contrary, a ten percent (10%) preference shall be granted to local business whenever the purchasing agent of Merced County purchases services, supplies, materials and/or equipment for county use through the competitive bid process, which shall be defined herein to include quotes, bids, and proposals. The purchasing agent in evaluating competitive bids shall determine the lowest responsive Bidder, and if the lowest responsive Bidder is a non-local Bidder then a ten percent (10%) preference shall be granted to local Bidders. Local preference only applies to the procurement of services, supplies, materials and/or equipment, and will not apply to bids conducted with other public agencies nor when prohibited by state or federal statutes or regulations to be



awarded to the “lowest responsible Bidder” or otherwise exempted from local preference. A local bidder is defined as:

- a. A principal place of business located within the County of Merced with a valid and verifiable business license, if applicable, issued by a city within the County or a business located in the unincorporated areas of the County. Post Office Boxes do not qualify as verifiable local business addresses;
- b. Employs at least one (1) full-time employee within the County, or if the business has no employees, shall be at least fifty percent (50%) owned by one or more persons whose primary residence(s) is located within the County; and
- c. Has had a fixed office or place of business having a street address within the County for at least six (6) months immediately prior to the issuance of the request for competitive bids by the County.

The ten percent (10 %) local preference shall be deducted from the total dollar amount bid by local Bidders on competitive quotes and bids, and assess on the total evaluated aggregate score obtained by local Bidders on proposals (County of Merced County Policy, Chapter 5.12.025, “Local Business Purchasing Preference” Policy).

#### **4.28 BUSINESS LICENSE**

Prior to the issuance of any purchase order and/or the performance of any Agreement derived from this bid, the successful bidder and its sub-Contractors shall be required to maintain a Merced County Business License in accordance with the County of Merced Ordinance No. 1705, “An Ordinance Establishing a requirement for a Business License and Temporary Business License and/or persons operating in the unincorporated areas of Merced County” (<http://www.qcode.us/codes/mercedcounty/>).

It is the intent of the Board of Supervisors of the County of Merced to authorize that no person shall maintain, conduct, or carry-on a business, whether or not for profit, located in whole or in part at a fixed place of business within the County and outside the limits of any incorporated city, without first obtaining a license to operate as provided under the County of Merced Ordinance No. 1705.

## **DEFINITIONS**

**Agreement** - Comprises the Request for Proposal (RFP), any amendment thereto, the bid proposal, and the purchase order if appropriate. The Agreement constitutes the entire agreement between the County and the awarded Bidder.

**Bidder** - A person, partnership, firm, corporation, or joint venture submitting a bid response for the purpose of obtaining a County Agreement.

### **Bonds –**

**Fidelity Bond** - Also referred to as a Dishonesty Bond. A fidelity bond is a form of protection that covers the County for losses as a result of fraudulent acts by the Contractor.

**Proposal Security Bond** – Also referred to as Bid Security. A bond that is submitted with Bidder's response to compensate the County for damages it might suffer if successful bidder refuses to execute the Agreement that may be derived from their response. Generally, it is 10% of the amount of Bidder's bid as bid security.

**Performance Bond** – A bond to ensure completion of the project as requested under the "Scope of Work". The Performance Bond is backed by a surety who guarantees the project will be completed in accordance with the specifications of the proposal.

**Payment Bond** – This bond is to protect sub-Contractors and suppliers. It ensures that the surety backing the bond will pay the sub-Contractors and suppliers if the general Contractor does not.

**County** - The County of Merced, a political subdivision of the State of California.

**Deliverable** - The physical evidence such as documentation, certification of completion, hardware/software delivery, etc. which shows that a specific work has been completed as specified in the "Requirements".

**Evaluation Committee** - A committee established to review and evaluate responses to determine the Agreement award. The committee includes representatives of the department seeking the goods or services.

**Goals/Tasks** - A discrete unit of work to be performed.

**Joint Ventures** - Two or more corporations or entities that form a temporary union for the purpose of the RFP.

**Prime Contractor** – The Bidder who is awarded the Agreement and designated as the legal entity. The Prime Contractor will hereafter also be known as the Contractor. Any sub-Contracting, Joint Ventures, or other legal arrangements made by the Contractor during this project are the sole responsibility of the Contractor.

