

PROFESSIONAL SERVICES AGREEMENT

23-PSG00197/CR

BROADBAND FEASIBILITY STUDY

County of Hernando
15470 Flight Path Drive
Brooksville, FL 34604



County of Hernando
PROFESSIONAL SERVICES AGREEMENT
Broadband Feasibility Study

I.	Professional Services Agreement
II.	Supplementary Conditions for State Requirements
III.	Signatures
IV.	Exhibit A.....
V.	Exhibit B.....

1. PROFESSIONAL SERVICES AGREEMENT

1.1. PSA

BOARD OF COUNTY COMMISSIONERS
HERNANDO COUNTY, FLORIDA
PROFESSIONAL SERVICES AGREEMENT
Contract No. 23-PSG00197/CR

THIS AGREEMENT made and entered into this Tuesday, March 14, 2023, by and between HERNANDO COUNTY BOARD OF COUNTY COMMISSIONERS, 15470 Flight Path Drive, Brooksville, Florida, a political subdivision of the State of Florida, hereinafter called the COUNTY and Magellan Advisors LLC., 999 18th Street Suite 3000, Denver, CO 80202 duly authorized to conduct business in the State of Florida, hereinafter called the PROFESSIONAL.

WITNESSETH:

SECTION 1.

The COUNTY does hereby retain the PROFESSIONAL to furnish certain services in connection with: Broadband Feasibility Study

SECTION 2.

The PROFESSIONAL and the COUNTY mutually agree to furnish, each to the other, the respective services, information and terms as described in Exhibit "A", attached hereto and made a part hereof.

Before any additions or deletions to the work described in Exhibit "A", and before undertaking any changes or revisions to such work, the parties shall negotiate any necessary cost changes and shall enter into a supplemental written AGREEMENT covering such modifications and the compensation to be paid therefor.

Reference herein to this Agreement shall be considered to include any supplement thereto.

Reference herein to COUNTY Administrator shall mean the Hernando County Administrator or his designee.

SECTION 3.

The services indicated in Exhibit "A" to be rendered by the PROFESSIONAL shall be commenced, subsequent to the execution of this AGREEMENT, upon written notice from the Hernando County Administrator, and shall be completed within 4 months from the date of issuance of the Purchase Order.

SECTION 4

The PROFESSIONAL agrees to provide Project Schedule progress reports in a format acceptable to the COUNTY, either monthly or at intervals established by the COUNTY. The COUNTY will be entitled at all times to be advised, at its request, as to the status of work being done by the PROFESSIONAL and of the

details thereof. Coordination shall be maintained by the PROFESSIONAL with representatives of the COUNTY. Either party to the Agreement may request and be granted a conference.

SECTION 5. In the event there are delays on the part of the COUNTY as to the approval of any of the materials submitted by the PROFESSIONAL, as if there are delays occasioned by circumstances beyond the control of the PROFESSIONAL which delay the project schedule completion date, the COUNTY shall grant to the PROFESSIONAL, by "Letter of Time Extension" an extension of the contract time, equal to the aforementioned delays, provided there are no changes in compensation or scope of work, except those changes that may be agreed upon between the parties hereto.

It shall be the responsibility of the PROFESSIONAL to ensure at all times that sufficient contract time remains within which to complete all services on the project. In the event there have been delays that would affect the project completion date, the PROFESSIONAL shall submit a written request to the COUNTY that identifies the reason(s) for the delay and the amount of time related to each reason. The COUNTY shall timely review the request and make a determination as to granting all or part of the requested.

SECTION 6. The PROFESSIONAL shall maintain an adequate and competent professional staff within the State of Florida and may associate with Specialists, Sub-Professionals and/or other Professionals, for the purpose of its services hereunder, without additional cost to the COUNTY. Should the PROFESSIONAL desire to utilize other Specialists, Sub-Professionals and/or Professionals in the performance of the work, the PROFESSIONAL shall be responsible for satisfactory completion of all such Specialists', Sub-Professionals' and/or other Professionals' work, and may not assign or transfer work under this Agreement to other Specialists, Sub-Professionals or Professionals unless approved in writing by the COUNTY. It is agreed that only Specialists, Sub-Professionals and/or other Professionals that have been approved by an authorized representative of the COUNTY will be used by the PROFESSIONAL. It is also agreed that the COUNTY will not, except for services so designated herein, or as may be approved by the COUNTY, if applicable, permit or authorize the PROFESSIONAL to perform less than the total contract work with other than its own organization.

SECTION 7. All documents, reports, studies and other data prepared by the PROFESSIONAL will bear the endorsement of a person in the full employ of the PROFESSIONAL and duly registered in the appropriate professional category.

