

PROFESSIONAL SERVICES AGREEMENT

CONTRACT NO. SC-105661

Magellan Advisors, hereinafter called Contractor, and Pierce County, hereinafter called County, agree as set forth in this Agreement, including: (General Conditions), pp. 2 to 7, Exhibit A (Scope of Work), pp. 8-9, Exhibit B (Compensation), p. 10, and Exhibit C (Contract Compliance for Professional, Technical, Supply, or Services - dated 03/10), pp. 12 to 16, copies of which are attached hereto and incorporated herein by this reference as fully as if set forth herein. The term of this Agreement shall commence on the 1st day of March, 2018, and shall, unless terminated or renewed elsewhere in the Agreement, terminate on the 31st day of December, 2018. The maximum consideration for the initial term of this Agreement or for any renewal term shall not exceed \$82,875. Contractor acknowledges and by signing this contract agrees that the Indemnification provisions set forth in Paragraphs 5, 13, 20, and 23, are totally and fully part of this contract and have been mutually negotiated by the parties.

IN WITNESS WHEREOF, the parties have executed this Agreement this 5th day of March, 2018.

CONTRACTOR:

John Honker
Name

Signature
President & CEO
Title of Signatory Authorized by Firm Bylaws

Address:
999 18th Street Suite 3000
Denver, CO 80202

Mailing Address:
999 18th Street, Suite 3000
Denver, CO 80202

UBI No.: 602509182

Contact Name: John Honker

Contact Phone: 786.203.8952

Contact FAX: 786.524.2214

CONTRACTOR:

Complete the tax status information for one of the following business entity types. Individual or Corporate name must exactly match that which is registered with either Social Security Administration or Internal Revenue Service.

SOLE PROPRIETOR:

Business Owner's Name

Business Owner's Social Security Number

DBA/Business or Trade Name (if applicable)

PARTNERSHIP:

OPK
Magellan Advisors, LLC
Name of Partnership

65-1218484

Partnership's Employer Identification Number

CORPORATION:

Name of Corporation

Corporation's Employer Identification Number

PIERCE COUNTY:

Approved as to legal form only:

Signature
Deputy Prosecuting Attorney
Date 2/28/18

Recommended:

Signature
Budget and Finance
Date 3/14/18

Approved:

Signature
Department Director
Date 3/5/2018

Pierce County Executive (\$250,000 or more) Date

**GENERAL CONDITIONS****1. Scope of Contractor's Services:**

The Contractor agrees to provide to the County services and any materials set forth in the project narrative identified as Exhibit "A" during the Agreement period. No material, labor, or facilities will be furnished by the County, unless otherwise provided for in the Agreement.

**2. Accounting and Payment for Contractor Services:**

Payment to the Contractor for services rendered under this Agreement shall be as set forth in Exhibit "B." Where Exhibit "B" requires payments by Pierce County, payment shall be based upon billings, supported unless otherwise provided in Exhibit "B," by documentation of units of work actually performed and amounts earned, including where appropriate, the actual number of days worked each month, total number of hours for the month, and the total dollar payment requested. Unless specifically stated in Exhibit "B" or approved in writing in advance by the official executing this Agreement for Pierce County, (hereinafter referred to as the "Contracting Officer"), the County will not reimburse the Contractor for any costs or expenses incurred by the Contractor in the performance of this contract.

Where required, the County shall, upon receipt of appropriate documentation, compensate the Contractor, no more often than monthly, through the County voucher system for the Contractor's service pursuant to the fee schedule set forth in Exhibit "B."

**3. Assignment and Subcontracting:**

No portion of this contract may be assigned or subcontracted to any other individual, firm or entity without the express and prior written approval of the Contracting Officer.

**4. Labor Standards and Contract Assistance:**

The Contractor shall comply with the provisions of Exhibit "C", attached hereto, titled "Contract Compliance For Professional, Technical, Supply or Services".

**5. Independent Contractor:**

The Contractor's services shall be furnished by the Contractor as an independent Contractor and nothing herein contained shall be construed to create a relationship of employer-employee or master-servant, but all payments made hereunder and all services performed shall be made and performed pursuant to this Agreement by the Contractor as an independent Contractor.

The Contractor acknowledges that the entire compensation for this Agreement is specified in Exhibit "B" and the Contractor is not entitled to any County benefits including, but not limited to: vacation pay, holiday pay, sick leave pay, medical, dental, or other insurance benefits, or any other rights or privileges afforded to Pierce County employees. The Contractor represents that he/she/it maintains a separate place of business, serves clients other than the County, will report all income and expense accrued under this contract to the Internal Revenue Service, and has a tax account with the State of Washington Department of Revenue for payment of all sales and use and Business and Occupation taxes collected by the State of Washington.