**Proposal Deadline** - The closing date associated with this proposal.

**Proprietary** – The information provided that is considered exempt from public disclosure defined as Trade Secrets under Civil Code Section 3426.1, pursuant to Public Records Act.

**Scope of Work** - The mutually agreed to document which describe tasks, dependencies, the sequence and timing of events, deliverables, and responsible parties associated with the various phases of the proposal.

**Sub-Contractors** - Any person, entity or organization, to which Contractor or County has delegated any of its obligations hereunder.

**Work Plan** - The mutually agreed to document, which describes task, dependencies, the sequence and timing of events, deliverables, and responsible parties, associated with the various phases of the proposal.

**EXHIBIT 1- CATEGORY OF SERVICES**

<b>Contractor should be prepared to demonstrate how they will provide standard and advanced information technology, telecommunications, imaging, homeland security technology</b>		
<b>CATEGORY</b>	<b>HOW SUPPLIED</b>	<b>% DISCOUNT OFF LIST PRICE</b>
<b>1.0 Communications Services</b>		
Call Center Solutions (with ACD)		
Emergency Notification Solutions (Reverse 911)		
Engineering/Consulting Services		
Integrated Voice Response (IVR)		
/		
Voice over Internet Protocol (VOIP)		
Unified Messaging (UM)		
Long Distance Services (Switched, Dedicated)		
Telecommunications Systems (PBX)		
Telephone Handsets		
Voice Mail Solutions		
Wireless Voice Communication Services		
<b>2.0 Application Systems</b>		
Development		
Installation Solutions		
Version Control Solutions		
<b>3.0 Infrastructure</b>		
Battery Backup Systems		
Cabling Services		
Energy Auditing and Management Solutions		
<b>4.0 Enterprise Mobility Solutions</b>		

Mobile Device Management		
Mobile Devices (Tablets)		
Mobile Applications		
<b>5.0 Maintenance Services</b>		
<b>6.0 Network &amp; Enterprise Security Solutions</b>		
Firewall & Virtual Private Network (VPN) Solutions		
Intrusion Detection/Prevention Solutions		
Network, Host & Enterprise Management Solutions		
Transport Solutions (PRI, MPLS, Super-trunks, CO Business Lines, Optical, Satellite, Wireless)		
Video Solutions		
Wireless Solutions (Wi-Fi)		
<b>7.0 E-Government</b>		
Web Site Analytics		
Web Site Content Management Solutions		
Web Site Design, Development, Hosting Services		
Web Site Development Tools		
Web Site Intranet Solutions		
Web Monitoring & Filtering Solutions		
Web Site Portal Solutions		
<b>8.0 Enterprise Systems</b>		
Virtualization (Servers)		
Virtual Desktop Infrastructure (VDI)		
Anti-Virus, Spam, Spyware Solutions		
Data Encryption Products & Services		
Helpdesk Solutions		
Hosting Services and Applications (Cloud and SaaS)		

Radio Frequency Identification (RFID)		
Server, Storage & Data Management Products		
Telepresence/Video Conferencing		
9.0 Training Solutions		
10.0 Consulting Services		
11.0 Other Goods and Services		

**EXHIBIT B**

**Original Government Contract**

## Exhibit B

### AGREEMENT FOR SPECIAL SERVICES

#### MERCED COUNTY CONTRACT NO. 2021092

**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 AMS.NET, Inc., a Delaware corporation, located at 502 Commerce Way, Livermore, California, 94551 (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)
- Emergency Notification Solutions (Reverse 911)
- 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

Infrastructure:

- Battery Backup Systems
- Cabling Services
- Energy Auditing and Management Solutions

Enterprise Mobility Solutions:

- Mobile Device Management
- Mobile Applications

Maintenance Services

Network and Enterprise Security Solutions:

- Firewall and Virtual Private Network (VPN)
- Intrusion Detection/Prevention Solutions
- Network, Host and Enterprise Management Solutions
- Video Solutions
- Wireless Solutions (Wi-Fi)

E-Government:

