

**CONSULTING SERVICES AGREEMENT BETWEEN
THE CITY OF SAN LEANDRO AND
MAGELLAN ADVISORS
FOR
FIBER-OPTICS MASTER PLAN**

THIS AGREEMENT for consulting services is made by and between the City of San Leandro (“City”) and Magellan Advisors (“Consultant”) (together sometimes referred to as the “Parties”) as of July 17, 2017 (the “Effective Date”).

Section 1. SERVICES. Subject to the terms and conditions set forth in this Agreement, Consultant shall provide to City the services described in the Scope of Work attached as Exhibit A at the time and place and in the manner specified therein. In the event of a conflict in or inconsistency between the terms of this Agreement and Exhibit A, the Agreement shall prevail.

- 1.1 Term of Services.** The term of this Agreement shall begin on the Effective Date and shall end on January 31, 2018 the date of completion specified in Exhibit A, and Consultant shall complete the work described in Exhibit A on or before that date, unless the term of the Agreement is otherwise terminated or extended, as provided for in Section 8. The time provided to Consultant to complete the services required by this Agreement shall not affect the City’s right to terminate the Agreement, as referenced in Section 8.
- 1.2 Standard of Performance.** Consultant shall perform all services required pursuant to this Agreement in the manner and according to the standards observed by a competent practitioner of the profession in which Consultant is engaged.
- 1.3 Assignment of Personnel.** Consultant shall assign only competent personnel to perform services pursuant to this Agreement. In the event that City, in its sole discretion, at any time during the term of this Agreement, desires the reassignment of any such persons, Consultant shall, immediately upon receiving notice from City of such desire of City, reassign such person or persons.
- 1.4 Time.** Consultant shall devote such time to the performance of services pursuant to this Agreement as may be reasonably necessary to meet the standard of performance provided in Subsection 1.2 above and to satisfy Consultant’s obligations hereunder.
- 1.5 City of San Leandro Living Wage Rates.** This contract may be covered by the City of San Leandro Living Wage Ordinance (LWO). Bidder’s attention is directed to the San Leandro Municipal Code, Title 1, Chapter 6, Article 6. Successful Bidder must submit completed self-certification form and comply with the LWO if covered.

Section 2. COMPENSATION. City hereby agrees to pay Consultant a sum not to exceed \$60,000 notwithstanding any contrary indications that may be contained in Consultant’s proposal, for services to be performed and reimbursable costs incurred under this Agreement. In the event of a conflict between this

Agreement and Consultant's proposal, attached as Exhibit B, regarding the amount of compensation, the Agreement shall prevail. City shall pay Consultant for services rendered pursuant to this Agreement at the time and in the manner set forth herein. The payments specified below shall be the only payments from City to Consultant for services rendered pursuant to this Agreement. Consultant shall submit all invoices to City in the manner specified herein. Except as specifically authorized by City in writing, Consultant shall not bill City for duplicate services performed by more than one person.

Consultant and City acknowledge and agree that compensation paid by City to Consultant under this Agreement is based upon Consultant's estimated costs of providing the services required hereunder, including salaries and benefits of employees and subcontractors of Consultant. Consequently, the Parties further agree that compensation hereunder is intended to include the costs of contributions to any pensions and/or annuities to which Consultant and its employees, agents, and subcontractors may be eligible. City therefore has no responsibility for such contributions beyond compensation required under this Agreement.

2.1 Invoices. Consultant shall submit invoices, not more often than once a month during the term of this Agreement, based on the cost for services performed and reimbursable costs incurred prior to the invoice date. Invoices shall contain the following information:

- Serial identifications of progress bills; i.e., Progress Bill No. 1 for the first invoice, etc.;
- The beginning and ending dates of the billing period;
- A Task Summary containing the original contract amount, the amount of prior billings, the total due this period, the balance available under the Agreement, and the percentage of completion;
- At City's option, for each work item in each task, a copy of the applicable time entries or time sheets shall be submitted showing the name of the person doing the work, the hours spent by each person, a brief description of the work, and each reimbursable expense;
- The total number of hours of work performed under the Agreement by Consultant and each employee, agent, and subcontractor of Consultant performing services hereunder;
- The Consultant's signature;
- Consultant shall give separate notice to the City when the total number of hours worked by Consultant and any individual employee, agent, or subcontractor of Consultant reaches or exceeds 800 hours within a 12-month period under this Agreement and any other agreement between Consultant and City. Such notice shall include an estimate of the time necessary to complete work described in Exhibit A and the estimate of time necessary to complete work under any other agreement between Consultant and City, if applicable.

- 2.2 Monthly Payment.** City shall make monthly payments, based on invoices received, for services satisfactorily performed, and for authorized reimbursable costs incurred. City shall have 30 days from the receipt of an invoice that complies with all of the requirements above to pay Consultant.
- 2.3 Final Payment.** City shall pay the last 10% of the total sum due pursuant to this Agreement within 60 days after completion of the services and submittal to City of a final invoice, if all services required have been satisfactorily performed.
- 2.4 Total Payment.** City shall pay for the services to be rendered by Consultant pursuant to this Agreement. City shall not pay any additional sum for any expense or cost whatsoever incurred by Consultant in rendering services pursuant to this Agreement. City shall make no payment for any extra, further, or additional service pursuant to this Agreement.
- In no event shall Consultant submit any invoice for an amount in excess of the maximum amount of compensation provided above either for a task or for the entire Agreement, unless the Agreement is modified prior to the submission of such an invoice by a properly executed change order or amendment.
- 2.5 Hourly Fees.** Fees for work performed by Consultant on an hourly basis shall not exceed the amounts shown on the compensation schedule attached hereto as Exhibit B.
- 2.6 Reimbursable Expenses.** Reimbursable expenses are specified in Exhibit B, and shall not exceed \$4000. Expenses not listed in Exhibit B are not chargeable to City. Reimbursable expenses are included in the total amount of compensation provided under this Agreement that shall not be exceeded.
- 2.7 Payment of Taxes.** Consultant is solely responsible for the payment of employment taxes incurred under this Agreement and any similar federal or state taxes.
- 2.8 Payment upon Termination.** In the event that the City or Consultant terminates this Agreement pursuant to Section 8, the City shall compensate the Consultant for all outstanding costs and reimbursable expenses incurred for work satisfactorily completed as of the date of written notice of termination. Consultant shall maintain adequate logs and timesheets to verify costs incurred to that date.
- 2.9 Authorization to Perform Services.** The Consultant is not authorized to perform any services or incur any costs whatsoever under the terms of this Agreement until receipt of authorization from the Contract Administrator.

