

PROFESSIONAL SERVICES AGREEMENT

1. Agreement. This agreement is made between **Deep East Texas Council of Governments (DETCOG)**, a Regional Planning Commission authorized by Chapter 391 of the Texas Local Government Code, with offices at 1405 Kurth Drive, Lufkin, TX 75904 (“Contractor”), and **Sabine County, Texas** (“County) for implementation and compliance associated with the “Broadband Infrastructure Build Out in Sabine County, TX” project with the National Telecommunication and Infrastructure Administration (NTIA) under the Broadband Infrastructure Program (“BIP”). Kinetic by Windstream (“Kinetic”), will be the internet services provider (ISP) for the project.

2. Services. Contractor will provide for County the following services listed in Exhibit A.

3. Term. The term of this agreement is for two years beginning from the agreed date of first service; May 25, 2022. This term shall not release contractor from completing this service agreement beyond May 24, 2024 if the project is not complete.

4. Payment for Services. The total cost to Sabine County, TX for this initiative is \$204,000, which will be invoiced in twenty-four (24) equal payments of \$8,500 monthly which shall not be paid from Sabine County funds but from the ARPA fiscal recovery fund allotted to the County for this type project or improvement. Postage and miscellaneous expenses incurred by Contractor in the course of providing services are considered normal costs of doing business and will not be separately billed to County. In addition, work related to “As-Built Diagrams” will be invoiced as incurred, monthly, at \$0.15 per linear foot. As-built diagrams are optional. Finally, any additional work for “Other Grant Compliance and Support Tasks” beyond the included ten (10) hours, will be invoiced as incurred, monthly, at \$230 hourly, provided that the additional work shall not exceed ten hours. A complete cost statement is included in Exhibit B.

5. Staff. Neither the Contractor nor Contractor’s staff is or shall be deemed to be employed by County. County is hereby contracting with Contractor for the services described in Exhibit A. Contractor shall take appropriate measures to ensure that Contractor’s staff does not breach this section.

6. Insurance. The insurance required by this Section shall be written for not less than the limits of liability specified therein or required by law, whichever is greater. Coverages under such insurance shall be maintained without interruption from the date the Contractor starts performing the activities in EXHIBIT A.

a. Liability Insurance. Prior to starting performance of EXHIBIT A, Contractor shall secure such liability insurance as shall protect from and against claims and liabilities arising out of bodily injury (including death) or property damage that may result from the performance of the work performed in EXHIBIT A. Such insurance shall include:

Commercial General Liability Insurance. Coverage shall be provided on an occurrence basis including premises-operations, products, contractual, broad form property damage, with coverage of at least \$1,000,000 Each Occurrence Limit.

Business Automobile Liability Insurance. Coverage shall include owned, hired, and non-owned with a combined single limit of not less than \$60,000 for bodily injury (including death) and property damage of not less than \$25,000 for each accident.

Professional Liability Insurance. Coverage shall have minimum limits of not less than \$1,000,000 per occurrence.

7.Collection. If this Account is placed in the hands of an attorney or collection agency for collections, or in the even of any litigation in connection with the execution, interpretation, performance or enforcement of this Agreement, the prevailing party shall be entitled to reimbursement by the other party of all cost and reasonable attorney's fees incurred by the prevailing party at trial or any appeal, or in connection with any proceeding before a U.S. Bankruptcy Court or in collecting on or enforcing any such decision or judgment.

8.Applicable Law. Contractor shall comply with all applicable laws in performing services. This agreement shall be constructed in accordance with the laws of the State of Texas.

9.Enforceability. If any provision of this Agreement shall be held to be invalid, illegal or unenforceable, then the validity, legality and enforceability of the remaining provisions shall in no way be affected or impaired thereby.

10.Notices. Legal notices between the parties shall be mailed postage prepaid via certified mail, return receipt requested to the last known business address or the intended receiving party.

11.Assignment. Either party may not assign this agreement without the prior written consent of the other party. Except for the prohibition on assignment contained in the proceeding sentence, this agreement shall be binding upon and inure to the benefit of the successors and assigns of the parties hereto.

12.Termination. Notwithstanding any other provision hereof, this Agreement may be terminated by either party on thirty (30) days written notice to the other party. No termination shall alter or affect any liabilities accruing or existing prior to the time of termination. If Contractor terminates this agreement a refund of the monies paid shall be paid to the County.

13.Entire Agreement. Each party acknowledges that it has read this Agreement, which includes the Exhibits and any Addenda, agrees to be bound by its terms and conditions, and further agrees that it is the complete and exclusive statement of the agreement between the parties, which supersedes, and merges all prior proposals and understandings relating to the subject matter of this Agreement. In the event of a conflict in the provisions of any attachments hereto and the provisions set forth in this Agreement, the provisions of such attachments shall govern. This agreement cannot be modified or altered except by a written instrument duly executed by both parties.