- Web Monitoring and Filtering Solutions

Enterprise Systems:

- Virtualization (Servers)
- Virtual Desktop Infrastructure (VDI)
- Anti-Virus, Spam, Spyware Solutions
- Data Encryption Products and Services
- Server, Storage and Data Management Products
- Telepresence/Video Conferencing

Training Solutions

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

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. Merced 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. Merced 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

- a. Notify Merced County of all sales made under FOCUS, including order/delivery progress, within fourteen (14) business days of order.
- b. Quarterly and annual sales reports.
- c. 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.
- d. Price increase/price decline policies. All price reduction changes must be published within seventy-two (72) hours.
- e. Quarterly Administrative fees for Merced County.
- f. Subcontractor list (See Agreement Attachment 1).
- g. Ordering (including invoices, payments, taxes on sales and services, and return procedures), reporting, and reconciliation procedures (See Agreement Attachment 2).
- h. Support services including help desk phone numbers.
- i. Warranty statements.
- j. Point of contact including phone/fax/e-mail information.

## 2. TERM

The term of this Agreement shall commence on the 18th day of May, 2021, and continue until the 17th day of May, 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 Merced County administrative fees in accordance with the following schedule on a quarterly basis. Payment is to be made not later than thirty (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 Agreement 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	Contractor
Director	AMS.NET, Inc.
Community & Economic Development	Robert Tocci
Merced County	President
2222 M Street	502 Commerce Way
Merced, CA 95340	Livermore, CA 94551

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

## 7. CONDITION SUBSEQUENT/NON-APPROPRIATION OF FUNDING

The compensation paid to Contractor pursuant to this Agreement is based on County's continued appropriation of funding for the purpose of this Agreement, as well as the receipt of local, county, state and/or federal funding for this purpose. The parties acknowledge that the nature of government finance is unpredictable, and that the rights and obligations set forth in this Agreement are therefore contingent upon the receipt and/or appropriation of the necessary

funds. In the event that funding is terminated, in whole or in part, for any reason, at any time, this Agreement and all obligations of the County arising from this Agreement shall be immediately discharged. County agrees to inform Contractor no later than ten (10) calendar days after the County determines, in its sole judgment, that funding will be terminated and the final date for which funding will be available. Under these circumstances, all billing or other claims for compensation or reimbursement by Contractor arising out of performance of this Agreement must be submitted to County prior to the final date for which funding is available. In the alternative, County and Contractor may agree, in such circumstance, to a suspension or modification of either party's rights and obligations under this Agreement. Such a modification, if the parties agree thereto, may permit a restoration of previous contract terms in the event funding is reinstated. Also in the alternative, if funding is provided to the County in the form of promises to pay at a later date, whether referred to as "government warrants", "IOU's", or by any other name, the County may, in its sole discretion, provide similar promises to pay to the Contractor, which the Contractor hereby agrees to accept as sufficient payment until cash funding becomes available.

#### **8. 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.

#### **9. TERMINATION FOR CAUSE**

The County may terminate this Agreement and be relieved of making any payments to Contractor and all duties to Contractor should the Contractor fail to perform any material duty or obligation of the Agreement. Notice shall be given as otherwise provided herein. In the event of such termination the County may proceed with the work in any manner deemed proper by the County. All costs to the County shall be deducted from any sum otherwise due the Contractor and the balance, if any, shall be paid to the Contractor upon demand. Such remedy is in addition to such other remedies as may be available to the County provided by law.

## **10. 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

## **11. INSURANCE**

A. 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 minimum limits indicated during the term of this Agreement. Contractor shall provide a certificate of insurance and endorsements on each policy as required in this section. Each certificate of insurance shall specify if Contractor has a self-insured retention (SIR), and if so, Contractor shall be required to provide the entire policy of insurance with which it has an SIR and/or deductible. All deductibles and SIRs shall be fully disclosed in the Certificates of Insurance and are subject to the express written permission of the County Risk Manager.