Section 3. FACILITIES AND EQUIPMENT. Except as set forth herein, Consultant shall, at its sole cost and expense, provide all facilities and equipment that may be necessary to perform the services required by this Agreement. City shall make available to Consultant only the facilities and equipment listed in this section, and only under the terms and conditions set forth herein.

City shall furnish physical facilities such as desks, filing cabinets, and conference space, as may be reasonably necessary for Consultant's use while consulting with City employees and reviewing records and the information in possession of the City. The location, quantity, and time of furnishing those facilities shall be in the sole discretion of City. In no event shall City be obligated to furnish any facility that may involve incurring any direct expense, including but not limited to computer, long-distance telephone or other communication charges, vehicles, and reproduction facilities.

Section 4. INSURANCE REQUIREMENTS. Before fully executing this Agreement, Consultant, at its own cost and expense, unless otherwise specified below, shall procure the types and amounts of insurance listed below against claims for injuries to persons or damages to property that may arise from or in connection with the performance of the work hereunder by the Consultant and its agents, representatives, employees, and subcontractors. Consistent with the following provisions, Consultant shall provide proof satisfactory to City of such insurance that meets the requirements of this section and under forms of insurance satisfactory in all respects, and that such insurance is in effect prior to beginning work to the City. Consultant shall maintain the insurance policies required by this section throughout the term of this Agreement. The cost of such insurance shall be included in the Consultant's bid. Consultant shall not allow any subcontractor to commence work on any subcontract until Consultant has obtained all insurance required herein for the subcontractor(s) and provided evidence that such insurance is in effect to City. VERIFICATION OF THE REQUIRED INSURANCE SHALL BE SUBMITTED AND MADE PART OF THIS AGREEMENT PRIOR TO EXECUTION. Consultant shall maintain all required insurance listed herein for the duration of this Agreement.

4.1 Workers' Compensation.

4.1.1 General Requirements. Consultant shall, at its sole cost and expense, maintain Statutory Workers' Compensation Insurance and Employer's Liability Insurance for any and all persons employed directly or indirectly by Consultant. The Statutory Workers' Compensation Insurance and Employer's Liability Insurance shall be provided with limits of not less than \$1,000,000 per accident. In the alternative, Consultant may rely on a self-insurance program to meet those requirements, but only if the program of self-insurance complies fully with the provisions of the California Labor Code. Determination of whether a self-insurance program meets the standards of the California Labor Code shall be solely in the discretion of the Contract Administrator.

The Workers' Compensation policy shall be endorsed with a waiver of subrogation in favor of the entity for all work performed by the Consultant, its employees, agendas, and subcontractors.

4.1.2 Submittal Requirements. To comply with Subsection 4.1, Consultant shall submit the following:

- a. Certificate of Liability Insurance in the amounts specified in the section; and
- b. Waiver of Subrogation Endorsement as required by the section.

4.2 **Commercial General and Automobile Liability Insurance.**

4.2.1 General Requirements. Consultant, at its own cost and expense, shall maintain commercial general liability insurance for the term of this Agreement in an amount not less than \$1,000,000 and automobile liability insurance for the term of this Agreement in an amount not less than \$1,000,000 per occurrence, combined single limit coverage for risks associated with the work contemplated by this Agreement. If a Commercial General Liability Insurance or an Automobile Liability form or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to the work to be performed under this Agreement or the general aggregate limit shall be at least twice the required occurrence limit. Such coverage shall include but shall not be limited to, protection against claims arising from bodily and personal injury, including death resulting therefrom, and damage to property resulting from activities contemplated under this Agreement, including the use of owned and non-owned automobiles.

4.2.2 Minimum Scope of Coverage. Commercial general coverage shall be at least as broad as Insurance Services Office Commercial General Liability occurrence form CG 0001 (most recent edition) covering comprehensive General Liability on an "occurrence" basis. Automobile coverage shall be at least as broad as Insurance Services Office Automobile Liability form CA 0001, Code 1 (any auto). No endorsement shall be attached limiting the coverage.

4.2.3 Additional Requirements. Each of the following shall be included in the insurance coverage or added as a certified endorsement to the policy:

- a. The Insurance shall cover on an occurrence or an accident basis, and not on a claims-made basis.
- b. City, its officers, officials, employees, and volunteers are to be covered as additional insureds as respects: liability arising out of work or operations performed by or on behalf of the Consultant; or automobiles owned, leased, hired, or borrowed by the Consultant.
- c. Consultant hereby agrees to waive subrogation which any insurer or contractor may require from vendor by virtue of the payment of any loss. Consultant agrees to obtain any endorsements that may be necessary to affect this waiver of subrogation.
- d. For any claims related to this Agreement or the work hereunder, the Consultant's insurance covered shall be primary insurance as respects the City, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by the City, its officers, officials, employees, or volunteers shall be excess of the Consultant's insurance and shall not contribute with it.

4.2.4 Submittal Requirements. To comply with Subsection 4.2, Consultant shall submit the following:

- a. Certificate of Liability Insurance in the amounts specified in the section;
- b. Additional Insured Endorsement as required by the section;
- c. Waiver of Subrogation Endorsement as required by the section; and
- d. Primary Insurance Endorsement as required by the section.

4.3 Professional Liability Insurance.

4.3.1 General Requirements. Consultant, at its own cost and expense, shall maintain for the period covered by this Agreement professional liability insurance for licensed professionals performing work pursuant to this Agreement in an amount not less than \$1,000,000 covering the licensed professionals' errors and omissions. Any deductible or self-insured retention shall not exceed \$150,000 per claim.