Contractor will defend, indemnify and hold harmless the County, its officers, agents or employees from any loss or expense, including but not limited to settlements, judgments, setoffs, attorneys' fees or costs incurred by reason of claims or demands because of breach of the provisions of this paragraph.

**6. No Guarantee of Employment:**

The performance of all or part of this contract by the Contractor shall not operate to vest any employment rights whatsoever and shall not be deemed to guarantee any employment of the Contractor or any employee of the Contractor or any subcontractor or any employee of any subcontractor by the County at the present time or in the future.

**7. Taxes:**

The Contractor understands and acknowledges that the County will not withhold Federal or State income taxes. Where required by State or Federal law, the Contractor authorizes the County to make withholding for any taxes other than income taxes (i.e., Medicare). All compensation received by the Contractor will be reported to the Internal Revenue Service at the end of the calendar year in accordance with the applicable IRS regulations. It is the responsibility of the Contractor to make the necessary estimated tax payments throughout the year, if any, and the Contractor is solely liable for any tax obligation arising from the

Contractor's performance of this Agreement. The Contractor hereby agrees to indemnify the County against any demand to pay taxes arising from the Contractor's failure to pay taxes on compensation earned pursuant to this Agreement.

The County will pay sales and use taxes imposed on goods or services acquired hereunder as required by law. The Contractor must pay all other taxes including, but not limited to: Business and Occupation Tax, taxes based on the Contractor's gross or net income, or personal property to which the County does not hold title. The County is exempt from Federal Excise Tax.

8. Regulations and Requirement:

This Agreement shall be subject to all laws, rules, and regulations of the United States of America, the State of Washington, and political subdivisions of the State of Washington, and to any other provisions set forth in Exhibit "D."

9. Right to Review:

This contract is subject to review by any Federal or State auditor. The County or its designee shall have the right to review and monitor the financial and service components of this program by whatever means are deemed expedient by the Contracting Officer. Such review may occur with or without notice, and may include, but is not limited to, on site inspection by County agents or employees, inspection of all records or other materials which the County deems pertinent to the Agreement and its performance, and any and all communications with or evaluations by service recipients under this Agreement. The Contractor shall preserve and maintain all financial records and records relating to the performance of work under this Agreement for 3 years after contract termination, and shall make them available for such review, within Pierce County, State of Washington, upon request.

10. Modifications:

Either party may request changes in the Agreement. Any and all agreed modifications shall be in writing, signed by each of the parties.

11. Termination for Default:

If the Contractor defaults by failing to perform any of the obligations of the contract or becomes insolvent or is declared bankrupt or commits any act of bankruptcy or insolvency or makes an assignment for the benefit of creditors, the County may, by depositing written notice to the Contractor in the U.S. mail, postage prepaid, terminate the contract, and at the County's option, obtain performance of the work elsewhere. If the contract is terminated for default, the Contractor shall not be entitled to receive any further payments under the contract until all work called for has been fully performed. Any extra cost or damage to the County resulting from such default(s) shall be deducted from any money due or coming due to the Contractor. The Contractor shall bear any extra expenses incurred by the County in completing the work, including all increased costs for completing the work, and all damage sustained, or which may be sustained by the County by reason of such default.

If a notice of termination for default has been issued and it is later determined for any reason that the Contractor was not in default, the rights and obligations of the parties shall be the same as if the notice of termination had been issued pursuant to the Termination for Public Convenience paragraph hereof.

12. Termination for Public Convenience:

The County may terminate the contract in whole or in part whenever the County determines, in its sole discretion, that such termination is in the interests of the County. Whenever the contract is terminated in accordance with this paragraph, the Contractor shall be entitled to payment for actual work performed at unit contract prices for completed items of work. An equitable adjustment in the contract price for partially completed items of work will be made, but such adjustment shall not include provision for loss of anticipated profit on deleted or uncompleted work. Termination of this contract by the County at any time during the term, whether for default or convenience, shall not constitute a breach of contract by the County.

13. Defense & Indemnity Agreement:

The Contractor agrees to defend, indemnify and save harmless the County, its appointed and elected officers and employees, from and against all loss or expense, including but not limited to judgments, settlements, attorney's fees and costs by reason of any and all claims and demands upon the County, its elected or appointed officials or employees for damages because of personal or bodily injury, including death at any time resulting therefrom, sustained by any person or persons, and for damages to property including loss of use thereof, whether such injury to persons or damage to property is due to the negligence of the Contractor,

his/her Subcontractors, its successor or assigns, or its or their agent, servants, or employees, the County, its appointed or elected officers, employees or their agents, except only such injury or damage as shall have been occasioned by the sole negligence of the County, its appointed or elected officials or employees.