14. Federal Participation Disclosure. This project will be partially funded with Federal funds from the NTIA and therefore is subject to the Federal laws and regulations associated with that program.

Signed by authorized representatives of the parties on the dates written below.

COUNTY:

By:

Title:

Date:

David Powell
County Judge
5/23/2022

CONTRACTOR:

By:

Title:

Date:

Linnie Hunt
PETCOG Executive Director
5-22-2022

Exhibit A
SCOPE OF WORK

Contractor will perform the following tasks for Sabine County for this Scope of Work, in support of the recently received NTIA BIP grant.

1. In collaboration with its sub-contractors, Magellan Advisors and MS Consulting, the Contractor will review and verify all work performed and documents required to be submitted under the Grant. This includes reviewing engineering documents prepared by Kinetic, and assuring all non-filed work performed by Kinetic, in engineering, environmental and construction efforts are performed to specification, at or exceeding specified quality metrics. Field work must be documented by Contractor and Kinetic. The Contractor shall review the progress and results of those efforts.
2. Coordinate activities with County and Kinetic, and delegate administrative, review, and scheduling activities to Magellan as mutually agreed.
3. Prior to submission to NTIA, the Contractor will review and assure required semi-annual and annual federal program reports, expenditure reports, and compliance documents. With County's authorization, Contractor will establish, or will support County's establishment of, an account for County's use on the grant with Treasury's Automated Standard Application for Payments (ASAP) system. Contractor will define procedures to assure that all invoices paid by County are regularly and timely submitted to ASAP for reimbursement. Magellan will support Contractor, providing good practice standards, process guidance, document storage and retention, and, in necessary, guidance and support for County submission of required documents to NTIA.

This section outlines the expected work process in performing the seventeen (17) task descriptions that were outlined in Exhibit A.

Task 1: Project Management Conference

The Contractor will coordinate the project management conferences with NTIA grant office to communicate all obligations assumed by County under the grant award. Key participants will be required to attend, especially County's Authorized Organizational Representative (AOR), lead financial coordinator, members of Kinetic's engineering and construction team, and County's Legal Counsel. Magellan and Contractor shall offer interpretations, support questions, and be a primary point of contact for the County through the entire grant program. Magellan and Contractor will document the conference.

Task 2: Property Trust Relationship, Public Notice Filings for Grant Property

County may be required to pledge primary liens to NTIA on any assets developed, deployed, procured, or otherwise acquired using federal funds. These assets must remain in place, dedicated to the intended purpose of the grant, for the useful life of the assets. Assets cannot be sold, title transferred, or otherwise disposed, without the expressed written consent of NTIA. To ensure that,

County will, with the Contractor's assistance, commit to file Forms UCCI with Texas Secretary of State, or equivalent office, committing to a primary lien on all assets, naming NTIA as lienholder. The filing comes with small fee, typically. If County performs to the grant program and meets all compliance obligations, there is no downside to the UCCI filing. The UCCI forms will be publicly available. Details within the UCCI include detailed descriptions of the assets, models and serial numbers, locations, maps of fiber paths, etc. Legal counsel will have to review and attest. Kinetic will take a primary role in preparing supporting documents and will be required to attest with statements of completeness accuracy, and non-omission. Contractor's sub-contractor, Magellan will review draft prepared UCCI forms, coordinating with County, as filing entity. Magellan will complete preparation of all forms, coordinating filings with Contractor and County. If and as appropriate, if there are similar Texas obligations, Magellan will prepare final forms with information provided by County and Kinetic. Contractor will review and ensure County's timely and properly performs all tasks required by the grantor.

Task 3: Land, Easements, and Rights of Way

The Contractor will develop written guidance on identifying classes of possible land, easements, and rights of way concerns. Once design and engineering phase is complete, Contractor and Magellan will coordinate with County and Kinetic to identify and possible encumbrances that might interfere with the construction, intended use, operations, or maintenance of the project. Contractor and Magellan will advise and suggest mitigations or alternatives, for County's decision. Once attested as complete by Contractor, County and Kinetic, Magellan will prepare a final list of any remaining encumbrances, if any. Magellan will coordinate acceptance of final list with NTIA.

Task 4: Eminent Domain

The Contractor will develop and provide written guidance to County on the required limited, minimal use of eminent domain powers in connection with the project. Any eminent domain proposals will require the prior written approval of the NTIA grants officer prior to any actions. Once attested as complete by Contractor, County and Kinetic, the Contractor will coordinate acceptance of final list with NTIA.