4.3.2 Claims-Made Limitations. The following provisions shall apply if the professional liability coverage is written on a claims-made form:

- a. The retroactive date of the policy must be shown and must be before the date of the Agreement.
- b. Insurance must be maintained and evidence of insurance must be provided for at least 5 years after completion of the Agreement or the work, so long as commercially available at reasonable rates.
- c. If coverage is canceled or not renewed and it is not replaced with another claims-made policy form with a retroactive date that precedes the date of this Agreement, Consultant shall purchase an extended period coverage for a minimum of 5 years after completion of work under this Agreement.
- d. A copy of the claim reporting requirements must be submitted to the City for review prior to the commencement of any work under this Agreement.

4.3.3 Additional Requirements. A certified endorsement to include contractual liability shall be included in the policy.

4.3.4 Submittal Requirements. To comply with Subsection 4.3, Consultant shall submit the Certificate of Liability Insurance in the amounts specified in the section.

4.4 All Policies Requirements.

- 4.4.1 Acceptability of Insurers.** All insurance required by this section is to be placed with insurers with a Bests' rating of no less than A:VII.
- 4.4.2 Verification of Coverage.** Prior to beginning any work under this Agreement, Consultant shall furnish City with complete copies of all Certificates of Liability Insurance delivered to Consultant by the insurer, including complete copies of all endorsements attached to the policies. All copies of Certificates of Liability Insurance and certified endorsements shall show the signature of a person authorized by that insurer to bind coverage on its behalf. If the City does not receive the required insurance documents prior to the Consultant beginning work, it shall not waive the Consultant's obligation to provide them. The City reserves the right to require complete copies of all required insurance policies at any time.
- 4.4.3 Deductibles and Self-Insured Retentions.** Consultant shall disclose to and obtain the written approval of City for the self-insured retentions and deductibles before beginning any of the services or work called for by any term of this Agreement. At the option of the City, either: the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the City, its officers, employees, and volunteers; or the Consultant shall provide a financial guarantee satisfactory to the City guaranteeing payment of losses and related investigations, claim administration and defense expenses.
- 4.4.4 Wasting Policies.** No policy required by this Section 4 shall include a "wasting" policy limit (i.e. limit that is eroded by the cost of defense).
- 4.4.5 Endorsement Requirements.** Each insurance policy required by Section 4 shall be endorsed to state that coverage shall not be canceled by either party, except after 30 days' prior written notice has been provided to the City.
- 4.4.6 Subcontractors.** Consultant shall include all subcontractors as insureds under its policies or shall furnish separate certificates and certified endorsements for each subcontractor. All coverages for subcontractors shall be subject to all of the requirements stated herein.
- 4.5 Remedies.** In addition to any other remedies City may have if Consultant fails to provide or maintain any insurance policies or policy endorsements to the extent and within the time herein required, City may, at its sole option exercise any of the following remedies, which are alternatives to other remedies City may have and are not the exclusive remedy for Consultant's breach:
- Obtain such insurance and deduct and retain the amount of the premiums for such insurance from any sums due under the Agreement;

- Order Consultant to stop work under this Agreement or withhold any payment that becomes due to Consultant hereunder, or both stop work and withhold any payment, until Consultant demonstrates compliance with the requirements hereof; and/or
- Terminate this Agreement.

Section 5. INDEMNIFICATION AND CONSULTANT'S RESPONSIBILITIES. Refer to the attached Exhibit C, which is incorporated herein and made a part of this Agreement.

Section 6. STATUS OF CONSULTANT.

- 6.1 Independent Contractor.** At all times during the term of this Agreement, Consultant shall be an independent contractor and shall not be an employee of City. City shall have the right to control Consultant only insofar as the results of Consultant's services rendered pursuant to this Agreement and assignment of personnel pursuant to Subsection 1.3; however, otherwise City shall not have the right to control the means by which Consultant accomplishes services rendered pursuant to this Agreement. Notwithstanding any other City, state, or federal policy, rule, regulation, law, or ordinance to the contrary, Consultant and any of its employees, agents, and subcontractors providing services under this Agreement shall not qualify for or become entitled to, and hereby agree to waive any and all claims to, any compensation, benefit, or any incident of employment by City, including but not limited to eligibility to enroll in the California Public Employees Retirement System (PERS) as an employee of City and entitlement to any contribution to be paid by City for employer contributions and/or employee contributions for PERS benefits.
- 6.2 Consultant Not an Agent.** Except as City may specify in writing, Consultant shall have no authority, express or implied, to act on behalf of City in any capacity whatsoever as an agent. Consultant shall have no authority, express or implied, pursuant to this Agreement to bind City to any obligation whatsoever.

Section 7. LEGAL REQUIREMENTS.

- 7.1 Governing Law.** The laws of the State of California shall govern this Agreement.
- 7.2 Compliance with Applicable Laws.** Consultant and any subcontractors shall comply with all laws and regulations applicable to the performance of the work hereunder, including but not limited to, the California Building Code, the Americans with Disabilities Act, and any copyright, patent or trademark law. Consultant's failure to comply with any law(s) or regulation(s) applicable to the performance of the work hereunder shall constitute a breach of contract.
- 7.3 Other Governmental Regulations.** To the extent that this Agreement may be funded by fiscal assistance from another governmental entity, Consultant and any subcontractors shall comply with all applicable rules and regulations to which City is bound by the terms of such fiscal assistance program.

- 7.4 **Licenses and Permits.** Consultant represents and warrants to City that Consultant and its employees, agents, and any subcontractors have all licenses, permits, qualifications, and approvals of whatsoever nature that are legally required to practice their respective professions. Consultant represents and warrants to City that Consultant and its employees, agents, any subcontractors shall, at their sole cost and expense, keep in effect at all times during the term of this Agreement any licenses, permits, and approvals that are legally required to practice their respective professions. In addition to the foregoing, Consultant and any subcontractors shall obtain and maintain during the term of this Agreement valid Business Licenses from City.
- 7.5 **Nondiscrimination and Equal Opportunity.** Consultant shall not discriminate, on the basis of a person's race, religion, color, national origin, age, physical or mental handicap or disability, medical condition, marital status, sex, or sexual orientation, against any employee, applicant for employment, subcontractor, bidder for a subcontract, or participant in, recipient of, or applicant for any services or programs provided by Consultant under this Agreement. Consultant shall comply with all applicable federal, state, and local laws, policies, rules, and requirements related to equal opportunity and nondiscrimination in employment, contracting, and the provision of any services that are the subject of this Agreement, including but not limited to the satisfaction of any positive obligations required of Consultant thereby.