SECTION 8. All reports prepared or obtained under this Agreement shall be considered works made for hire and shall become the property of the COUNTY restricted to the terms of (7) above; and reproducible copies shall be made available, upon request, at direct printing costs, to the COUNTY at any time during the period of this Agreement. The COUNTY will have the right to visit the site for inspection of the work of the PROFESSIONAL at any time. Unless changed by written agreement of the parties, said site shall be the address of the firm. Records of cost incurred under the terms of this Agreement shall be maintained and made available upon request of the COUNTY at all times during the period of this Agreement and for five (5) years after final payment is made. Copies of these documents and records shall be furnished to the COUNTY upon request at direct printing cost. This notwithstanding, PROFESSIONAL shall maintain all ownership rights, title and interests in all inventions, trade secrets, trademarks, copyrights, patents, know-how, practices, drawings, specifications, details, procedures, processes, mapping, GIS, technology, software, hardware, database, calculations, algorithm, object and

source code developed, owned or controlled by PROFESSIONAL prior to the performance of any services to COUNTY under this Agreement or developed by Contractor independently from the performance of any Services for County under this Agreement ("PROFESSIONAL IP"). To the extent any PROFESSIONAL IP is contained within any of the reports or deliverables provided to COUNTY, PROFESSIONAL IP grants to COUNTY an irrevocable, non-exclusive, perpetual, royalty-free license to use and employ any and all PROFESSIONAL IP to the extent necessary to gain the full advantage and benefits of the services.

Records of cost incurred includes the PROFESSIONAL project accounting records, together with supporting documents and records of the PROFESSIONAL and all Specialists, Sub-Professionals and/or other Professionals performing work on the project, and all other records of the PROFESSIONAL and Specialists, Sub-Professionals and/or other Professionals considered necessary by the COUNTY for a proper audit of project costs.

Whenever travel costs are included, the provisions of Section 112.061 (Current Edition), Florida Statutes, shall govern as to reimbursable costs.

The PROFESSIONAL shall furnish to the COUNTY at direct printing cost all final work documents, papers and letters, or any other such materials which may be subject to the provisions of Chapter 119 (Current Edition), Florida Statutes, made or received by the PROFESSIONAL in conjunction with this project. Failure by the PROFESSIONAL to provide such records shall be grounds for immediate unilateral cancellation of the Agreement by the COUNTY.

SECTION 9. The PROFESSIONAL shall comply with all federal, state and local laws and ordinances applicable to the work or payment thereof, and shall not discriminate on the grounds of race, color, religion, sex or national origin in the performance of work under this Agreement.

SECTION 10. The COUNTY agrees to pay the PROFESSIONAL compensation as detailed in Exhibit "B", attached hereto and made a part hereof. Unless otherwise agreed to, this is a lump sum contract. No additional fees or expenses will be paid.

1.2. PROFESSIONAL SERVICES AGREEMENT

SECTION 11. The PROFESSIONAL is employed to render a professional service only and that payments made to the PROFESSIONAL are compensation solely for such services rendered and recommendations made in carrying out the work. The PROFESSIONAL shall perform all services contracted for under this Agreement in accordance with the standard of care used by similar professionals in the community that render the same professional services under similar circumstances.

SECTION 12. The COUNTY may terminate this Agreement in whole or in part at any time the interest of the COUNTY requires such termination.

Termination for Cause

a) If the COUNTY reasonably determines that the performance of the PROFESSIONAL is not satisfactory, the COUNTY shall have the option of:

1) immediately terminating the Agreement and paying the PROFESSIONAL for work reasonably satisfactorily performed hereunder through the date of termination;

2) notify the PROFESSIONAL of the deficiency, with a requirement that the deficiency be corrected within a reasonable specified time, otherwise the Agreement will be so terminated at the end of such time, and the PROFESSIONAL shall be paid for work satisfactorily completed to such specified date.

Termination for Convenience

b) If the COUNTY requires termination of the Agreement for reasons other than unsatisfactory performance of the PROFESSIONAL, the COUNTY shall notify the PROFESSIONAL of such termination and specify the state of work at which time the Agreement is to be terminated, and the PROFESSIONAL shall be entitled to receive payment of all work reasonably satisfactorily performed hereunder through the date of termination. An allowance for satisfactory work in progress but not yet completed shall be made.

Remedies

c) If the Agreement is terminated before performance is completed, the PROFESSIONAL shall be paid for work satisfactorily performed. Payment is to be on the basis of substantiated costs, not to exceed the percentage of work performed. The PROFESSIONAL shall provide to the COUNTY copies of all calculations, reports, and studies completed to date.