The preceding paragraph is valid and enforceable only to the extent of the Contractor's negligence where the damages arise out of services or work in connection with or collateral to, a contract or agreement relative to construction, alteration, repair, addition to, subtraction from, improvement to, or maintenance of, any building, highway, road, railroad, excavation, or other structure, project, development, or improvement attached to real estate, including moving and demolition in connection therewith, a contract or agreement for architectural, landscape architectural, engineering, or land surveying services, or a motor carrier transportation contract and where the damages are caused by or result from the concurrent negligence of (i) the County or its agents or employees, and (ii) the Contractor or the Contractor's agents or employees."

14. Insurance Requirements

The insurance coverages specified in this paragraph (14.) are required unless modified by Attachment A of this agreement. If insurance requirements are contained in Attachment A they take precedence

The Contractor shall, at the Contractor's own expense, maintain, with an insurance carrier authorized or eligible under RCW Chapter 48.15 to do business in the State of Washington, with minimum coverage as outlined below, commercial automobile liability insurance, and either commercial general liability insurance, or, if any services required by the contract must be performed by persons authorized by the State of Washington, professional liability insurance:

<u>Commercial Automobile Liability</u>	Bodily Injury Liability and Property Damage Liability Insurance \$1,000,000 each occurrence <u>OR</u> combined single limit coverage of \$2,000,000, with not greater than a \$1000.00 deductible.
<u>Commercial General Liability</u>	Bodily Injury Liability and Property Damage Liability Insurance \$1,000,000 each occurrence <u>OR</u> combined single limit coverage of \$2,000,000, with not greater than a \$1000.00 deductible.
<u>Professional Liability Insurance</u>	Shall include errors and omissions insurance providing \$1,000,000.00 coverage with not greater than a \$5,000.00 deductible for all liability which may be incurred during the life of this contract.

Pierce County shall be named as an additional insured on all required policies except professional liability insurance, and such insurance as is carried by the Contractor shall be primary over any insurance carried by Pierce County. The Contractor shall provide a certificate of insurance to be approved by the County Risk Manager prior to contract execution, which shall be attached to the contract.

Such insurance policies or related certificates of insurance shall name the Pierce County as an additional insured on all general liability, automobile liability, employers' liability, and excess policies. The Contractor may comply with these insurance requirements through a program of self insurance that meets or exceeds these minimum limits. The Contractor must provide Pierce County with adequate documentation of self insurance prior to performing any work related to this contract and treat the County as an insured under the indemnity agreement. Should the Contractor no longer benefit from a program of self-insurance, the Contractor agrees to promptly obtain insurance as provided above. A forty-five (45) Calendar Day written notice shall be given to prior to termination of or any material change to the policy(ies) as it relates to this Agreement.

Pierce County shall have no obligation to report occurrences unless a claim is filed with the Pierce County Auditor; nor shall Pierce County have an obligation to pay premiums.

In the event of nonrenewal or cancellation of or material change in the coverage required, thirty (30) days written notice will be furnished Pierce County prior to the date of cancellation, change or nonrenewal, such notice to be sent to the Pierce County Risk Manager, 955 Tacoma Ave South, Suite 303, Tacoma, WA 98402."

15. Industrial Insurance Waiver

With respect to the performance of this Agreement and as to claims against the County, its officers, agents and employees, the Contractor expressly waives its immunity under Title 51 of the Revised Code of

Washington, the Industrial Insurance Act, for injuries to its employees and agrees that the obligations to indemnify, defend and hold harmless provided in this Agreement extend to any claim brought by or on behalf of any employee of the Contractor. This waiver is mutually negotiated by the parties to this Agreement.

16. Venue and Choice of Law:

In the event that any litigation should arise concerning the construction or interpretation of any of the terms of this Agreement, the venue of such action of litigation shall be in the courts of the State of Washington in and for the County of Pierce. This Agreement shall be governed by the law of the State of Washington.

17. Withholding Payment:

In the event the Contracting Officer determines that the Contractor has failed to perform any obligation under this Agreement within the times set forth in this Agreement, then the County may withhold from amounts otherwise due and payable to Contractor the amount determined by the County as necessary to cure the default, until the Contracting Officer determines that such failure to perform has been cured. Withholding under this clause shall not be deemed a breach entitling Contractor to termination or damages, provided that the County promptly gives notice in writing to the Contractor of the nature of the default or failure to perform, and in no case more than 10 days after it determines to withhold amounts otherwise due. A determination of the Contracting Officer set forth in a notice to the Contractor of the action required and /or the amount required to cure any alleged failure to perform shall be deemed conclusive, except to the extent that the Contractor acts within the times and in strict accord with the provisions of the Disputes clause of this Agreement. The County may act in accordance with any determination of the Contracting Officer which has become conclusive under this clause, without prejudice to any other remedy under the Agreement, to take all or any of the following actions: (1) cure any failure or default, (2) to pay any amount so required to be paid and to charge the same to the account of the Contractor, (3) to set off any amount so paid or incurred from amounts due or to become due the Contractor. In the event the Contractor obtains relief upon a claim under the Disputes clause, no penalty or damages shall accrue to Contractor by reason of good faith withholding by the County under this clause.