Task 5: Inspection and Testing of Materials

Magellan and Contractor will develop and provide written guidance to County and Kinetic on the required inspection obligations and quality checks that must be performed on all materials prior to installation. Kinetic will coordinate re-ordering of defective or deficient materials, either those Kinetic procured directly, or those that County purchased for the project. Kinetic will be asked to prepare a report, outlining the results of the inspections, any remediations, and certifying completeness, accuracy, and non-omission of the facts. There will be multiple inspections and reports. Contractor, and Kinetic will be responsible for performing inspections and documenting the results of the inspections. Magellan can review the documented results and make suggestions for amendment. Magellan will maintain a file of final inspection results.

Task 6: Energy Efficiency

County and Contractor are responsible for assuring the use of the most sustainable, energy efficient design principles to minimize energy costs and pollution and to optimize life cycle costs related to

construction. Magellan will develop and provide written guidance to County and Kinetic on these principles. County will be responsible for final decisions regarding energy efficiency.

Task 7: Requirements During Construction

The Contractor will develop and provide written guidance to County, and Kinetic for reporting obligations during construction.

1. County, Contractor, and Kinetic are responsible for constructing a complete project plan and specifications. These should be forecast with tasks defined at least quarterly, if not more frequently, and provide specifics on metrics of the construction project, including number of fiber miles installed, number of households available for connections, number of households connected, and any other program performance metrics.
2. These plans, along with quarterly reports, will serve as the basis for program progress reports, to be filed quarterly.
3. Based on these attested program reports and financial reports provided from County's system, Magellan will prepare quarterly Program Progress and Expenditure Reports for Contractor's and County's review.
4. These should be approved by Sabine County and Contractor and signed by County, submission of which is mechanical. County can perform by submission, or County can delegate responsibility to Contractor and/or Magellan.

Magellan and Contractor will develop and provide written guidance on supporting documentation required for invoice processing by County, consistent with County's and Texas' procurement guidelines.

1. County will implement these processes for making and tracking payments to Kinetic and for other contracted services, including Contractors.

Permitting and Inspections:

2. Kinetic is responsible for obtaining all necessary permits.
3. Kinetic is responsible for construction inspection, and then providing copies of sufficient inspection certificates to County and Contractor.
4. Magellan can review all permits for sufficiency.

Task 8: Recipient and Contractor Compliance with Applicable Requirements

Contractor will develop and provide written guidance to County on requirements with which all sub-recipients and contractors must comply, based upon NTIA award documents, including CD-450 and other documents. Contractor and Sabine County will be responsible for ensuring that

contracts with all sub-recipients and contractors include these supporting requirements. The Contractor can review the proposed final contracts for form on this topic. Assuring performance of these contract obligations will remain with Contractor and County's procurement and/or contract management departments.

Task 9: Environmental Assessment

County and Kinetic may only expend funds on engineering design, permitting, and preliminary environmental, historical, and cultural reviews prior to NTIA approving County's project for environmental sufficiency. Magellan will develop and provide written guidance to County related to identifying an environmental firm to complete activities to secure a Record of Consideration (REC), a Finding of No Significant Impact (FONSI), or a Record of Decision (ROD) consistent with the guidance of National Environmental Policy Act of 1969. These must be obtained, filed with NTIA, and approved by the Grants Officer before construction may begin.

In addition, there may be required consultation with Native American tribes under Section 106 of National Historic Preservation Act (NHPA), and/or consultations with State Historic Preservation Office (SHPO), and Tribal Historic Preservation Office (THPO), U.S. Fish and Wildlife Service (FWS), or other parties. Contractor will oversee this process.

Once an environmental contractor is selected and contracted by County, Magellan will support coordination of the process of completing all environmental tasks. In addition, Magellan will coordinate communications with NTIA to complete environmental tasks. Magellan will create an archive will all related documents and manage submission to NTIA. Contractor will oversee this process.

Magellan will support preparation of the six-month expenditure plan and reporting to NTIA. Written approval by the Grants Officer of this report is required prior to significant drawdowns through ASAP.

Task 10: National Historic Preservation Act

County and Kinetic may only expend funds on engineering design, permitting, and preliminary environmental, historical, and cultural reviews prior to NTIA approving County's project for environmental sufficiency. There may be required consultation with Native American tribes under Section 106 of National Historic Preservation Act (NHPA), and/or consultations with State Historic Preservation Office (SHPO), and Tribal Historic Preservation Office (THPO), U.S. Fish and Wildlife Service (FWS), or state or local parties.