SECTION 13. Adjustment of compensation and contract time because of any major changes in the work that may become necessary or desirable as the work progresses shall be left to the absolute discretion of the COUNTY and supplemental agreement(s) of such a nature as required may be entered into by the parties in accordance herewith.

SECTION 14. All words used herein in the singular form shall extend to and include the plural. All words used in the plural form shall extend to and include the singular. All words used in any gender shall extend to and include all genders.

SECTION 15. The PROFESSIONAL shall procure and maintain professional liability insurance for protection from claims arising out of performance of professional services caused by a negligent error, omission or act for which the insured is legally liable; such professional liability insurance will provide coverage in the amount of \$1,000,000 min. per claim and in the aggregate. Proof of insurance shall be provided to the COUNTY upon execution of this Agreement.

Additionally, the PROFESSIONAL shall procure and maintain Commercial General Liability insurance in the amount of \$1,000,000/\$2,000,000; \$1,000,000 for Auto; and Statutory amounts for Worker's Compensation coverage whenever PROFESSIONAL enters County property.

The PROFESSIONAL will also cause Professional Specialists and/or Sub-Professionals retained by PROFESSIONAL for the project to procure and maintain comparable insurance coverage. Before commencing the work, the PROFESSIONAL shall furnish the COUNTY a certificate(s) showing compliance with this paragraph. Said certificate(s) shall provide that policy(s) shall not be changed or canceled until 30 days prior written notice has been given to the COUNTY; per policy provisions and per the standard ISO ACORD insurance form; Hernando County is named as additional insured as to general liability, including a waiver of subrogation and Certificate Holder must read: Hernando County Board of County Commissioners.

SECTION 16. The PROFESSIONAL warrants that he has not employed or retained any company or person, other than a bona fide employee working solely for the PROFESSIONAL, to solicit or secure this Agreement, and that he has not paid or agreed to pay any person, company, corporation, individual or firm any fee, commission, percentage, gift or any other consideration, contingent upon or resulting from the award or making of this Agreement. It is understood and agreed that the term "fee" shall also include brokerage fee, however denoted.

a) For the breach of violation of Paragraph (16) the COUNTY shall have the right to terminate this Agreement without liability and, at its discretion, to deduct from the contract price, or otherwise recover, the full amount of such fee, commission, percentage, gift or consideration.

SECTION 17. Unless otherwise required by law or judicial order, the PROFESSIONAL agrees that it shall make no statements, press releases or publicity releases concerning the Agreement or its subject matter or otherwise disclose or permit to be disclosed any of the data or other information obtained or furnished in compliance with this Agreement, or any particulars thereof, during the period of the Agreement, without first notifying the COUNTY and securing its consent in writing. The PROFESSIONAL also agrees that it shall not publish, copyright or patent any of the site specific data furnished in compliance with this Agreement; it being understood that, under Paragraph (8) hereof, such data or information is the property of the COUNTY. This does not include materials previously or concurrently developed by the PROFESSIONAL for "In House" use. Only data generated by PROFESSIONAL for work under this Agreement shall be the property of the COUNTY.

SECTION 18. Standards of Conduct - Conflict of Interest - The PROFESSIONAL covenants and agrees that it and its employees shall be bound by the standards of conduct provided in Florida Statutes 112.313 (Current Edition) as it relates to work performed under this contract, which standards is hereby incorporated and made a part of this contract as though set forth in full. The PROFESSIONAL agrees to incorporate the provisions of this paragraph in any subcontract into which it might enter with reference to the work performed.

SECTION 19. The COUNTY reserves the right to suspend, cancel or terminate the Agreement in the event one or more of the PROFESSIONAL'S Corporate Officers is indicted or has a direct information issued against him for any crime arising out of or in conjunction with any work being performed by the PROFESSIONAL for or on behalf of the COUNTY under this Agreement without penalty. It is understood and agreed that in the event of such termination, that reproducible copies of all documents prepared or obtained under this Agreement shall immediately be turned over to the COUNTY in conformity with the provisions of Paragraph (8) hereof. The PROFESSIONAL shall be compensated for its services rendered up to the time of any such termination in accordance with Paragraph (12) hereof. The COUNTY also reserves the right to terminate or cancel this Agreement in the event the PROFESSIONAL shall be placed in either voluntary or involuntary bankruptcy or an assignment be made for the benefit of creditors. The COUNTY further reserves the right to suspend the qualifications of the PROFESSIONAL to do business with the COUNTY upon any such indictment or direct information. In the event that any such person against whom any such indictment or direct information is brought shall have indictment or direct information dismissed or be found not guilty, such suspension on account hereof shall be immediately lifted by the County Administrator.

