

**MEMORANDUM OF UNDERSTANDING
BETWEEN
COUNTY OF MERCED
AND
CITY OF MERCED
CONTRACT NO. _____**

THIS AGREEMENT, is made and entered into by and between the County of Merced, a political subdivision of the State of California, (hereinafter referred to as "County"), and the City of Merced, located at 678 W. 18th Street, Merced, CA 953404 (hereinafter referred to as "City").

WHEREAS, County desires to contract with Magellan Advisors, LLC., for special services which consist of developing a Countywide Broadband Strategic Plan; and

WHEREAS, City desires to reimburse County for the City's portion of the total cost of the contract with Magellan Advisors, LLC.;

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

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

1. PURPOSE AND SCOPE

The purpose of this Agreement is to reimburse County a portion of the costs paid to Magellan Advisors, LLC for development of a Countywide Strategic Plan services in accordance with the terms and conditions stated herein. Magellan Advisors, LLC will provide the following services:

- A. Asset Inventory and Marketing Assessment
- B. Outreach and Community Engagement
- C. Policy Guidance
- D. Broadband Readiness Assessment
- E. Action Plan and Recommendations
- F. Broadband Strategic Plan Drafting and Adoption
- G. Project Management and Ongoing Meetings

2. TERM

The term of this Agreement shall commence on the 2nd day of May, 2022, and continue until the 31st day of December 2023. This Agreement may be terminated without cause by either City or County upon written notice of termination given to the other party at least ninety (90) calendar days in advance of the effective date of termination. Notice of termination shall be personally served or mailed, postage

prepaid to the address designated under Section 9 Notices; or to such other address as may be designated by written notice.

3. COMPENSATION

City agrees to pay County Thirty Percent (30%) of the overall strategic plan cost of Two Hundred Thirty Thousand One Hundred Dollars and No Cents (\$230,100.00), which equals Sixty-Nine Thousand Thirty Dollars and No Cents (\$69,030.00) for Countywide Broadband Strategic Plan Services as set forth in Scope of Services. Total Agreement Price not to exceed Sixty-Nine Thousand Thirty Dollars and No Cents (\$69,030.00).

4. NO EMPLOYMENT OR AGENCY RELATIONSHIP

This Agreement is a funding agreement only. Nothing in this Agreement shall be construed to create any employment or agency relationship between the parties or their officers, employees, or agents.

5. INSURANCE

The Parties shall maintain, at their own expense, Commercial General Liability (CGL) insurance, Automobile Liability insurance, and Workers Compensation insurance in such forms and amounts sufficient to cover claims arising from the duties and responsibilities under this Agreement.

6. INDEMNIFICATION

Nothing in the provisions of this Agreement is intended to affect the legal liability of either party by imposing any standard of care different from the standard of care imposed by law. Each party shall bear its own exposure for Workers' Compensation for its own personnel while furnished to the other party or likewise engaged.

City shall indemnify, defend and hold harmless, the County, its Board of Supervisors, officers, employees, agents and assigns from and against any and all claims, demands, liability, judgments, awards, interest, attorney's fees, costs, experts' fees and expenses of whatsoever kind or nature, at any time arising out of or in any way connected with the County providing Countywide Broadband Strategic Plan services to City by employees or, whether in tort, contract or otherwise. This shall include, but not be limited to, claims for bodily injury, property damage, personal injury, and contractual damages or otherwise alleged to be caused to any person or entity including, but not limited to employees, agents and officers of City.

City's obligation shall extend to any allegation or claim of liability except in circumstances found by a jury or judge to be the sole and legal result of the willful

misconduct of County. City's obligation shall arise at the first claim or allegation of liability against County. City will on request and at its expense, defend any action, suit, or proceeding arising hereunder. This clause for indemnification shall be interpreted to the broadest extent permitted by law.

7. ENTIRE AGREEMENT

This agreement and any additional or supplementary document(s) incorporated herein by specific reference contain all the terms and conditions agreed upon by the parties. No other contracts, oral or otherwise, regarding the subject matter of this Agreement shall have any validity or bind any of the parties unless specifically identified within the Agreement.

8. AMENDMENTS

The City or County may amend this Agreement at any time provided that such amendments make specific reference to this Agreement, and are executed in writing, signed by a duly authorized representative of each organization. Such amendments shall not invalidate this Agreement, nor relieve or release the City or County from its obligations under this Agreement

9. RECORDS AND INSPECTIONS

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

10. NOTICES

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

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

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

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

County of Merced c/o
County Executive Office
Attn: Lindsey Johnson
2222 M Street
Merced, CA 95340

City of Merced
Attn: Jeff Bennyhoff
678 W. 18th Street
Merced, CA 95340

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

Signature page to follow

County of Merced

City of Merced

By _____
_____Lloyd Pareira, Jr.
_____Chairman Board of _____Supervisors

By _____
_____Stephanie Dietz
_____City Manager

Dated

Dated

APPROVED AS TO LEGAL FORM
MERCED COUNTY COUNSEL

By _____

APPROVED AS TO FORM:

John B. Goulart *4-6-22*
JOHN B. GOULART Date
Senior Deputy City Attorney