

## August 22, 2016 Regular Meeting

### 1. Meeting Agenda

Documents:

[CC160822\\_AGENDA.PDF](#)

### 2. Item 3A1

Second Reading and Adoption of Ordinance No. 408

Documents:

[CC160822\\_ITEM 3A1.PDF](#)

### 3. Item 3B2

Warrant Register No. 578

Documents:

[CC160822\\_ITEM 3B2.PDF](#)

### 4. Item 3B3

Amendment to Agreement with Malibu Yellow Cab for Dial-A-Ride Services

Documents:

[CC160822\\_ITEM 3B3.PDF](#)

### 5. Item 3B4

Professional Services Agreement with Stone Environmental, Inc.

Documents:

[CC160822\\_ITEM 3B4.PDF](#)

### 6. Item 3B5

Professional Services Agreement with Fugro Consultants, Inc.

Documents:

[CC160822\\_ITEM 3B5.PDF](#)

### 7. Item 3B6

Professional Services Agreement with Swag Corporation (Gates Security)

Documents:

[CC160822\\_ITEM 3B6.PDF](#)

### 8. Item 4A

Amendments to Malibu Municipal Code Chapter 5.34 (Special Events)

Documents:

[CC160822\\_ITEM 4A.PDF](#)

9. Item 6A  
Power Purchase Agreement with PFMG Solar

Documents:

[CC160822\\_ITEM 6A.PDF](#)

10. Item 7A  
Ban on All Expanded Polystyrene Products (Mayor Pro Tem Peak)

Documents:

[CC160822\\_ITEM 7A.PDF](#)

**Malibu City Council**  
**Regular Meeting Agenda**

**Monday, August 22, 2016**

**6:30 P.M. – REGULAR CITY COUNCIL MEETING**

**City Hall – Council Chambers  
23825 Stuart Ranch Road**

**Six-thirty p.m. Regular Session**

*Public Hearings will begin at 6:30 p.m., or as soon thereafter as possible, but in no event later than 7:30 p.m.*

Call to Order - Mayor

Roll Call - Recording Secretary

Pledge of Allegiance

Approval of Agenda

Report on Posting of Agenda – August 11, 2016

**1. Ceremonial/Presentations**

- A. Presentation of Proclamation Declaring September 2016 “SurfAid September”
- B. Presentation of Commendation to Mike Mulligan in Recognition of his California Coaches Association 2015-2016 Coach of the Year Award
- C. Staff Update on the Civic Center Wastewater Treatment Facility Project

**2. Written and Oral Communications from the Public**

- A. Communications from the Public concerning matters which are not on the agenda but for which the City Council has subject matter jurisdiction. City Council may not act on these matters except to refer the matters to staff or schedule the matters for a future agenda.
- B. Commission / Committee / City Manager Updates
- C. City Council Subcommittee reports / Mayor and Councilmember meeting attendance, reports and inquiries

**3. Consent Calendar**

- A. Previously Discussed Items

1. Second Reading and Adoption of Ordinance No. 408

Recommended Action: Conduct second reading, unless waived, and adopt Ordinance No. 408 amending Chapter 10.08 of the Malibu Municipal Code to establish speed limits on City streets.

Staff contact: Acting City Clerk Glaser, 456-2489 ext. 228

B. New Items

1. Waive Further Reading

Recommended Action: After the City Attorney has read the title, waive full reading of ordinances considered on this agenda for introduction on first reading and/or second reading and adoption.

Staff contact: City Attorney Hogin, 456-2489 ext. 228

2. Approve Warrants

Recommended Action: Allow and approve warrant demand numbers 48191-48303 listed on the register from the General Fund and direct the City Manager to pay out the funds to each of the claimants listed in Warrant Register No. 578 in the amount of the warrant appearing opposite their names, for the purposes stated on the respective demands in a total amount of \$522,279.20. City of Malibu payroll check numbers 4688-4691 and ACH deposits were issued in the amount of \$169,887.69.

Staff contact: Assistant City Manager Soghor, 456-2489 ext. 224

3. Amendment to Agreement with Malibu Yellow Cab for Dial-A-Ride Services

Recommended Action: 1) Authorize the City Manager to execute Amendment No. 2 to the Agreement with Malibu Yellow Cab, modifying the Scope of Services for the Dial-A-Ride (DAR) program; and 2) Adopt revised City Council Policy #42, DAR Program, to amend the program hours and use restrictions.

Staff contact: City Manager Feldman, 456-2489 ext. 226

4. Professional Services Agreement with Stone Environmental, Inc.

Recommended Action: 1) Authorize the City Manager to execute a Professional Services Agreement with Stone Environmental, Inc. to provide consulting services for updates and enhancements to the City's Integrated Wastewater Information Management System; and 2) Appropriate \$163,000 from the General Fund Undesignated Reserve to Account No. 101-2010-5100 (Wastewater Management Professional Services).

Staff contact: Environmental Sustainability Director George, 456-2489 ext. 229

5. Professional Services Agreement with Fugro Consultants, Inc.

Recommended Action: Authorize the City Manager to execute a Professional Services Agreement with Fugro Consultants, Inc. for maintenance and monitoring services for the Big Rock Mesa, Malibu Road, and Calle Del Barco Landslide Assessment Districts.