Consultant shall include the provisions of this Subsection in any subcontract approved by the Contract Administrator or this Agreement.

Section 8. TERMINATION AND MODIFICATION.

- 8.1 **Termination.** City may cancel this Agreement at any time and without cause upon written notification to Consultant.

Consultant may cancel this Agreement upon 30 days' written notice to City and shall include in such notice the reasons for cancellation.

In the event of termination, Consultant shall be entitled to compensation for services performed to the effective date of termination; City, however, may condition payment of such compensation upon Consultant delivering to City any or all documents, photographs, computer software, video and audio tapes, and other materials provided to Consultant or prepared by or for Consultant or the City in connection with this Agreement.

- 8.2 **Extension.** City may, in its sole and exclusive discretion, extend the end date of this Agreement beyond that provided for in Subsection 1.1. Any such extension shall require a written amendment to this Agreement, as provided for herein. Consultant understands and agrees that, if City grants such an extension, City shall have no obligation to provide Consultant with compensation beyond the maximum amount provided for in this Agreement. Similarly, unless authorized by the Contract Administrator, City shall have no obligation to reimburse Consultant for any otherwise reimbursable expenses incurred during the extension period.

- 8.3 Amendments.** The Parties may amend this Agreement only by a writing signed by all the Parties.
- 8.4 Assignment and Subcontracting.** City and Consultant recognize and agree that this Agreement contemplates personal performance by Consultant and is based upon a determination of Consultant's unique personal competence, experience, and specialized personal knowledge. Moreover, a substantial inducement to City for entering into this Agreement was and is the professional reputation and competence of Consultant. Consultant may not assign this Agreement or any interest therein without the prior written approval of the Contract Administrator. Consultant shall not subcontract any portion of the performance contemplated and provided for herein, other than to the subcontractors noted in the proposal, without prior written approval of the Contract Administrator.
- 8.5 Survival.** All obligations arising prior to the termination of this Agreement and all provisions of this Agreement allocating liability between City and Consultant shall survive the termination of this Agreement.
- 8.6 Options upon Breach by Consultant.** If Consultant materially breaches any of the terms of this Agreement, City's remedies shall include, but are not limited to, the following:
- 8.6.1** Immediately terminate the Agreement;
 - 8.6.2** Retain the plans, specifications, drawings, reports, design documents, and any other work product prepared by Consultant pursuant to this Agreement;
 - 8.6.3** Retain a different consultant to complete the work described in Exhibit A not finished by Consultant; or
 - 8.6.4** Charge Consultant the difference between the cost to complete the work described in Exhibit A that is unfinished at the time of breach and the amount that City would have paid Consultant pursuant to Section 2 if Consultant had completed the work.

Section 9. KEEPING AND STATUS OF RECORDS.

- 9.1 Records Created as Part of Consultant's Performance.** All reports, data, maps, models, charts, studies, surveys, photographs, memoranda, plans, studies, specifications, records, files, or any other documents or materials, in electronic or any other form, that Consultant prepares or obtains pursuant to this Agreement and that relate to the matters covered hereunder shall be the property of the City. Consultant hereby agrees to deliver those documents to the City upon termination of the Agreement. It is understood and agreed that the documents and other materials, including but not limited to those described above, prepared pursuant to this Agreement are prepared specifically for the City and are not necessarily suitable for any future or other use. City and Consultant agree that, until final approval by City, all data, plans, specifications, reports and other documents are

confidential and will not be released to third parties without prior written consent of both Parties.

- 9.2 Consultant's Books and Records.** Consultant shall maintain any and all ledgers, books of account, invoices, vouchers, canceled checks, and other records or documents evidencing or relating to charges for services or expenditures and disbursements charged to the City under this Agreement for a minimum of 3 years, or for any longer period required by law, from the date of final payment to the Consultant to this Agreement.
- 9.3 Inspection and Audit of Records.** Any records or documents that Subsection 9.2 of this Agreement requires Consultant to maintain shall be made available for inspection, audit, and/or copying at any time during regular business hours, upon oral or written request of the City. Under California Government Code Section 8546.7, if the amount of public funds expended under this Agreement exceeds \$10,000, the Agreement shall be subject to the examination and audit of the State Auditor, at the request of City or as part of any audit of the City, for a period of 3 years after final payment under the Agreement.

Section 10. MISCELLANEOUS PROVISIONS.

- 10.1 Attorneys' Fees.** If a party to this Agreement brings any action, including an action for declaratory relief, to enforce or interpret the provision of this Agreement, the prevailing party shall be entitled to reasonable attorneys' fees in addition to any other relief to which that party may be entitled. The court may set such fees in the same action or in a separate action brought for that purpose.
- 10.2 Venue.** In the event that either party brings any action against the other under this Agreement, the Parties agree that trial of such action shall be vested exclusively in the state courts of California in the County of Alameda or in the United States District Court for the Northern District of California.
- 10.3 Severability.** If a court of competent jurisdiction finds or rules that any provision of this Agreement is invalid, void, or unenforceable, the provisions of this Agreement not so adjudged shall remain in full force and effect. The invalidity in whole or in part of any provision of this Agreement shall not void or affect the validity of any other provision of this Agreement.
- 10.4 No Implied Waiver of Breach.** The waiver of any breach of a specific provision of this Agreement does not constitute a waiver of any other breach of that term or any other term of this Agreement.
- 10.5 Successors and Assigns.** The provisions of this Agreement shall inure to the benefit of and shall apply to and bind the successors and assigns of the Parties.
- 10.6 Use of Recycled Products.** Consultant shall prepare and submit all reports, written studies and other printed material on recycled paper to the extent it is available at equal or less cost than virgin paper.