Once an archaeological, architectural history, or traditional cultural consultant is selected and contracted by County, Magellan will support coordination of the process of all NHPA tasks. In addition, Magellan will support Contractor in coordinating communications with NTIA to complete environmental tasks. Magellan will create an archive will all related documents and manage submission to NTIA.

Magellan will support preparation of the six-month expenditure plan and reporting to NTIA. Written approval by the Grants Officer of this report is required prior to significant drawdowns through ASAP.

Task 11: Scheduling Inspection for Final Acceptance

Magellan and Contractor will support coordination of final acceptance and reviews of completed work with County and Kinetic. Representatives of the County, responsible and/or delegated Kinetic personnel, the NTIA Grants Officer, and the Contractor will attend the inspection. Magellan will prepare Final Acceptance Report for County.

Task 12: Domestic Preference for Procurements (“Buy American”)

Magellan and Contractor will develop and provide written guidance to County on requirements for “Buy American” with which all sub-recipients and contractors must comply. The County will be responsible for ensuring that contracts with all sub-recipients and contractors including these supporting requirements. Magellan can review the proposed contracts for form on this topic. Assuring Performance of these contract obligations will remain with County’s procurement and/or contract management departments.

Task 13: Contracting With SBE, MBE, WBE, and Labor Surplus Area Firms

The Contractor will develop and provide written guidance to County on good process steps for assuring sufficient work is awarded, through competitive contract, to Small Business, Minority Business, Women’s Business, and Labor Surplus Areas firms receive opportunities for work.

Task 14: Open Network Requirements

Magellan and Contractor will develop and provide written guidance to County on requirements for open network. These requirements will require only middle-mile networks (not last mile networks) to:

1. Allow Interconnection at any reasonable point along the middle mile paths, as requested by third party.
2. Negotiate in good faith with any bona fide request from a qualified entity for interconnections.
3. Negotiate in good faith with any bona fide request from a qualified entity for obtaining wholesale broadband service and non-discriminatory, fair pricing.

Magellan can develop sample contracts, at no additional cost to County.

Task 15: Prohibition on Use for Covered Communications Equipment or Services

The Contractor will develop and provide written guidance to County on obligations specifying that grant funds cannot be used to support covered communications equipment or services as defined in the named Act. There may also be prohibitions on certain telecommunications, video surveillance, or facial recognition capabilities, depending on local law.

Task 16: Prevention of Waste, Fraud, and Abuse

The Contractor will coordinate periodic training sessions for any key project personnel on prevention of fraud, waste, and abuse. Training content for sessions will be provided by U.S. Government. Contractor and Sub-Contractor will deliver the training or provide train-the-trainer activities to County personnel. Magellan will maintain a master attendance roster.

Task 17: Protection of Whistleblowers

The Contractor will develop and provide written guidance to County on requirements for whistleblower protection, with which all sub-recipients and contractors must comply. The County will be responsible for ensuring that contracts with all sub-recipients and contractors including these supporting requirements. The Contractor can review the proposed contracts for form on this topic. Assuring performance of these contract obligations will remain with County's procurement and/or contract management departments.

As-Built Diagrams

Contractor's subcontractor, Magellan, will collect electronic copies of all as-built diagrams from Kinetic. If and as requested, Magellan can review and mark up as-builts, as required, providing a final, authoritative version of as-builts to be provided to County in ESRI GIS formats.

Post-Grant Compliance

After the 24-month performance period, there may be grant project closeout tasks related to NTIA auditing requirements that were not listed in Exhibit A, above. Ten (10) hours of effort will be required, which is included in the price. Should additional time be required, upon County approval, Contractor will bill any additional hours at \$230.00 hourly, not to exceed ten (10) additional hours.

Exhibit B
COST STATEMENT

The total cost to Sabine County, TX for this initiative is \$204,000, which will be invoiced in twenty-four (24) equal payments of \$8,500 monthly.

In addition, work related to "As-Built Diagrams" will be invoiced as incurred, monthly, at \$0.15 per linear foot. As-built diagrams are optional.

Finally, any additional work for "Other Grant Compliance and Support Tasks" beyond the included ten (10) hours, will be invoiced as incurred, monthly, at \$230 hourly; Not to exceed ten (10) additional hours.

Cost Table

Task/Description	Unit	Unit Cost	Quantity	Total Cost
NTIA BIS COMPLIANCE-EXHIBIT A	Monthly	\$8,500	24	\$204,000

Optional Services

OPTIONAL AS-BUILT DIAGRAMS (ESTIMATED PER FOOT COST)	Linear Feet	\$0.15	100 miles (528,000)	\$79,200
POST-GRANT COMPLIANCE (IF REQUIRED)	Hourly	\$230	TBD	TBD