18. Future Non-Allocation of Funds:

Notwithstanding any other terms of this Agreement, if sufficient funds are not appropriated or allocated for payment under this contract for any future fiscal period, the County will not be obligated to make payment for services or amounts after the end of the fiscal period through which funds have been appropriated and allocated, unless authorized by county ordinance. No penalty or expense shall accrue to the County in the event this provision applies.

19. Contractor Commitments, Warranties and Representations:

Any written commitment received from the Contractor concerning this Agreement shall be binding upon the Contractor, unless otherwise specifically provided herein with reference to this paragraph. Failure of the Contractor to fulfill such a commitment shall render the Contractor liable for damages to the County. A commitment includes, but is not limited to any representation made prior to execution of this Agreement, whether or not incorporated elsewhere herein by reference, as to performance of services or equipment, prices or options for future acquisition to remain in effect for a fixed period, or warranties.

20. Patent/Copyright Infringement:

Contractor will defend and indemnify the County from any claimed action, cause or demand brought against the County, to the extent such action is based on the claim that information supplied by the Contractor infringes any patent or copyright. The Contractor will pay those costs and damages attributable to any such claims that are finally awarded against the County in any action. Such defense and payments are conditioned upon the following:

- a. That Contractor shall be notified promptly in writing by County of any notice of such claim.
- b. Contractor shall have the right, hereunder, at its option and expense, to obtain for the County the right to continue using the information, in the event such claim of infringement, is made, provided no reduction in performance or loss results to the County.

21. Disputes

a. General

Differences between the Contractor and the County, arising under and by virtue of the Contract Documents shall be brought to the attention of the County at the earliest possible time in order that such matters may be settled or other appropriate action promptly taken. Except for such objections as are made of record in the manner hereinafter specified and within the time limits stated, the records, orders,

rulings, instructions, and decisions of the Contracting Officer, shall be final and conclusive.

b. **Notice of Potential Claims**

The Contractor shall not be entitled to additional compensation which otherwise may be payable, or to extension of time for (1) any act or failure to act by the Contracting Officer or the County, or (2) the happening of any event or occurrence, unless the Contractor has given the County a written Notice of Potential Claim within 10 days of the commencement of the act, failure, or event giving rise to the claim, and before final payment by the County. The written Notice of Potential Claim shall set forth the reasons for which the Contractor believes additional compensation or extension of time is due, the nature of the cost involved, and insofar as possible, the amount of the potential claim. Contractor shall keep full and complete daily records of the Work performed, labor and material used, and all costs and additional time claimed to be additional.

c. **Detailed Claim**

The Contractor shall not be entitled to claim any such additional compensation, or extension of time, unless within 30 days of the accomplishment of the portion of the work from which the claim arose, and before final payment by the County, the Contractor has given the County a detailed written statement of each element of cost or other compensation requested and of all elements of additional time required, and copies of any supporting documents evidencing the amount or the extension of time claimed to be due.

22. **Ownership of Items Produced**

All writings, programs, data, public records or other materials prepared by the Contractor and/or its consultants or subcontractors, in connection with the performance of this Agreement shall be the sole and absolute property of the County.

23. **Confidentiality:**

The Contractor, its employees, subcontractors, and their employees shall maintain the confidentiality of all information provided by the County or acquired by the Contractor in performance of this Agreement, except upon the prior written consent of the Pierce County Prosecuting Attorney or an order entered by a court after having acquired jurisdiction over the County. Contractor shall immediately give to the County notice of any judicial proceeding seeking disclosure of such information. Contractor shall indemnify and hold harmless the County, its officials, agents or employees from all loss or expense, including, but not limited to settlements, judgments, setoffs, attorneys' fees and costs resulting from Contractor's breach of this provision.

24. **Notice:**

Except as set forth elsewhere in the Agreement, for all purposes under this Agreement, except service of process, notice shall be given by the Contractor to the department head of the department for whom services are rendered, and to the County Purchasing Agent, 615 S. 9th, Tacoma, WA 98405-4673. Notice to the Contractor for all purposes under this Agreement shall be given to the address reflected below. Notice may be given by delivery or by depositing in the US Mail, first class, postage prepaid.

25. **Severability:**

If any term or condition of this contract or the application thereof to any person(s) or circumstances is held invalid, such invalidity shall not affect other terms, conditions or applications which can be given effect without the invalid term, condition or application. To this end, the terms and conditions of this contract are declared severable.