- 10.7 Conflict of Interest.** Consultant may serve other clients, but none whose activities within the corporate limits of City or whose business, regardless of location, would place Consultant in a “conflict of interest,” as that term is defined in the Political Reform Act, codified at California Government Code Section 81000 *et seq.*

Consultant shall not employ any City official in the work performed pursuant to this Agreement. No officer or employee of City shall have any financial interest in this Agreement that would violate California Government Code Section 1090 *et seq.*

Consultant hereby warrants that it is not now, nor has it been in the previous 12 months, an employee, agent, appointee, or official of the City. If Consultant was an employee, agent, appointee, or official of the City in the previous 12 months, Consultant warrants that it did not participate in any manner in the forming of this Agreement. Consultant understands that, if this Agreement is made in violation of California Government Code Section 1090 *et seq.*, the entire Agreement is void and Consultant will not be entitled to any compensation for services performed pursuant to this Agreement, including reimbursement of expenses, and Consultant will be required to reimburse the City for any sums paid to the Consultant. Consultant understands that, in addition to the foregoing, it may be subject to criminal prosecution for a violation of California Government Code Section 1090 *et seq.*, and, if applicable, will be disqualified from holding public office in the State of California.

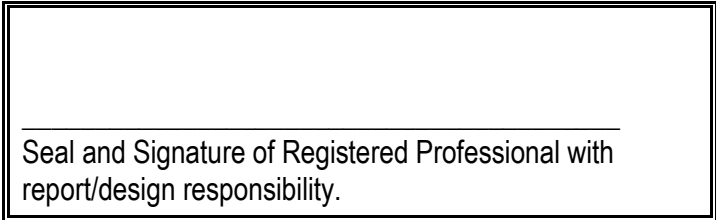
- 10.8 Solicitation.** Consultant agrees not to solicit business at any meeting, focus group, or interview related to this Agreement, either orally or through any written materials.
- 10.9 Contract Administration.** This Agreement shall be administered by Anton D. Batalla ("Contract Administrator"). All correspondence shall be directed to or through the Contract Administrator or his or her designee.
- 10.10 Notices.** Any written notice to Consultant shall be sent to:

John Honker
Magellan Advisors
450 Alton Rd. #1402
Miami Beach, FL 33139
JHonker@Magellan-Advisors.com

Any written notice to City shall be sent to:
City of San Leandro
c/o Anton D. Batalla
835 E. 14th St
San Leandro, CA 94577

With a copy to:
City of San Leandro
Department of Finance
c/o Purchasing Technician
835 East 14th Street
San Leandro, CA 94577

10.11 Professional Seal. Where applicable in the determination of the contract administrator, the first page of a technical report, first page of design specifications, and each page of construction drawings shall be stamped/sealed and signed by the licensed professional responsible for the report/design preparation. The stamp/seal shall be in a block entitled "Seal and Signature of Registered Professional with report/design responsibility," as in the following example.



10.12 Integration. This Agreement, including the scope of work attached hereto and incorporated herein as Exhibits A, B, and C represents the entire and integrated agreement between City and Consultant and supersedes all prior negotiations, representations, or agreements, either written or oral.

Exhibit A Scope of Services
Exhibit B Compensation Schedule & Reimbursable Expenses
Exhibit C Indemnification

10.13 Counterparts. This Agreement may be executed in multiple counterparts, each of which shall be an original and all of which together shall constitute one agreement.

10.14 Certification per Iran Contracting Act of 2010. In the event that this contract is for one million dollars (\$1,000,000.00) or more, by Consultant's signature below Consultant certifies that Consultant, and any parent entities, subsidiaries, successors or subunits of Consultant are not identified on a list created pursuant to subdivision (b) of Section 2203 of the California Public Contract Code as a person engaging in investment activities in Iran as described in subdivision (a) of Section 2202.5, or as a person described in subdivision (b) of Section 2202.5 of the California Public Contract Code, as applicable.

SIGNATURES ON FOLLOWING PAGE

The Parties have executed this Agreement as of the Effective Date. The persons whose signatures appear below certify that they are authorized to sign on behalf of the respective Party.

CITY OF SAN LEANDRO

MAGELLAN ADVISORS

Chris Zapata, City Manager

John Honker, President

Attest:

Consultant's DIR Registration Number, if applicable

Tamika Greenwood, City Clerk

Approved as to Fiscal Authority:

David Baum, Finance Director

Account Number

Approved as to Form:

Richard D. Pio Roda, City Attorney

Per Section 10.7:

- Form 700 Not Required
- Form 700 Required

Jeff Kay
City Manager's Office

1969630.2 (2015)

EXHIBIT A

SCOPE OF SERVICES

I. PROJECT SUMMARY

Methodology and Approach

Magellan Advisors believes that the following approach will provide the most effective development of a Big Picture Plan for the City of San Leandro. We understand that San Leandro views broadband as a new utility for government innovation, smart city, economic development and lifestyle improvements for its residents, including public safety, education, telemedicine and intelligent transportation.

Through broadband, San Leandro will become a center for innovation in the Bay Area. We understand that San Leandro must be measured in its approach to expanding broadband in the community, and we believe that a thorough analysis of the following factors is key to making the right decisions and taking the right steps forward.

Methodology for San Leandro Fiber Optic Master Plan

- Work with San Leandro to develop its strategic goals, objectives and the role it should play in deployment of broadband services;
- Develop an understanding of community-wide need for fiber-based broadband that leverages San Leandro's relationships with local businesses, institutions, constituents and stakeholders;
- Document real-world broadband demand in San Leandro through a combination of surveys, assessments and focus groups with businesses, institutions and community stakeholders;
- Assess the feasibility of using San Leandro's existing right of way, fiber, poles and other assets to reduce the cost of wired and wireless broadband deployments;
- Determine the benefits that a San Leandro network would provide, in terms of economic development, education, healthcare, municipal and regional government and the quality of life of its businesses and constituents;
- Determine how a broadband network would create added value for San Leandro in terms of government innovation, cost savings, smart city applications, lease revenue opportunities, and leveraging of vertical pole assets for additional revenue opportunities;
- Identify business and financial scenarios for San Leandro to consider for deployment of a network, paying special consideration to a range of feasible business model options such as retail, wholesale and public-private partnerships, including an estimate of costs for FTTH for residents;
- Through workshops with San Leandro's leadership, determine the most feasible options and gain consensus on the path forward to achieve San Leandro's broadband goals;
- Lay out a business plan and deployment roadmap for expansion of the fiber network based on the most feasible option(s) and a phasing and milestone plan to achieve the goals.