1. Commercial General Liability: \$1,000,000 per occurrence and \$2,000,000 annual aggregate covering products and completed operations, bodily injury, personal injury and property damage. The County and its officers, employees and agents shall be endorsed to 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 arising from the performance of this Agreement.
2. Automobile Liability: \$1,000,000 per accident for bodily injury and property damage, or alternatively split limits of \$500,000 per person and \$1,000,000 per accident for bodily injury with \$250,000 per accident for property damage.
3. Workers Compensation: Statutory coverage, if and as required according to the California Labor Code, including Employers' Liability limits of \$1,000,000 per accident. The policy shall be endorsed to waive the insurer's subrogation rights against the County.
4. Technology Professional Liability Errors and Omissions Insurance appropriate to the Contractor's profession and work hereunder, with limits not less than \$2,000,000 per occurrence. Coverage shall be sufficiently broad to respond to the duties and obligations as is undertaken by the Contractor in this agreement and shall include, but not be limited to, claims involving infringement of intellectual



property, copyright, trademark, invasion of privacy violations, information theft, release of private information, extortion and network security. The policy shall provide coverage for breach response costs as well as regulatory fines and penalties as well as credit monitoring expenses with limits sufficient to respond to these obligations.

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

Cyber Liability coverage not less than \$2,000,000 per occurrence, and sufficient to cover, the full replacement value of damage to, alteration of, loss of, or destruction of electronic data and/or information "property" 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. Each of the above required policies shall be endorsed to provide the County with thirty (30) days prior written notice of cancellation. The 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 maintains broader coverage and/or higher limits than the minimums shown above, the County requires and shall be entitled to the broader coverage and/or the higher limits maintained by the Contractor. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the County.

4. If the Contractor uses Sub-Contractors or others to perform work under this Agreement, such Sub-Contractor or other persons shall be Named Insured or Additionally Insured to the Contractor's required insurance coverage, or required by the Contractor to comply with equivalent insurance and conditions of this Section.

## **12. 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.

## **13. 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.

#### **14. 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.

To the extent permitted by law, Contractor shall furnish County such periodic reports as County may request pertaining to the work or services undertaken pursuant to this Agreement. The costs and obligations incurred or to be incurred in connection therewith shall be borne by the Contractor.

#### **15. OWNERSHIP OF DOCUMENTS**

To the extent permitted by law, all technical data, evaluations, plans, specifications, reports, documents, or other work products developed by Contractor hereunder are the exclusive property of County and upon request of County shall be delivered to County upon completion of the services authorized hereunder. In the event of termination, all finished or unfinished documents and other materials, if any, at the option of County, and to the extent permitted by law, shall become the property of the County. Contractor may retain copies thereof for its files and internal use.

Any publication of information directly derived from work performed or data obtained in connection with services rendered under this Agreement must be first approved by County.

#### **16. 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.

**17. 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 this Agreement to the personal satisfaction of the County. County shall determine compliance in good faith as a reasonable person would under the circumstances.

**18. 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.

**19. 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.

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

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

**21. 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.

**22. 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.

**23. 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.

**24. 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.

**25. 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.

**26. 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 itself perform, or cause the performance of, such agreement or obligation. In that event, Contractor will, on demand, fully reimburse County for all such expenditures. Alternatively, County, at its option, may deduct from any funds owed to Contractor the amount necessary to cover any expenditures under this provision. This is in addition to any other remedies available to the County by law or as otherwise stated in this Agreement.

**27. 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.

**28. 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.

**29. 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.

### **30. 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.

### **31. 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.

Contractor hereby assigns to the County all rights, title, and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 U.S.C. Sec. 15) or under the Cartwright Act (Chapter 2 (commencing with Section 16700) of Part 2 of Division 7 of the Business and Professions Code), arising from the purchase of goods, materials, or services by the Contractor for sale to the County pursuant to this Agreement.