SECTION 20. PROFESSIONAL shall indemnify and hold harmless the COUNTY and its authorized agents and employees from liabilities, damages, losses, and costs, including, but not limited to, reasonable attorneys' fees, to the extent caused by the negligence, recklessness, or intentionally wrongful conduct of PROFESSIONAL and other persons employed or utilized by PROFESSIONAL in the performance of the contract.

SECTION 21. All notices required to be served on the PROFESSIONAL shall be served by Registered or Certified mail, Return Receipt Requested, to PROFESSIONAL'S address and all notices required to be served upon the COUNTY shall be served by Registered or Certified mail, Return Receipt Requested, addressed to the County Administrator, Hernando County Board of County Commissioners, 15470 Flight Path Drive, Brooksville, FL 34604.

SECTION 22. Hernando County reserves the privilege of auditing a vendor's records by a representative of the County, as such records relate to equipment, goods or services and expenditures therefor, with respect to any express or implied agreement between Hernando County and said vendor. Such records include, but are not limited to: all books, records, and memoranda of every description, pertaining to work under contract.

Hernando County further reserves the right to reproduce any of the aforementioned documents pertaining to the work under contract.

SECTION 23. Unless otherwise required by law, this Agreement shall be governed by and construed in accordance with the laws of the State of Florida. Venue for any dispute arising from this agreement shall be litigated in the appropriate court in Hernando County, Florida, or the US District Court, Middle District of Florida. IN ANY LITIGATION ARISING FROM THIS AGREEMENT, THE PARTIES SHALL BEAR THEIR OWN COSTS AND ATTORNEYS' FEES.

SECTION 24. E-VERIFY- Contractor must have legally Authorized Workforce.

CONTRACTOR/CONSULTANT is advised that the COUNTY has entered into an agreement with U.S. Immigration and Customs Enforcement (ICE) wherein the COUNTY will, in part, seek to promote the principles of ethical business conduct, prevent the knowing hiring of unauthorized workers through self-governance, and encourage voluntary reporting of the discovery of unauthorized workers to ICE (the IMAGE Agreement). Accordingly, by submitting your Bid/Proposal, CONTRACTOR/CONSULTANT represents and warrants (a) that the CONTRACTOR/CONSULTANT is in compliance with all applicable federal, state and local laws, including, but not limited to, the laws related to the requirement of an employer to verify an employee's eligibility to work in the United States, (b) that all of the CONTRACTOR/CONSULTANT employees are legally eligible to work in the United States, and (c) that the CONTRACTOR/CONSULTANT has actively and affirmatively verified such eligibility utilizing the Federal Government's Employment Verification Eligibility Form (I-9 Form).

A mere allegation of CONTRACTOR/CONSULTANT's intent to use and/or current use of unauthorized workers may not be a basis to delay the COUNTY'S award of a contract to the CONTRACTOR/CONSULTANT unless such an allegation has been determined to be factual by ICE pursuant to an investigation conducted by ICE prior to the date the contract is scheduled to be awarded by the COUNTY.

Legitimate claims of the CONTRACTOR/CONSULTANT's use of unauthorized workers must be reported to both of the following agencies:

The COUNTY'S Purchasing Contracts Department at (352) 754-4020: and

ICE (Immigration and Customs Enforcement) at 1-866-DHS-2-ICE

In the event it is discovered that the CONTRACTOR/CONSULTANT's employees are not legally eligible to work in the United States, then the COUNTY may, in its sole discretion, demand that the CONTRACTOR/CONSULTANT cure this deficiency within a specified time frame, and/or immediately terminate the contract without any cost or penalty to the COUNTY, and/or debar the CONTRACTOR/CONSULTANT from bidding on all COUNTY contracts for a period up to twenty-four (24) months, and/or take any and all legal action deemed necessary and appropriate.

CONTRACTOR/CONSULTANT is required to incorporate the following IMAGE Best Practices into its business and, when practicable, incorporate verification requirements into its agreements with subcontractors:

Use the Department of Homeland Security employment eligibility verification program (E-Verify) to verify the employment eligibility of all new hires.

Use the Social Security Number Verification Service and make good faith effort to correct and verify the names and Social SECURITY numbers of the current workforce.

Establish a written hiring and employment eligibility verification policy.

Establish an internal compliance and training program related to the hiring and employment verification process, to include, but not limited to, completion of Form I-9, how to detect fraudulent use of documents in the verification process, and how to use E-Verify and the Social Security Number Verification Service.