II. DESCRIPTION OF PLANNING ACTIVITIES

Task 1: Community Engagement

We propose to hold a broadband education workshop specifically for the client team and local stakeholders. This will allow Magellan to provide tangible examples of communities that have developed broadband strategies, benefits, obstacles and results. This education process will be geared to stimulating ideas, identifying applications and charting benefits for the community that will be incorporated into the planning process. Additionally, it will allow the client team and stakeholders to understand real-world examples of how broadband networks are planned, emerge and evolve over time. We believe that the more information the representatives are equipped with, the more successful it will be in the education process with the general community.

Educating the local stakeholders on the importance of broadband will be key to overall community support for the project. We propose to hold workshops to illustrate the benefits, short-term and long-term. We will utilize case studies and economic factors to help local businesses, residents and anchors understand how advanced broadband can make them more efficient and productive, while enabling them to compete globally. The education seminars will act to inform and rally stakeholder groups around the project. In addition, Magellan suggests that this information be made publicly available on the City's websites in support of the project along with project contact information. Keeping stakeholders engaged will help ensure overall effectiveness of the outreach process. We will also work with you to determine long-term education and engagement strategies to carry the message forward beyond the initial planning project.

Magellan will work with San Leandro to systematically investigate the availability, adoption and utilization of broadband by community stakeholders through a survey campaign. Magellan will work with the City to identify the target stakeholder group. Once the target stakeholder group is identified, an overall population of the group will be determined and a target sample size will be recommended by Magellan to reach a statistically significant data set. To reach statistically reliable results, Magellan will recommend participant levels to insure at least a 90% level of confidence within a 5% margin of error based on the stakeholder group population. The survey will be administered by Magellan, with the City and community partners focused on promotion of the survey campaign.

Task 2: Analysis of the Area of Focus

The market assessment will determine the services that are available, providers, service level, pricing, and access. We will document all publicly owned and privately owned networks in San Leandro and build a comprehensive GIS-based broadband map to illustrate how the City is served by broadband and what providers currently serve the market.

We should expect that some private providers will not share their infrastructure maps for the project, but we find that in many cases, providers will cooperate in this initiative as this collaboration often provides opportunities for them to better understand the local market. Our analysis will document fiber and copper networks, facilities, data centers, and related infrastructure in the City to determine how well the area is served by broadband. We will also work with the local providers to understand and document their current needs, as they too are stakeholders in the community. These discussions should lead to potential opportunities for the City and private providers to define potential partnership opportunities in delivering new broadband services to the region.

We will build an inventory of all community anchor, business, residential, and wholesale costs to help the City understand how they compare to other peers. It will also enable the City to understand the costs necessary for the expansion of the community broadband network.

The following step will be to analyze the current market and its propensity for additional broadband services. This market assessment will include businesses, schools, hospitals, clinics/doctors' offices, and other community organizations determined in the analysis. We will incorporate the current network into the comprehensive broadband map, which will allow us to begin building layers of potential customer locations on top of the current infrastructure. Layers will include businesses, schools, hospitals, clinics, government organizations, community support organizations, and others to be determined.

Based on information collected from the market assessment, we will identify the opportunities for the City to consider a variety of options for developing a community broadband network. This analysis should build on the City's current fiber/conduit infrastructure, other potential partners and new infrastructure that would create a network to support the community. There are many inputs to the overall feasibility and sustainability of community broadband networks and Magellan will work with the San Leandro team to determine the drivers in the region that would support such a network. Magellan will provide an estimate for expanding network services to provide FTTH for residents.

Smart City and Emerging Technologies

Magellan will interview City departments and regional service providers, both public and private, to identify smart city applications, locate them geographically and to inform and advise the City in using the wired and wireless broadband network for supporting these innovations. These include but are not limited to intelligent transportation, traffic signal synchronization, mass transit priority, public safety, parking and traffic, WiFi, streaming video, credit card services, EV charging, environmental sensors, vehicle and pedestrian counting and access control. The report will also identify how San Leandro can use the broadband network for supporting emerging technologies, including drones, driverless cars, advanced robotics, and mobile hotspots. This assessment will dovetail with identifying and assessing the viability of using existing or new assets such as conduits, buildings, traffic signal poles and cabinets, street light poles and smart poles. A more fully defined set of advisory services includes:

Public WiFi

- Location Aware Launch Pages
- Session Management
- Income from Advertising
- Promotion of Location and Space for Business
- Secure Municipal Networks

Smart Parking

- Wireless Meters
- Real-time Parking Availability
- Pay-on-Foot Devices
- Smart Mobile Parking Apps
- Parking Navigation
- Directional Signs

- Real-time Signs
- Credit Card Transactions
- Wireless Accounts

Smart Transportation

- Traffic Signal Synchron
- Transit Priority
- HD Traffic Cameras
- Transportation Management Center
- Smart Bike Lanes

Smart Public Safety

- 4G & Wi-Fi Data
- Mobile Streaming Video
- HD Public Safety CCTV Cameras

Task 3: Current and Future Fiber Mapping

A. Document Current Infrastructure

Magellan's technical team has in-depth experience with GIS-based mapping, inventory, analysis and reporting on broadband projects. For each of our broadband planning clients, we have implemented comprehensive GIS-based studies of service areas, including:

- Broadband inventory and analysis;
- Broadband penetration and availability;
- Broadband market data;
- Broadband service area boundaries; and
- Broadband infrastructure overlap and overbuild information.

Magellan's GIS services will enable San Leandro to accurately collect, track, analyze and report on key broadband infrastructure assets throughout the City. We propose to first build a geo-correct layer for the City's conduit and fiber, identifying placed conduit, type, size, status (occupied/vacant) and related information. A second layer will incorporate poles, traffic signal cabinets and other assets to be used for expanding the network, for network operations and for opportunities to generate lease revenue through vertical pole assets from 5G microcell site deployments.

We will work with the City's public works and utilities departments to assess capital projects that may create opportunities to install conduit and fiber infrastructure, in conjunction with other broadband providers. We propose to review the long-term capital projects schedule and build a map that identifies the projects where broadband infrastructure could be installed over the 10-year period. We'll also plan cost estimates for the City year-by-year to determine how much funding should be allocated to these projects, if any.