## **32. 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.

## **33. 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**

By   
Signature

Daron McDaniel  
Chairman, Board of Supervisors

MAY 18 2021

Dated

**AMS.NET, Inc.**

By   
Signature

Diana Monaghan  
Vice President

5/7/2021

Dated

APPROVED AS TO FORM  
FORREST W. HANSEN  
MERCED COUNTY COUNSEL

By   
Jeff Grant, Deputy County Counsel IV

## **ATTACHMENT 1 SUBCONTRACTORS**

### **3M**

Aamstrand Ropes & Twine

AMS ProServ

Advanced Network Devices

Aerohive Extreme

Allen Tel Products

American Polywater Corporation

APC

Arecont Vision Costar

Arista Networks

Arrow Wire & Cable

AtlasLED

Avigilon

Barracuda

Baicells Technologies

Barracuda Networks

Belden

BLF Corporation

Berk-Tek

BlackHawk Labs

BLF Corporation

Brother International

Cablofil Inc.

Chatsworth Products

Circa

Cisco

Cohesity

Commscope

Cooper B-Line Systems

Corning Optical Communications

Damac

DAP Products Inc.

Eaton

eNet Components

Erico

Exacq Technologies

Extron

Fluke

Fortinet

FrontRow

Greenlee

HALO  
Hoffman  
HPE Aruba  
Hubbell Premise Wiring  
IBM  
Ideal Industries  
Ilsentech  
Leviton Manufacturing  
L.H. Dottie Co.  
Lightspeed Systems  
Maxcell  
Microsoft  
Middle Atlantic Products  
Mohawk Cable Solutions  
Nimble  
Oberon, Inc.  
OCC  
Ortronics  
Paige Datacom Solutions  
Palo Alto Networks  
Panduit  
Platt Electric Supply  
Preformed Line Products  
Pure Storage  
Qognify  
Quiktron, Inc.  
Rubrik  
Ruckus Brocade  
Siemon  
Singlewire Software  
Specified Technologies Inc.  
Superior Essex  
Syn-Apps  
TE Connectivity  
TerraWave  
Tintri  
Total Cable Solutions  
Tripp Lite  
Valcom  
Veeam Software  
Verkada  
VMware  
Wiremold  
Zoom Video Communications

## **ATTACHMENT 2 ORDERING, REPORTING, AND RECONCILIATION PROCEDURES**

### **ORDERING:**

To order from the FOCUS Contract, Contractor needs:

1. A public agency purchase order (P.O.), stating the FOCUS Contract Number, made out to Contractor.
2. Confirmation that a copy of the P.O. has been sent to County via U.S. Mail, fax or email.

Contractor can receive information in the following ways: U.S. Mail, fax or email:

US mail:  
AMS.NET  
Sales/FOCUS Contract orders  
502 Commerce Way  
Livermore, CA 94550

Fax:  
925-245-6150

Email:  
sales@ams.net

Upon receiving the above, Contractor will proceed with the ordering of the equipment delivered to Contractor for delivery to the customer. The Order Administrator will also send a copy of the P.O. to the County.

### **REPORTING AND RECONCILIATION:**

Contractor will report to County on a quarterly basis. The report and associated fees will be sent by Contractor no later than the 30<sup>th</sup> of the month, following the end of the quarter (January 30<sup>th</sup>, April 30<sup>th</sup>, July 30<sup>th</sup>, October 30<sup>th</sup>) to the County via overnight carrier. Copies of P.O.'s will also be included.

**AMENDMENT #1  
TO  
CONTRACT NO. 2021092  
BETWEEN  
MERCED COUNTY  
AND  
AMS.NET, INC.**

THIS Amendment to Contract No. 2021092, is executed by and between the County of Merced, a political subdivision of the State of California, (hereinafter called "County"), and AMS.NET, Inc., a Delaware corporation, located at 502 Commerce Way, Livermore, CA 94551 (hereinafter called "Contractor").

This Amendment is hereby annexed to and made a part of the printed part of the Agreement to which it is attached, or modifies the existing Agreement between the parties. In each instance in which the provisions of this Amendment shall contradict or be inconsistent with the provisions of the printed portion of the original Agreement and any previous amendments, the provision of this Amendment shall prevail and govern and the contradicted or inconsistent provisions shall be deemed amended accordingly. Both parties agree that there is new and adequate consideration for this Amendment.

This Amendment shall be deemed to have been duly approved when executed by both parties to the original Agreement. Once duly approved, this Amendment shall become effective as of the date signed by the Chairman of the Merced County Board of Supervisors.