26. **Waiver:**

Waiver of any breach or condition of this contract shall not be deemed a waiver of any prior or subsequent breach. No term or condition of this contract shall be held to be waived, modified or deleted except by an instrument, in writing, signed by the parties hereto.

27. **Waiver of Non Competition:**

Contractor irrevocably waives any existing rights which it may have, by contract or otherwise, to require another person or corporation to refrain from submitting a proposal to or performing work or providing supplies to Pierce County, and Contractor further promises that it will not in the future, directly or indirectly, induce or solicit any person or corporation to refrain from submitting a bid or proposal to or from performing work or providing supplies to Pierce County.

28. **Survival:**

The provisions of paragraphs 5, 7, 9, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 25, and 26, and the provisions of any non-collusion affidavit required by paragraph 4, shall survive, notwithstanding the termination or invalidity of this Agreement for any reason.

29. Entire Agreement: This written contract represents the entire Agreement between the parties and supersedes any prior oral statements, discussions or understandings between the parties.
  
30. Cooperative Purchasing. The Washington State Interlocal Cooperative Act RCW 39.34 provides that other governmental agencies may purchase goods and services on this solicitation or contract in accordance with the terms and prices indicated therein if all parties are willing. The Contract maximum for this contract per annual term, or for any renewal period, is for Pierce County's use only. Other agencies may use this contract up to their contract limits, if any, exclusive of and in addition to the County's contract maximum. By ordering and providing service under terms of this contract to any other governmental agency or jurisdiction, the governmental agency and the Agency agree to indemnify, defend and hold harmless Pierce County and District Court from any and all obligations, claims, or expenses, including attorney's fees, arising out of such action.

**EXHIBIT "A"**  
**(SCOPE OF WORK)**

The Contractor will assist Pierce County performance audit staff in conducting an evaluation of broadband connectivity and access in Pierce County. This project is partly described in the September 13, 2017 proposal submitted by the Contractor titled "Evaluation of Broadband Connectivity and Access in Pierce County." In the event of a disagreement between the documents, this scope of work will take precedence.

**Objectives**

The main objective of the study is to provide a report with recommendations and strategies to expand broadband access in the county, especially to rural and underserved areas, and including fiber optic, cellular and other potential technologies. The final report will include (a) an inventory of broadband infrastructure in the county; (b) a market analysis of current and future broadband needs in the county; and (c) recommended potential public investments and regulatory reforms to attract and increase private broadband infrastructure development and "last mile" service provision.

The study shall include the following:

**1. Inventory of broadband infrastructure in Pierce County, including assets such as active and dark fiber, conduit, towers, rights-of-way, or utility poles. Magellan will:**

- Provide field verification through a mix of paper and digital records, stakeholder outreach, internal municipal department audits and software databases.
- Provide onsite field verification of assets when deemed necessary in areas of the region that lack the appropriate documentation.
- Build a geocorrect layer for both public and private conduit and fiber, identifying placed conduit, type, size, status (occupied/vacant) and related information. A second layer will incorporate all outside plant structures in Pierce County, including vaults, hand holes, manholes, pedestals, poles, transitions and related information.
- Identify all fiber optic assets in conduit and document type of fiber cable, strand count, splice points, splice cases, snowshoes, terminations and related information.
- Identify and verify fiber routes, including all public and private organizations, with the understanding that some entities may not wish to publicize their broadband infrastructure.
- Provide all supporting information such as individual task analysis, raw data, and mapping (ESRI) shapefiles.

**2. Market analysis of current broadband and future coverage and needs in the county. Magellan will:**

**Public and Private Providers**

- Determine the current broadband environment, including updated maps of broadband availability, speeds and providers.
- Determine the services that are available, providers, service level, pricing, and access.
- Document all publicly owned and privately owned networks in the communities and build a comprehensive GIS-based broadband map to illustrate how the County is served by broadband and what providers currently serve the market.
- Include details on all download and upload capacity and inventory on all physical transport.

**Levels of Service**

- Determine the current broadband environment, including updated maps of broadband availability, speeds and providers.
- Use a survey tool to provide Pierce County with speed testing tools so that residents, community anchors and businesses can report broadband speeds and experiences.
- Provide a graphical and visual representation of the current market, based on the survey and data collected, showing actual speeds that residents, anchors and businesses are receiving; actual pricing that residents, anchors and businesses pay for service; territories for providers operating in

each community; customer satisfaction levels with broadband providers; key issues that impact customers across the County; and underserved and unserved areas.