We will collect vertical pole inventories for leveraging DAS attachments and WiFi deployments for lease revenue opportunities, for support of smart city applications and for lifestyle improvements for workers, visitors and residents.

B. Conceptual Network Design

Magellan will work with San Leandro staff to identify infrastructure that is required to meet the needs of the community determined in the Community Broadband Engagement. Our team will thoroughly review all communications facilities owned by the City that could be utilized in a new strategy that would be developed as part of this Study. Our consultants will work with San Leandro staff to understand the pros and cons of each delivery method and the costs associated with each as the infrastructure that is chosen can have a major impact on long-term financial sustainability.

The overall network design will be based on the needs of the residents, businesses and anchors that will utilize it. This will determine the bandwidths and speeds, performance, redundancy and scalability requirements and solution-specific requirements. Magellan will design a network that meets the specifics outlined by the City, and the network should be capable of supporting the following:

- Gigabit-capable with a path to 10-gigabit
- High-performance, dedicated connectivity
- Reliable and redundant
- Flexible to support multiple technologies, such as GPON and Active Ethernet simultaneously
- Scalable to support future growth, density and bandwidth requirements
- Multi-service in design – voice, video, data, with the necessary QOS management
- Administratively lean, fitting well within the electric utility operational environment
- Smart City applications
- Smart Grid technologies

Based on the network design, Magellan will provide estimates to San Leandro for cost of network construction, including design, construction, equipment, testing and certification as well as ongoing annual costs to operate and maintain the network. In addition, all backhaul options will be reviewed to identify the most optimal routes out of San Leandro, and to identify potential interconnect points to regional Points of Presence (PoPs). Our significant work managing broadband construction projects will allow for accurate estimation of the costs the City will bear in this process. We will incorporate these cost estimates into our financial planning tools used in the project for business, anchor and residential service.

We'll incorporate all cost estimates for capital into our Broadband Financial Sustainability Model to conduct further financial analysis of the proposed network. Our model provides comprehensive capital and operational costs for buildout in year-by-year schedules that accounts for all revenues and costs borne by San Leandro's proposed network. Details on how our model works is described in the following sections.

Task 4: Business Models & Financials

We will help San Leandro analyze a range of business model options in the framework of financial, operational, and organizational requirements to determine which models are "best fit" for the City, have the greatest chance of success, and will be the most financially sustainable. We will present each analysis of every business model to the City team and provide an analysis of how each meets San Leandro's goals in the project.

Magellan will work with the City to define the range of business model options to evaluate for expanded fiber deployment, which may include the following:

- Wholesale dark fiber and/or services in partnership with telecommunications providers;
- Expanded retail services to a range of customer segments, which may include residential;
- Partnership models with existing broadband providers or other public utilities in the region;
- Others to be determined.

Magellan will evaluate the current financial and budgetary environment for the network. We believe that San Leandro's decision-making process for a network expansion needs to include financial analysis of the proposed hardware solution and the operational costs that San Leandro will incur in deploying the selected solution. These operational costs include more than equipment service contracts; the selected solution will have financial impacts across many aspects of San Leandro's operations. We want to make sure these are evaluated so the City understands all financial impacts to the organization.

Once documentation is complete, we propose to analyze current and future needs for San Leandro and the Lit San Leandro network. Magellan proposes that we ask and answer the following key questions in the needs assessment:

- What are the long-term needs of San Leandro's current customers including types of service, bandwidth scalability, performance, and reliability?
- Can San Leandro expand its service offerings to attract new customer segments? If so, what customer segments are anticipated and what services will these customers require?
- Are San Leandro's products and services competitive in the market and how can the expanded network create competitive advantages for San Leandro to expand its customer base in the community?
- What is the current environment in metropolitan area networking that San Leandro should consider for improve competitiveness and meet current and future customer needs?
- How is the network currently managed and what operational goals does San Leandro want to achieve in expansion of its network?

Financial Planning and Our Broadband Financial Model

Magellan proposes using our Broadband Financial Sustainability Model to ensure that San Leandro has a full understanding of the business and financial sustainability of various broadband initiatives. Using these tools will allow San Leandro to evaluate different business models and make informed decisions on which are most adequate for the City and community – including environments that require no funding.

Our financial models have been specifically developed for broadband utilities and are very similar to electric utility rate studies. Our models are widely used tools to model feasibility and financial performance for over 50 municipal broadband providers. Magellan's financial modeling tools have been utilized to plan and manage broadband network investments for over \$500 Million in broadband projects nationwide, including \$250 Million in Broadband Stimulus investments under the NTIA BTOP grant program.

Using our financial tools, we suggest using the following process to conduct the business model analysis and make recommendations. We would propose using a 10-year period to analyze the project:

1. Develop the cost model for the network, including one-time and ongoing capital expenditures to build the network.

2. Develop the cost model for operations, including O&M, network operations, field services, staffing, billing and customer service.
3. From the market analysis and outreach, determine the customer segmentation and growth on the network, across each type of customer (business, school, hospital, etc.).
4. Determine customer growth rates for the network, based on benchmarking analysis from other utility and municipal providers.
5. Determine a proposed competitive rate schedule for potential services, using pricing information from the market analysis and benchmarking information.
6. Develop financial statements, pro-formas, depreciation schedules, and cash flows.
7. Conduct comprehensive financial analysis on the project to determine overall financial sustainability using key metrics such as free cash flow, debt service coverage, operating margin, and net income.
8. Use scenario analysis to evaluate different business models and determine which are feasible for San Leandro to consider.
9. Recommend the most feasible business model based on overall business and financial sustainability, community benefit, and long-term value to the San Leandro community.

Task 5: Policy Guidance

Magellan will assist and guide San Leandro in policy development around joint trench, right of way management, dig once, and fiber and wireless ordinances. We maintain knowledge of best practice in policy development and organizational structure for implementing and operating broadband networks and smart city initiatives. We will help San Leandro organize and refine internal business processes for improved communications, project management, financial management and policy development. We will provide San Leandro with advisory services for right of way management, dig once and wireless policies for 5G microcell site deployments for enabling and facilitating the development of its broadband infrastructure and smart city initiatives. Our recommendations will help the City generate business processes and workflows that will improve internal and external partnerships for streamlining the City's ongoing expansion of broadband and smart city deployments.