**MODIFICATIONS:**

- 1) Section 2, entitled "Term", is amended to add as follows:

The term of this Agreement shall commence on the 18<sup>th</sup> day of May, 2021, and continue until the 17<sup>th</sup> day of May, 2026, 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.

Except as herein modified, all terms and conditions in said Agreement as heretofore approved remain unchanged and in full force and effect.

*Signature page to follow.*

**County of Merced**

By: 

**Rodrigo Espinosa**  
Chair, Board of Supervisors

**MAY 07 2024**

Dated

**AMS, NCM, Inc.**

By: 

**Robert Tocci,**  
Chief Executive Officer/CFO/Secretary

**4/10/24**

Dated

**APPROVED AS TO LEGAL FORM  
MERCED COUNTY COUNSEL**

BY: 

**Rina M. Gonzales**  
Chief Deputy County Counsel

**5/1/2024**

Dated

**EXHIBIT C**

**City's Insurance and Indemnity**

## **Exhibit C**

### **Insurance and Indemnity**

#### **INDEMNIFICATION**

To the furthest extent allowed by law, VENDOR shall indemnify, hold harmless and defend CITY and each of its officers, officials, employees, agents and volunteers from any and all loss, liability, fines, penalties, forfeitures, costs and damages (whether in contract, tort or strict liability, including but not limited to personal injury, death at any time and property damage) incurred by CITY, VENDOR or any other person, and from any and all claims, demands and actions in law or equity (including reasonable attorney's fees, litigation expenses and cost to enforce this agreement), arising or alleged to have arisen directly or indirectly out of performance of this Contract. VENDOR'S obligations under the preceding sentence shall apply regardless of whether CITY or any of its officers, officials, employees, agents or volunteers are passively negligent, but shall not apply to any loss, liability, fines, penalties, forfeitures, costs or damages caused by the active or sole negligence, or the willful misconduct, of CITY or any of its officers, officials, employees, agents or volunteers.

If VENDOR should subcontract all or any portion of the work to be performed under this Contract, VENDOR shall require each subcontractor to indemnify, hold harmless and defend CITY and each of its officers, officials, employees, agents and volunteers in accordance with the terms of the preceding paragraph.

This section shall survive termination or expiration of this Contract.

#### **INSURANCE REQUIREMENTS**

(a) Throughout the life of this Agreement, VENDOR shall pay for and maintain in full force and effect all insurance as required herein with an insurance company(ies) either (i) admitted by the California Insurance Commissioner to do business in the State of California and rated no less than "A-VII" in the Best's Insurance Rating Guide, or (ii) as may be authorized in writing by CITY'S Risk Manager or his/her designee at any time and in his/her sole discretion. The required policies of insurance as stated herein shall maintain limits of liability of not less than those amounts stated therein. However, the insurance limits available to CITY, its officers, officials, employees, agents and volunteers as additional insureds, shall be the greater of the minimum limits specified therein or the full limit of any insurance proceeds to the named insured.

(b) If at any time during the life of the Agreement or any extension, VENDOR or any of its subcontractors fail to maintain any required insurance in full force and effect, all services and work under this Agreement shall be discontinued immediately, and all payments due or that become due to VENDOR shall be withheld until notice is received by CITY that the required insurance has been restored to full force and effect and that the premiums therefore have been paid for a period satisfactory to CITY. Any failure to maintain the required insurance shall be sufficient cause for CITY to terminate this



Agreement. No action taken by CITY pursuant to this section shall in any way relieve VENDOR of its responsibilities under this Agreement. The phrase "fail to maintain any required insurance" shall include, without limitation, notification received by CITY that an insurer has commenced proceedings, or has had proceedings commenced against it, indicating that the insurer is insolvent.

(c) The fact that insurance is obtained by VENDOR shall not be deemed to release or diminish the liability of VENDOR, including, without limitation, liability under the indemnity provisions of this Agreement. The duty to indemnify CITY shall apply to all claims and liability regardless of whether any insurance policies are applicable. The policy limits do not act as a limitation upon the amount of indemnification to be provided by VENDOR. Approval or purchase of any insurance contracts or policies shall in no way relieve from liability nor limit the liability of VENDOR, vendors, suppliers, invitees, contractors, sub-contractors, subcontractors, or anyone employed directly or indirectly by any of them.