Require the Form I-9 and E-Verify process to be conducted only by individuals who received appropriate training and include secondary review as to each employee's verification to minimize the potential for a single individual to subvert the process.

Arrange for annual Form I-9 audits by an external auditing firm or a trained employee not otherwise involved in the Form I-9 process.

Establish a procedure to report to ICE credible information of suspected criminal misconduct in the employment eligibility verification process.

Establish a program to assess subcontractors' compliance with employment eligibility verification requirements. Encourage contractors to incorporate the IMAGE Best Practices contained in this Article and, when practicable, incorporate the verification requirements in subcontractor agreements.

Establish a protocol for responding to letters received from Federal and State government agencies indicating that there is a discrepancy between the agency's information and the information provided by the employer or employee; for example, "no match" letters received from the Social Security Administration.

Establish a tip line mechanism (inbox, e-mail, etc.) for employees to report activity relating to the employment of unauthorized workers, and a protocol for responding to employee tips.

Establish and maintain appropriate policies, practices, and safeguards against use of the verification process for unlawful discrimination, and to ensure that U.S. Citizens and authorized workers do not face discrimination with respect to hiring, firing, recruitment or referral for a fee because of citizenship status or national origin.

Maintain copies of any documents accepted as proof of identify and/or employment authorization for all new hires.

SECTION 25. INTERPRETATION

This Agreement shall not be construed for or against any party hereto, without regard to which party is wholly or partly responsible for its drafting.

SECTION 26. Attachments:

Exhibit "A" Scope of Services

Exhibit "B" Compensation and Method of Payment

SECTION 27. LIMITATION OF DAMAGES

NEITHER COUNTY NOR PROFESSIONAL SHALL BE LIABLE TO THE OTHER FOR ANY PUNITIVE, EXEMPLARY, SPECIAL, INCIDENTAL, INDIRECT OR CONSEQUENTIAL DAMAGES, WHETHER FORESEEN OR KNOWN IN ADVANCE BY EITHER PARTY, WHETHER BASED IN CONTRACT, WARRANTY, TORT OR OTHER LEGAL THEORY, INCLUDING BUT NOT LIMITED TO LOSS OF PROFIT, REVENUE, FINANCING, FUNDING, BONDING, USE, PRODUCTIVITY OR EFFICIENCY, BUSINESS, EQUIPMENT OR FACILITY INTERRUPTION, INEFFICIENCY OR SHUTDOWN, AND DAMAGE TO BUSINESS REPUTATION. THE TOTAL AND AGGREGATE LIABILITY OF PROFESSIONAL FOR ANY AND ALL CLAIMS, LOSSES, LIABILITIES, DAMAGES, JUDGMENTS AND AWARDS ARISING OUT OF OR RELATED TO ITS SERVICES OR THIS AGREEMENT SHALL BE LIMITED TO THE GREATER OF THE APPLICABLE INSURANCE LIMITS REQUIRED TO BE MAINTAINED BY PROFESSIONAL UNDER THIS AGREEMENT OR \$5,000,000. This limitation shall not apply to claims arising under the Indemnity paragraph contain in this agreement.

2. SUPPLEMENTARY CONDITIONS FOR STATE REQUIREMENTS

2.1. Community Planning Technical Assistance (CPTA) Grant Agreement, State of Florida, Department of Economic Opportunity

2.2. PROTECTION OF TRADE SECRETS OR OTHER CONFIDENTIAL INFORMATION:

- A. If the Contractor considers any portion of materials made or received in the course of performing the Contract (“contract-related materials”) to be trade secret under section 812.081, Florida Statutes, or otherwise confidential under Florida or federal law, the Contractor must clearly designate that portion of the materials as “confidential” when submitted to Hernando County.
- B. If Hernando County receives a public records request for contract-related materials designated by the Contractor as “confidential,” Hernando County will provide only the portions of the contract-related materials not designated as “confidential.” If the requester asserts a right to examine contract-related materials designated as “confidential,” Hernando County will notify the Contractor. The Contractor will be responsible for responding to and resolving all claims for access to contract-related materials it has designated “confidential.”
- C. If Hernando County is served with a request for discovery of contract-related materials designated “confidential,” Hernando County will promptly notify the Contractor about the request. The Contractor will be responsible for filing the appropriate motion or objection in response to the request for discovery. Hernando County will provide materials designated “confidential” only if Respondent fails to take appropriate action, within timeframes established by statute and court rule, to protect the materials designated as “confidential” from disclosure.
- D. The Contractor shall protect, defend, and indemnify Hernando County for claims, costs, fines, and attorney’s fees arising from or relating to its designation of contract-related materials as “confidential.”