#### Identify Broadband Demand & Potential Adoption Rates

- Measure current and future demand for broadband services for the County using a combination of market research and survey tools, interviews and focus groups with local stakeholders and data collected across the community.
- Establish predicted take rates using a formal, statistically valid approach, with a minimum 95% confidence interval and no greater than +/- 5% margin of error on the information gained from broadband survey.
- Determine take rates at key pricing levels to determine potential demand for multiple service tiers, which may be 1 Gigabit, 500 Megabit, 100 Megabit and lower levels. Provide a range of possibilities to assess overall financial performance for provision of services.
- Determine the reduction in uptake that may be experienced because of providers' deployment of alternative gigabit services.
- Include this information in a financial model to assess various scenarios and the long-term impact to the provision of broadband services.

#### Information from Existing Providers

- Hold a mix of focus groups and one on one meetings with stakeholders, including all area broadband service providers.
- Work with the Pierce County team to identify important stakeholders and schedule interviews including the following:
  - County Departments
  - Community Anchors
  - Enterprise Business
  - Local Broadband Service Providers
  - Small & Medium Business Focus Groups
- Develop a gap analysis that identifies the key broadband issues in Pierce County, for residents, businesses and community anchors, identifying the issues that the County faces, and provide recommendations on how to address issues including: available infrastructure, access, affordability, reliability, bandwidth, symmetry, redundancy, and inclusivity.

### **3. Evaluation of potential public investments and regulatory reforms for private investment in infrastructure and "last mile" development. Magellan will:**

- Identify investments necessary for potential development of the County's broadband infrastructure and how these potential projects could be funded, while minimizing capital investment and financial risk wherever possible and only employing capital in cases where there is a strong likelihood of payback and return on the County's investment.
- Model projected capital and operating costs related to buildout and implementation of broadband infrastructure.
- Identify potential system revenues generated by the investments in this infrastructure to understand how these cash flows will support future operating and capital costs as the infrastructure expands.
- Financial models should indicate the optimum technology for deployment, including but not limited to fiber-optic, satellite and "TV white space."
- Based on the financial analysis, provide information to the County to determine the best vehicles and organizational structures to be used for the project, including:
  - Organizational structures available, for profit, non-profit, economic development corporations, joint powers authorities and joint ventures
  - Public/Private contribution models
  - Total amount of funding needed for the project
  - Capital versus operational funding needed for the project
  - Funding term, identifying short-term and long-term portions of funding
  - Optimizing public and private funding sources
  - State and Federal grant and loan programs such as FirstNET, USDA RUS and the Healthcare Connect Fund

- Bonds and other state and federal funding and others where appropriate
- Identify and evaluate all franchise agreements in the County and cities to ascertain their value in supporting the expansion of broadband services and their terms and conditions to determine if they are performing as expected and adhering to current best practice, including:
  - Identification of franchise agreements at the county and city levels
  - Review of expiration dates and renewal terms and conditions
  - Compensation rates, escalators and assignment conditions
  - Terms for maintenance, staff training and certification
  - Requirements for public safety and periodic audits
  - Conditions and schedules for replacements, upgrades and modernization
  - Restrictions on use
  - Suitability for use in broadband expansion
  - Requirements for serving full franchise area
  - Reporting and data-sharing requirements
- Explore policy issues and implementation of dig-once and joint-trench strategies around existing and future broadband expansion.
- Review all policy and regulatory aspects in the State of Washington and at the Federal level (FCC) that will affect how Pierce County can expand broadband in the County.
- Analyze all public policy, investment and regulatory aspects to identify expansion throughout the County with an emphasis on "last mile".

#### **4. Evaluate Potential Partnership Options. Magellan will:**

- Identify opportunities that exist with providers and customers to including ISPs, telecommunications companies, cooperatives, statewide telecom networks, government entities, NGOs, K-12 and higher education, library systems, healthcare providers and the industry and business community.
- Assist the county in consolidating demand from each market segment, including residential, business, community anchor and wholesale, to incentivize private sector service providers to partner with the County on this project.
- Evaluate communities' conduit and fiber-optic network to determine how this infrastructure may be used to consolidate customer markets in proximity to the networks.
- Based on the needs assessment for all project stakeholders, assist the county in determining opportunities for collaboration between the local governments and their joint public stakeholders for regional benefit and to achieve economies of scale, and what public/private partnership models are most effective to serve the needs of the region.

#### **5. Final Report**

The final report will include all of the above elements, and provide recommendations on how to expand broadband access in the County with a focus on rural areas such as Key peninsula and underserved business areas such as Frederickson, with full cost estimates and financial analysis of the business model options for the County, and including technologies in alternative to / in combination with fiber optic.



**EXHIBIT "B"**  
**(COMPENSATION)**

1. The County shall pay the Contractor a fixed fee of \$82,875, contingent on approval of the deliverables by the contract manager.
2. Contractor may submit up to four billings in equal amounts along with invoices reflecting progress along the Project Objectives in Exhibit "A."
3. Billings are to be submitted to the contract manager, William Vetter, Senior Legislative Analyst, Pierce County Council, 930 Tacoma Avenue South, Room 1046, Tacoma, WA 98402.