Coverage shall be at least as broad as:

1. The most current version of Insurance Services Office (ISO) Commercial General Liability Coverage Form CG 00 01, providing liability coverage arising out of your business operations. The Commercial General Liability policy shall be written on an occurrence form and shall provide coverage for "bodily injury," "property damage" and "personal and advertising injury" with coverage for premises and operations (including the use of owned and non-owned equipment), products and completed operations, and contractual liability (including, without limitation, indemnity obligations under the Agreement) with limits of liability not less than those set forth under "Minimum Limits of Insurance."
2. The most current version of ISO \*Commercial Auto Coverage Form CA 00 01, providing liability coverage arising out of the ownership, maintenance or use of automobiles in the course of your business operations. The Automobile Policy shall be written on an occurrence form and shall provide coverage for all owned, hired, and non-owned automobiles or other licensed vehicles (Code 1- Any Auto).
3. Workers' Compensation insurance as required by the State of California and Employer's Liability Insurance.
4. Technology Liability (Errors and Omissions) insurance appropriate to VENDOR'S profession. Coverage shall be sufficiently broad to respond to duties and obligations as is undertaken by VENDOR in this agreement and shall include but not be limited to, claims involving infringement of intellectual property, including but not limited to infringement of copyright, trademark, trade dress, invasion of privacy violations, information theft, damage to or destruction of electronic information, release of private

information, alteration of electronic information, extortion and network security. The policy shall provide coverage for breach response costs as well as regulatory fines penalties and credit monitoring expenses with limits sufficient to respond to these obligations.

#### MINIMUM LIMITS OF INSURANCE

VENDOR shall procure and maintain for the duration of the contract, and for 5 years thereafter, insurance with limits of liability not less than those set forth below. However, insurance limits available to CITY, its officers, officials, employees, agents and volunteers as additional insureds, shall be the greater of the minimum limits specified herein or the full limit of any insurance proceeds available to the named insured:

1. COMMERCIAL GENERAL LIABILITY

- (i) \$1,000,000 per occurrence for bodily injury and property damage;
- (ii) \$1,000,000 per occurrence for personal and advertising injury;
- (iii) \$2,000,000 aggregate for products and completed operations; and,
- (iv) \$2,000,000 general aggregate applying separately to the work performed under the Agreement.

2. COMMERCIAL AUTOMOBILE LIABILITY

\$1,000,000 per accident for bodily injury and property damage.

3. Workers' Compensation Insurance as required by the State of California with statutory limits and EMPLOYER'S LIABILITY with limits of liability not less than:

- (i) \$1,000,000 each accident for bodily injury;
- (ii) \$1,000,000 disease each employee; and,
- (iii) \$1,000,000 disease policy limit.

4. TECHNOLOGY PROFESSIONAL LIABILITY :

- (i) \$1,000,000 per claim/occurrence; and,

- (ii) \$2,000,000 policy aggregate.

#### UMBRELLA OR EXCESS INSURANCE

In the event VENDOR purchases an Umbrella or Excess insurance policy(ies) to meet the "Minimum Limits of Insurance," this insurance policy(ies) shall "follow form" and afford no less coverage than the primary insurance policy(ies). In addition, such Umbrella or Excess insurance policy(ies) shall also apply on a primary and non-contributory basis for the benefit of the CITY, its officers, officials, employees, agents and volunteers.

#### DEDUCTIBLES AND SELF-INSURED RETENTIONS

VENDOR shall be responsible for payment of any deductibles contained in any insurance policy(ies) required herein and VENDOR shall also be responsible for payment of any self-insured retentions.

#### OTHER INSURANCE PROVISIONS/ENDORSEMENTS

(i) All policies of insurance required herein shall be endorsed to provide that the coverage shall not be cancelled, non-renewed, reduced in coverage or in limits except after thirty (30) calendar days written notice has been given to CITY, except ten (10) days for nonpayment of premium. VENDOR is also responsible for providing written notice to the CITY under the same terms and conditions. Upon issuance by the insurer, broker, or agent of a notice of cancellation, non-renewal, or reduction in coverage or in limits, VENDOR shall furnish CITY with a new certificate and applicable endorsements for such policy(ies). In the event any policy is due to expire during the work to be performed for CITY, VENDOR shall provide a new certificate, and applicable endorsements, evidencing renewal of such policy not less than fifteen (15) calendar days prior to the expiration date of the expiring policy.