2.3. RETENTION OF RECORDS

The Contractor shall retain sufficient documentation to substantiate claims for payment under the Contract, and all other records made in relation to the Contract, for five (5) years after expiration or termination of the Contract.

2.4. AUDIT AND INSPECTION

The Contractor shall permit Hernando County’s authorized representatives to inspect all work, materials, payrolls, records; and to audit the books, records and accounts pertaining to the financing and development of the Project.

2.5. EQUAL EMPLOYMENT OPPORTUNITY

In connection with the carrying out of any project, the Contractor shall not discriminate against any employee or applicant for employment because of race, age, creed, color, sex or national origin. The

Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, age, creed, color, sex, or national origin. Such action shall include, but not be limited to, the following: Employment upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor shall provide a harassment-free workplace, with any allegation of harassment to be given priority attention and action.

The Contractor shall insert the foregoing provision modified only to show the particular contractual relationship in all its contracts in connection with the development or operation of the Project, except contracts for standard commercial supplies or raw materials, and shall require all such contractors to insert a similar provision in all subcontracts, except subcontracts for standard commercial supplies or raw materials. When the Project involves installation, construction, demolition, removal, site improvement, or similar work, the Contractor shall post, in conspicuous places available to employees and applicants for employment for Project work, notices to be provided by Hernando County setting forth the provisions of the nondiscrimination clause.

2.6. PROHIBITED INTERESTS

- A. Hernando County shall not enter into a contract or arrangement in connection with the Project or any property included or planned to be included in the Project, with any officer, director or employee of Hernando county, or any business entity of which the officer, director or employee or the officer's, director's or employee's spouse or child is an officer, partner, director, or proprietor or in which such officer, director or employee or the officer's, director's or employee's spouse or child, or any combination of them, has a material interest.
1. "Material Interest" means direct or indirect ownership of more than 5% of the total assets or capital stock of any business entity.
 2. Hernando County shall not enter into any contract or arrangement in connection with the Project or any property included or planned to be included in the Project, with any person or entity who was represented before Hernando County by any person who at any time during the immediately preceding two (2) years was an officer, director or employee of Hernando County.
 3. The provisions of this subsection shall not be applicable to any agreement between Hernando County and its fiscal depositories, any agreement between Hernando County and an agency of state government.

2.7. INTEREST OF MEMBERS OF, OR DELEGATES TO, CONGRESS OR LEGISLATURE

No member or delegate to the Congress of the United States, or the State of Florida legislature, shall be admitted to any share or part of the Agreement or any benefit arising therefrom.

2.8. MISCELLANEOUS PROVISIONS

- A. Hernando County Not Obligated to Third Parties

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

B. Contractual Indemnity

1. The contractual indemnity shall be controlled by Section 20 of the Professional Services Agreement, Contract No. 23-PSG00197/CR, which states: PROFESSIONAL shall indemnify and hold harmless the COUNTY and its authorized agents and employees from liabilities, damages, losses, and costs, including, but not limited to, reasonable attorneys' fees, to the extent caused by the negligence, recklessness, or intentionally wrongful conduct of PROFESSIONAL and other persons employed or utilized by PROFESSIONAL in the performance of the contract. Nothing in this Agreement shall be construed as a waiver by the Contractor of any sovereign immunity protections that may be provided by Section 768.28, Florida Statutes.

2.9. RESTRICTIONS ON LOB BYING-STATE

- A. Contractors shall ensure compliance with Section 11.062, FS and Section 216.347, FS. The Contractor shall not, in connection with this or any other agreement with the State, directly or indirectly
 1. offer, confer, or agree to confer any pecuniary benefit on anyone as consideration for any State officer or employee's decision, opinion recommendation, vote, other exercise of discretion, or violation of a known legal duty, or
 2. offer, give, or agree to give to anyone any gratuity for the benefit of, or at the direction or request of, any State officer or employee. For purposes of clause (13.2), "gratuity" means any payment of more than nominal monetary value in the form of cash, travel, entertainment, gifts, meals, lodging, loans, subscriptions, advances, deposits of money, services, employment, or contracts of any kind. Upon request of FDOT's Inspector General, or other authorized State official, the Contractor shall provide any type of information the Inspector General deems relevant to the Contractor's integrity or responsibility. Such information may include, but shall not be limited to, the Contractor's business or financial records, documents, or files of any type or form that refer to or relate to the Contract. The Contractor shall retain such records for the longer of
 - a. three years after the expiration of the Contract or
 - b. the period required by the General Records Schedules maintained by the Florida Department of State. (available at: <http://dos.myflorida.com/library-archives/records-management/general-records-schedules/>). The Contractor agrees to reimburse the State for the reasonable costs of investigation incurred by the Inspector General or other authorized State official for investigations of the Contractor's compliance with the terms of this or any other agreement between the Contractor and the State which

results in the suspension or debarment of the Contractor. Such costs shall include, but shall not be limited to: salaries of investigators, including overtime; travel and lodging expenses; and expert witness and documentary fees. The Contractor shall not be responsible for any costs of investigations that do not result in the Contractor's suspension or debarment.