## EXHIBIT "C" CONTRACT COMPLIANCE FOR PROFESSIONAL, TECHNICAL, SUPPLY OR SERVICES

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Revised 3/10

It is the policy of Pierce County to foster an environment that encourages economic growth and diversification, business development and retention, increases competition and reduces unemployment. In support of that policy, Pierce County reaffirms its commitment to maximize opportunities in public contracting for all contractors including minority and women owned business enterprises.

Bidders are encouraged to utilize qualified, local businesses in Pierce County and Washington State where cost effectiveness is deemed competitive. In addition, Bidders are encouraged to subcontract with firms certified by the Washington State Office of Minority and Women's Business Enterprises (MWBE).

### A. MWBE DIRECTORY ASSISTANCE

A directory of MWBE firms is published quarterly by the Washington State Office of Minority and Women's Business Enterprises (OMWBE). Copies of the directory are available from the State OMWBE (360-753-9693) or may be viewed at the Public Works Department, 2702 S 42<sup>nd</sup> St Suite 201, Tacoma 98409, and the Tacoma Public Library, 1102 Tacoma Avenue South, Tacoma, 98402. Contact the Contract Compliance Office for additional information at (253) 798-7250.

### B. EQUAL EMPLOYMENT OPPORTUNITY:

1. Upon execution of this contract, the Contractor shall comply with the Equal Employment Opportunity requirements set forth below. The Contractor shall not violate any of the terms of Chapter 49.60 of the Revised Code of Washington, Title VII of the Civil Rights Act of 1964, or any other applicable federal, state, or local law or regulation regarding nondiscrimination.
2. No person or firm employed by the Contractor shall be subject to retaliation for opposing any practice made unlawful by Title VII of the Civil Rights Act, the Age Discrimination in Employment Act (29 U.S.C. 621 et seq.), the Equal Pay Act (29 U.S.C. 206(d), the Rehabilitation Act (29 U.S.C. 791 et seq.), the Americans with Disabilities Act of 1990, or for participating in any stage of administrative or judicial proceedings under those statutes.
3. The Contractor shall take all reasonable steps to ensure that qualified applicants and employees shall have an equal opportunity to compete for advertised or in-house positions for employment. Applicants and employees shall be treated fairly without regard to race, color, religion, sex, age, disability, or national origin. Equitable treatment shall include, but not be limited to employment, upgrading or promotion, rates of pay increases or other forms of compensation, and selection for training or enrollment in apprenticeship programs.

### C. CERTIFICATION OF NONSEGREGATED FACILITIES

The Contractor shall submit with its proposal a Certification of Nonsegregated Facilities. All requests to sublet or assign any portion of this contract, at any level, shall be accompanied by evidence of this certification in all subcontract agreements.

### D. E-VERIFY DECLARATION

Pierce County requires that all businesses which contract with the County for contracts in excess of \$25,000 and of duration longer than 120 days, and are not specifically exempted by PCC 2.106.022, be enrolled in the Federal E-verify Program. The requirement extends to every subcontractor meeting the same criteria. The Prime Contractor must provide certification of enrollment in the Federal E-verify program to the County. The Prime Contractor will remain enrolled in the program for the duration of the contract. The Prime Contractor is responsible for verification of every applicable subcontractor. The County reserves the right to require a copy of the Memorandum of Understanding between the Prime or any Subcontractor and the Department of Homeland Security upon request at any time during the term of the contract. Failure to provide this document could result in suspension of the project.

A copy of Ordinance 2009-74 is on the Purchasing Department's website located at [www.co.pierce.wa.us/cfapps/edocs/viewdocuments.cfm?did=95668&dnum](http://www.co.pierce.wa.us/cfapps/edocs/viewdocuments.cfm?did=95668&dnum).

The Federal E-Verify Program is a web based application and can be accessed at [www.dhs.gov/everify](http://www.dhs.gov/everify).

### E. SUBMITTAL REQUIREMENTS

1. Certificate of non-segregated facilities: Contractor shall submit with proposal, each subcontractor shall

submit when work is sublet.

2. Professional and Technical Workforce Data Form: Contractor is encouraged to submit with proposal, each Subcontractor is encouraged to submit the form when work is sublet.
3. Subcontractors Participation Form: Check the appropriate box indicating the firm who will perform the work of the contract. Submit the completed form with the proposal documents.
4. E-Verify Declaration: Contractor shall submit with proposal.

CERTIFICATION OF NONSEGREGATED FACILITIES

The contractor certifies that no segregated facilities are maintained and will not be maintained during the execution of this contract at any of contractor's establishments.