We will provide advisory services for development of a governance plan and advise and guide the City in implementing policy that may include the following areas:

Political Will

- Engage councils, commissions and community stakeholders
- Educate and achieve support from internal champions
- Organize diverse task force and project advocates

Governance and Ownership

- Appoint leaders to internal governance board
- Hold regular meetings of task force and governance board
- Establish operating and CIP budgets for broadband and smart city projects
- Create mechanisms for synchronizing project budgets

Internal and External Policy Development

- Right-of-way management ordinance
- Dig once and joint trench

- Wireless ordinance

Internal Cooperation, Communication and Alignment

- Assist in removing department silos
- Establish partnerships – Public Works, Traffic Signals, Utilities, Planning, Economic Development, IT
- Approval practices for right-of-way projects (public and private) and development agreements
- Document and organize timelines, budgets and partnerships for synergies between smart city initiatives

Internal Best Practice and Workflow

- Document and share municipal, utility and private sector assets
- Invite private sector participation in public works projects
- Trade and lease public and private assets for network expansion
- Utilize GIS for asset tracking, management and expansion
- Streamline excavation and pole permitting processes
- Streamline wireless permitting processes
- Combine public works schedules for lowering construction costs
- Build on demand and for savings

Internal Budget Considerations

- Combine telecommunications budgets for efficiencies
- Create master fund and fund balance to manage and reinvest savings
- Budget resources and materials for dig once and joint trench opportunities
- Provide guidance in coordinating budgets for smart city projects and applications

Task 6: “Big Picture” Vision

Magellan will provide a final Fiber-Optics Master Plan that includes a “big picture” vision that unifies the City’s goals to become a center for innovation in the Bay Area at the conclusion of this engagement. The City of San Leandro Fiber-Optic Master Plan will contain the blueprint for development of City infrastructure to interconnect all corridors with one another, serve municipal and community needs, support economic development, support identified smart city initiatives, provide policy and connectivity for leveraging light pole assets for new revenue opportunities and prepare the City for the gigabit generation. The report will include how San Leandro can use the broadband network and prepare itself for emerging technologies, including drones, driverless cars, advanced robotics, and mobile hotspots. We will work with you to refine this plan so it is 100% representative of your stakeholders needs and has a high degree of relevance to your community. The Master Plan will function as the guidebook for fiber-optic development across the City and will include all information necessary for San Leandro to begin expanding its broadband wired and wireless networks, implementing smart city applications, connecting more businesses for economic development, implementing best practice governance and policy for broadband operations and leveraging traffic signal and street light poles for generating new revenue from dark fiber and pole attachment leases from 5G wireless microcell sites. It will also provide estimates for FTTH and for Digital Inclusion. All supporting information such as individual task analysis, raw data, mapping (ESRI) shapefiles and the

technical memoranda from each previous task will be included with the Master Plan. All documents generated to support delivery of the Plan will also be provided to the City.

Magellan's project team will be readily available for meetings with San Leandro leadership to support the adoption of the Master Plan and we are happy to present the final report and findings to your leadership, city officials or other stakeholder you believe should be included in the final presentations.

III. WORK PLAN

Project Schedule

We estimate that over the 5-month duration of the project, approximately 280 hours of onsite and offsite work will be required. During this time, Magellan will meet with City staff, hold meetings with stakeholders, review plans, visit regional sites and make presentations to the City’s project teams as well as other activities to be determined between San Leandro and Magellan. Schedules will be determined cooperatively between San Leandro and Magellan. Magellan will require some resources of the City staff to gather relevant regional data, work with local stakeholder to schedule outreach meetings, conduct interviews of San Leandro staff with Magellan, participate on status calls and onsite meetings and participate in presentations.

Task	Description	Month 1	Month 2	Month 3	Month 4	Month 5
1	Community Engagement					
2	Analysis of Area of Focus					
3	Current & Future Fiber Mapping					
4	Business Models & Financials					
5	Policy Guidance					
6	“Big Picture” Vision					

EXHIBIT B

COMPENSATION SCHEDULE & REIMBURSABLE EXPENSES

The total cost to the City of San Leandro as outlined in the chart below is \$60,000 and includes all work to be completed by Magellan for the City as stated in this Proposal. Our hourly rate for the proposal is \$200 per hour exclusive of overhead and travel, which is to be billed separately. We estimate completion of this project will require 280 billable hours of work.

Description	Hours	Hourly Rate	Total
Community Engagement	45	\$200	\$9,000
Analysis of Area of Focus	45	\$200	\$9,000
Current & Future Fiber Mapping	45	\$200	\$9,000
Business Models & Financials	40	\$200	\$8,000
Policy Guidance	65	\$200	\$13,000
“Big Picture” Vision	40	\$200	\$8,000
Travel and Incidentals (Not-to-Exceed)			\$4,000
Total Pricing	280		\$60,000

EXHIBIT C

INDEMNIFICATION

Consultant shall indemnify, defend with counsel acceptable to City, and hold harmless City and its officers, elected officials, employees, agents and volunteers from and against any and all liability, loss, damage, claims, expenses, and costs (including without limitation, attorney's fees and costs and fees of litigation) (collectively, "Liability") of every nature arising out of or in connection with Consultant's performance of the services called for or its failure to comply with any of its obligations contained in this Agreement, except such Liability caused by the active negligence or willful misconduct of City.

Notwithstanding the forgoing, to the extent this Agreement is a "construction contract" as defined by California Civil Code Section 2782, as may be amended from time to time, such duties of Consultant to indemnify shall not apply when to do so would be prohibited by California Civil Code Section 2782.

The Consultant's obligation to defend and indemnify shall not be excused because of the Consultant's inability to evaluate Liability or because the Consultant evaluates Liability and determines that the Consultant is not liable to the claimant. The Consultant must respond within 30 days to the tender of any claim for defense and indemnity by the City. If the Consultant fails to accept or reject a tender of defense and indemnity within 30 days, in addition to any other remedy authorized by law, so much of the money due the Consultant under and by virtue of this Agreement as shall reasonably be considered necessary by the City, may be retained by the City until disposition has been made of the claim or suit for damages, or until the Consultant accepts or rejects the tender of defense, whichever occurs first.