2.10. RESTRICTIONS, PROHIBITS, CONTROLS, AND LABOR PROVISIONS

During the performance of this Contract, Hernando County requires the following provisions to be included in each contract and subcontract entered into pursuant to this Contract.

- A. A person or affiliate who has been placed on the convicted vendor list following a conviction for a public entity crime may not submit a bid on a contract to provide any goods or services to a public entity, may not submit a bid on a contract with a public entity for the construction or repair of a public building or public work, may not submit bids on leases or real property to a public entity, may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with any public entity, and may not transact business with any public entity in excess of the threshold amount provided in Section 287.017, Florida Statutes for CATEGORY TWO for a period of 36 months from the date of being placed on the convicted vendor list.
- B. In accordance with Section 287.134, Florida Statutes, an entity or affiliate who has been placed on the discriminatory vendor list may not submit a bid on a contract to provide any goods or services to a public entity, may not submit a bid on a contract with a public entity for the construction or repair of a public building or public work, may not submit bids on leases of real property to a public entity, may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with any public entity, and may not transact business with any public entity.
- C. An entity or affiliate who has had its Certificate of Qualification suspended, revoked, denied or have further been determined by Hernando County to be a non-responsible contractor may not submit a bid or perform work for the construction or repair of a public building or public work on a contract with Hernando County.
- D. Neither Hernando County nor any of its contractors or their subcontractors shall enter into any contract, subcontract or arrangement in connection with the Project or any property included or planned to be included in the Project in which any member, officer or employee of Hernando County or the locality during tenure or for two (2) years thereafter has any interest, direct or indirect. If any such present or former member, officer or employee involuntarily acquires or had acquired prior to the beginning of tenure any such interest, and if such interest is immediately disclosed to Hernando County, Hernando County, with prior approval of Florida Department of Economic Opportunity, may waive the prohibition contained in this paragraph provided that any such present member, officer or employee shall not participate in any action

by Hernando County or the locality relating to such contract, subcontract or arrangement. Hernando County shall insert in all contracts entered into in connection with the Project or any property included or planned to be included in any Project, and shall require its contractors to insert in each of their subcontracts, the following provision:

1. *“No member, officer or employee of Hernando County or of the locality during his tenure or for 2 years thereafter shall have any interest, direct or indirect, in this contract or the proceeds thereof.”*

- E. The provisions of this paragraph shall not be applicable to any agreement between Hernando County and its fiscal depositories or to any agreement for utility services the rates for which are fixed or controlled by a governmental agency.

2.11. ENVIRONMENTAL REGULATIONS

Execution of this Agreement constitutes a certification by the Contractor that the Project will be carried out in conformance with all applicable environmental regulations including the securing of any applicable permits. The Contractor will be solely responsible for any liability in the event of non-compliance with applicable environmental regulations, including the securing of any applicable permits, and will reimburse Hernando County for any loss incurred in connection therewith.

2.12. BUSINESS WITH PUBLIC ENTITIES

- A. Contractor is aware of and understands the provisions of s. 287.133(2)(a), F.S., and 287.134(2)(a), F.S. As required by s. 287.135(5), F.S., Contractor certifies that it is not:
1. listed on the Scrutinized Companies that Boycott Israel List, created pursuant to s. 215.4725, F.S.;
 2. engaged in a boycott of Israel;
 3. listed on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, created pursuant to s. 215.473, F.S.; or
 4. engaged in business operations in Cuba or Syria.
- B. Hernando County may immediately terminate this Agreement if Contractor submits a false certification as to the above, or if Contractor is placed on the Scrutinized Companies that Boycott Israel List, engages in a boycott of Israel, is placed on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, or has engaged in business operations in Cuba or Syria.

2.13. PATENTS, COPYRIGHTS, AND ROYALTIES

All legal title and every right, interest, claim or demand of any kinds, in and to any patent, trademark or copyright, or application for the same, or any other intellectual property right to, the work developed or produced under or in connection with this Agreement, is the exclusive property of DEO to be granted to

and vested in the Florida Department of State for the use and benefit of the state; and no person, firm or corporation shall be entitled to use the same without the written consent of the Florida Department of State.