The contractor further certifies that none of the contractor's employees are permitted to perform their services at any location under the contractor's control during the life of this contract where segregated facilities are maintained. The contractor certifies further that he will not maintain or provide for his employees any segregated facilities at any of his establishments, and that he will not permit his employees to perform their services at any location, under his control, where segregated facilities are maintained.

The contractor agrees that a breach of this certification is a violation of the Equal Opportunity clause in this contract. As used in this certification, the term "segregated facilities" means any waiting rooms, work area, rest rooms and wash rooms, restaurants and other eating areas, time clocks, locker rooms and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing facilities provided for employees which are segregated by explicit directive or are in fact segregated on the basis of race, creed, color or national origin, because of habit, local custom, or otherwise.

The contractor agrees that identical certifications from proposed contractors will be obtained prior to the award of any subcontracts. Contractor will retain a copy of any subcontractor's certification and will send original to Contract Compliance Division.

NON-COLLUSION & DEBARMENT AFFIDAVIT

State of Washington, County of Pierce

As an authorized representative of the firm of Magellan Advisors John Honker, I do hereby certify that said person(s), firm, association or corporation has (have) not, either directly or indirectly, entered into any agreement, participated in any collusion, or otherwise taken any action in restraint of free competitive bidding in connection with the project for which this proposal is submitted.

I further certify that, except as noted below, the firm, association or corporation or any person in a controlling capacity associated therewith or any position involving the administration of federal funds; is not currently under suspension, debarment, voluntary exclusion, or determination of eligibility by any federal agency; has not been suspended, debarred, voluntarily excluded or determined ineligible by any federal agency within the past 3 years; does not have a proposed debarment pending; and has not been indicted, convicted or had a civil judgment rendered against said person, firm, association or corporation by a court of competent jurisdiction in any matter involving fraud or official misconduct within the past 3 years.

I further acknowledge that by signing the signature page of the proposal, I am deemed to have signed and have agreed to the provisions of this affidavit.

Note: Exceptions will not necessarily result in denial of award, but will be considered in determining bidder responsibility. For any exception noted, indicate above to whom it applies, initiating agency, and dates of action. Providing false information may result in criminal prosecution or administrative sanctions.

"A suspending or debaring official may grant an exception permitting a debarred, suspended, or excluded person to participate in a particular transaction upon a written determination by such official stating the reason(s) for deviating from the Presidential policy established by Executive Order 12549..." (49CFR Part 29 Section 29.215)

The undersigned hereby agrees to pay labor not less than the prevailing rates of wages in accordance with the requirements of the special provisions for this project.

BY: [Signature] DATE: 2/7/18

TITLE: President & CEO

**SUBCONTRACTORS PARTICIPATION FORM  
FOR PROFESSIONAL, TECHNICAL, SUPPLY OR SERVICE PSAS**

Check appropriate statement below:

- Our firm will perform all contracted scope of work tasks.**
- Our firm will subcontract a portion of the work tasks.** The following firms were contacted and will be utilized in the performance of the work as indicated below.

List all potential subcontracting firms. Do not mark "N/A" unless the Bidder will perform all work or provide all supplies or services for this contract.

Firm Name/Address/Phone	Work Item(s) Solicited	Proposal Amount	Awarded? (yes/no)
N/A			

1. List full name, address, and phone number of each firm listed to be utilized.
2. List specific work to be accomplished, supplies to be furnished and the amount proposed for each subcontract.
3. Contact the Pierce County Contract Compliance Officer at (253) 798-7250 if you have questions.

BY:  DATE: 2/7/18 \_\_\_\_\_

TITLE: President & CEO \_\_\_\_\_ PHONE: 786.208.8952 \_\_\_\_\_

### PERSONNEL WORKFORCE DATA FORM

FIRM NAME Magellan Advisors, LLC

ADDRESS 999 18<sup>th</sup> St., Suite 3000

CITY, STATE, ZIP Denver, CO 80202

PHONE 888.963.52.99

PROJECT Broadband Consulting

PROJECT # \_\_\_\_\_

CONTRACT WORK HOURS (if applicable) \_\_\_\_\_

TYPE OF SERVICE PROVIDED Broadband Consulting

CONTRACTORS AGGREGATE WORK FORCE – if you need additional space, photo copy this section and attach it to this form.

OCCUPATION	TOTAL EMPLOYED		TOTAL MINORITY		NATIVE AMERICAN		ASIAN		BLACK		HISPANIC		APPRENTICE/ TRAINEE	
	M	F	M	F	M	F	M	F	M	F	M	F	M	F
Management	2													
Professionals	16	7							2					
Technicians														
Administrative		1										1		
Other														
TOTALS	18	8							2			1		