(ii) The Commercial General and Automobile Liability insurance policies shall be written on an occurrence form.

(iii) The Commercial General and Automobile Liability insurance policies shall be endorsed to name City, its officers, officials, agents, employees and volunteers as an additional insured all ongoing and completed operations. Additional Insured endorsements under the General Liability policy must be as broad as that contained in ISO Forms: GC 20 10 11 85 or both CG 20 10 & CG 20 37.

(iv) The Commercial General and Automobile Liability insurance shall contain, or be endorsed to contain, that VENDOR'S insurance shall be primary to and require no contribution from the City. Primary and Non Contributory language under the General

Liability policy must be as broad as that contained in ISO Form CG 20 01 04 13. These coverages shall contain no special limitations on the scope of protection afforded to City, its officers, officials, employees, agents and volunteers.

(v) Should any of these policies provide that the defense costs are paid within the Limits of Liability, thereby reducing the available limits by defense costs, then the requirement for the Limits of Liability of these policies will be twice the above stated limits.

(vi) All insurance policies required herein shall contain, or be endorsed to contain, a waiver of subrogation as to CITY, its officers, officials, agents, employees and volunteers.

The Technology Professional Liability insurance shall cover claims involving privacy violations, information theft, damage to or destruction of electronic information, intentional and/or unintentional release of private information (including credit monitoring costs), alteration of electronic information, extortion and network security. Such coverage is required for claims involving any professional services for which VENDOR is engaged with the City for such length of time as necessary to cover any and all claims

If the Technology Professional insurance policy is written on a claims-made form:

1. The retroactive date must be shown, and must be before the effective date of the Agreement or the commencement of work by VENDOR.
2. Insurance must be maintained and evidence of insurance must be provided for at least five (5) years after completion of the Agreement work or termination of the Agreement, whichever occurs first, or, in the alternative, the policy shall be endorsed to provide not less than a five (5) year discovery period.
3. If coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a retroactive date prior to the effective date of the Agreement or the commencement of work by VENDOR, VENDOR must purchase "extended reporting" coverage for a minimum of five (5) years completion of the Agreement work or termination of the Agreement, whichever occurs first.
4. A copy of the claims reporting requirements must be submitted to CITY for review.
5. These requirements shall survive expiration or termination of the Agreement.

Should any of these policies provide that the defense costs are paid within the Limits of Liability, thereby reducing the available limits by defense costs, then the requirement for the Limits of Liability of these policies will be twice the above stated limits.

## PROVIDING OF DOCUMENTS

VENDOR shall furnish CITY with all certificate(s) and applicable endorsements effecting coverage required herein. All certificates and applicable endorsements are to be received and approved by the CITY'S Risk Manager or his/her designee prior to CITY'S execution of the Agreement and before work commences. All non-ISO endorsements amending policy coverage shall be executed by a licensed and authorized agent or broker. Upon request of CITY, VENDOR shall immediately furnish CITY with a complete copy of any insurance policy required under this Agreement, including all endorsements, with said copy certified by the underwriter to be a true and correct copy of the original policy. This requirement shall survive expiration or termination of this Agreement. All subcontractors working under the direction of VENDOR shall also be required to provide all documents noted herein.

## SUBCONTRACTORS

If VENDOR subcontracts any or all of the services to be performed under this Agreement, VENDOR shall require, at the discretion of the CITY Risk Manager or designee, subcontractor(s) to enter into a separate Side Agreement with the City to provide required indemnification and insurance protection. Any required Side Agreement(s) and associated insurance documents for the subcontractor must be reviewed and preapproved by CITY Risk Manager or designee. If no Side Agreement is required, VENDOR will be solely responsible for ensuring that its subcontractors maintain insurance coverage at levels no less than those required by applicable law and is customary in the relevant industry.