2.14. NOTIFICATIONS OF INSTANCES OF FRAUD

Upon discovery, Contractor shall report all known or suspected instances of Contractor, or Contractor's agents, subcontractors or employees, operational fraud or criminal activities to to Hernando County's Agreement Manager in writing within 24 chronological hours.

2.15. ASSIGNMENTS AND SUBCONTRACTS

Contractor shall provide a monthly Minority and Service-Disabled Veteran Business Enterprise Report for each invoice period summarizing the participation of certified and non-certified minority and service-disabled veteran contractors/material suppliers for that period, and project to date. The report shall include the names, addresses and dollar amount of each certified and non-certified Minority Business Enterprise and Service-Disabled Veteran Enterprise participant.

2.16. LITIGATION, INVESTIGATIONS, ARBITRATION, OR ADMINISTRATIVE PROCEEDINGS

The contractor certifies that it, its principals and agents, are not engaged in any civil or criminal litigation investigations, arbitration, or administrative proceedings relating to or affecting their ability to perform under this Agreement.

2.17. PUBLIC RECORDS ACCESS REQUIREMENTS

- A. If the Contractor is acting on behalf of the Department in its performance of services under the Contract, the Contractor must allow public access to all documents, papers, letters, or other material, regardless of the physical form, characteristics, or means of transmission, made or received by the Contractor in conjunction with the Contract (Public Records), unless the Public Records are exempt from public access pursuant to section 24(a) of Article I of the Florida Constitution or section 119.07(1), F.S.
- B. The Department may unilaterally terminate the Contract if the Contractor refuses to allow public access to Public Records as required by law.

2.18. ADDITIONAL PUBLIC RECORDS DUTIES of Section 119.0701, F.S.

- A. If the Contractor is a "contractor" as defined in section 119.0701(1)(a), F.S., the Contractor shall:
 - 1. Keep and maintain Public Records required by the Department to perform the service.
 - 2. Upon request, provide the Department with a copy of requested Public Records or allow the Public Records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in chapter 119, F.S., or as otherwise provided by law.
 - 3. Ensure that Public Records that are exempt or confidential and exempt from Public Records disclosure requirements are not disclosed except as authorized by law for the duration of

the Contract term and following completion of the Contract if the Contractor does not transfer the Public Records to the Department.

4. Upon completion of the Contract, transfer, at no cost, to the Department all Public Records in possession of the Contractor or keep and maintain Public Records required by the Department to perform the service. If the Contractor transfers all Public Records to the Department upon completion of the Contract, the Contractor shall destroy any duplicate Public Records that are exempt or confidential and exempt from Public Records disclosure requirements. If the Contractor keeps and maintains Public Records upon completion of the Contract, the Contractor shall meet all applicable requirements for retaining Public Records. All Public Records _stored electronically must be provided to the Department, upon request from the Department's custodian of Public Records, in a format specified by the Department as compatible with the information technology systems of the Department. These formatting requirements are satisfied by using the data formats as authorized in the Contract or Microsoft Word, Outlook, Adobe, or Excel, and any software formats the Contractor is authorized to access.
5. If the Contractor has questions regarding the application of Chapter 119, F.S., to the Contractor's duty to provide public records relating to the contract,
6. CONTACT PUBLIC RECORDS AT: Telephone: (850) 413-3149; Email: PublicRecordsInquiry@myfloridacfo.com; Mailing Address: The Department of Financial Services, Office of the General Counsel, Public Records 200 E. Gaines Street, Larson Building Tallahassee, Florida 32399-0311A Contractor who fails to provide the Public Records to the Department within a reasonable time may be subject to penalties under section 119.10, F.S.

2.19. SUPPLEMENTARY CONDITIONS FOR STATE REQUIREMENTS SIGNATURE:

By signing my name below, I certify that I have read the above information. My signature also certifies my understanding and agreement with the above terms and conditions.



Authorized Signature

John Honker

Name (Printed)

Magellan CEO

Title (Printed)

3/8/23

Date

3. Signatures

IN WITNESS WHEREOF, the parties hereto have caused these present to be executed, the day and year first above written.

Signature: *[Signature]* Date: 3/8/23
Magellan Advisors, LLC

Signature: *[Signature]* Date: 3/28/2023
John Allocco, Chairman
BOARD OF COUNTY
COMMISSIONERSHERNANDO COUNTY, FLORIDA



ATTEST: *Heidi Kuyper, D.C.* Date: 3/28/2023
fn Douglas A. Chorvat, Jr., Clerk of Circuit Court and Comptroller

Approved as to Form
and Legal Sufficiency
By: *Victoria Anderson*
County Attorney's Office