Staff contact: Public Works Director Brager, 456-2489 ext. 247

6. Professional Services Agreement with Swag Corporation

Recommended Action: Authorize the City Manager to execute a Professional Services Agreement with Swag Corporation, a California Corporation doing business as Gates Security, to clear and secure Trancas Canyon Park, Equestrian Park and Las Flores Creek Park daily at sunset.

Staff contact: City Manager Feldman, 456-2489 ext. 226

4. **Ordinances and Public Hearings**

A. Amendments to Malibu Municipal Code Chapter 5.34 (Special Events)

Recommended Action: 1) After the City Attorney reads the title of the ordinance, introduce on first reading Ordinance No. 409 (Attachment 1), determining the project is categorically exempt from the California Environmental Quality Act (CEQA) and amending Malibu Municipal Code (MMC) Chapter 5.34 (Special Events); and 2) Direct staff to schedule second reading and adoption of Ordinance No. 409 for the September 13, 2016 Regular City Council meeting.

Staff contact: Planning Director Blue, 456-2489 ext. 258

5. **Old Business**

None.

6. **New Business**

A. Power Purchase Agreement with PFMG Solar

Recommended Action: Consider the terms of the Power Purchase Agreement (PPA) with PFMG Solar for the installation of solar carports at City Hall, and 1) Authorize the City Manager to execute the PPA with PFMG Solar or direct staff bring back to Council an agreement to purchase a solar carport system from Borrego Solar; or 2) Recommend that no solar power system be installed on City Hall property.

Staff contact: Environmental Sustainability Director George, 456-2489 ext. 229

**7. Council Items**

**A. Ban on All Expanded Polystyrene Products (Mayor Pro Tem Peak)**

Recommended Action: At the request of Mayor Pro Tem Peak, consider directing staff to bring back an ordinance to amend Malibu Municipal Code (MMC) Chapter 9.24 to: 1) Remove the exemption for polystyrene coolers and ice chests; 2) Expand the ban to all expanded polystyrene products, including food storage and serving products, packaging and shipping materials; and 3) Make the ban applicable to all businesses, organizations and individuals in the City of Malibu.

Staff contact: City Manager Feldman, 456-2489 ext. 226

**Adjournment**

**Future Meetings**

Monday, September 12, 2016	6:30 p.m.	Regular City Council Meeting	City Hall Council Chambers
Monday, September 26, 2016	6:30 p.m.	Regular City Council Meeting	City Hall Council Chambers
Monday, October 10, 2016	6:30 p.m.	Regular City Council Meeting	City Hall Council Chambers

**Guide to the City Council Proceedings**

**The Oral Communication** portion of the agenda is for members of the public to present items, which are not listed on the agenda but are under the subject matter jurisdiction of the City Council. No action may be taken under, except to direct staff unless the Council, by a two-thirds vote, determines that there is a need to take immediate action and that need came to the attention of the City after the posting of the agenda. Although no action may be taken, the Council and staff will follow up, at an appropriate time, on those items needing response. Each speaker is limited to three (3) minutes. Time may be surrendered by deferring one (1) minute to another speaker, not to exceed a total of eight (8) minutes. The speaker wishing to defer time must be present when the item is heard. In order to be recognized and present an item, each speaker must complete and submit to the Recording Secretary a Request to Speak form prior to the beginning of the item being announced by the Mayor (forms are available outside the Council Chambers). Speakers are taken in the order slips are submitted.

**Items in Consent Calendar Section A** have already been considered by the Council at a previous meeting where the public was invited to comment, after which a decision was made. These items are not subject to public discussion at this meeting because the vote taken at the previous meeting was final. Resolutions concerning decisions made at previous meetings are for the purpose of memorializing the decision to assure the accuracy of the findings, the prior vote, and any conditions imposed.

**Items in Consent Calendar Section B** have not been discussed previously by the Council. If discussion is desired, an item may be removed from the Consent Calendar for individual consideration. Councilmembers may indicate a negative or abstaining vote on any individual item by so declaring prior to the vote on the motion to adopt the entire Consent Calendar. Items excluded from the Consent Calendar will be taken up by the Council following the action on the Consent Calendar. The Council first will take up the items for which public speaker requests have been submitted. Public speakers shall follow the rules as set forth under Oral Communication.

**For Public Hearings** involving zoning matters the appellant and applicant will be given 15 minutes each to present their position to the City Council, including rebuttal time. All other testimony shall follow the rules as set forth under Oral Communication.

**Old Business** items have appeared on previous agendas but have either been continued or tabled to this meeting with no final action having been taken. Public comment shall follow the rules as set forth under Oral Communication.

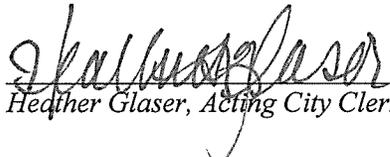
**Items in New Business** are items, which are appearing for the first time for formal action. Public comment shall follow the rules as set forth under Oral Communication.

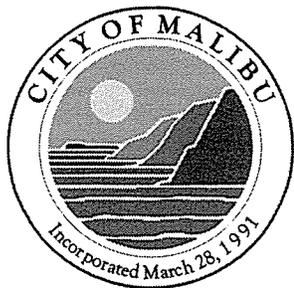
**City Council Items** are items, which individual members of the City Council may bring up for action, to propose future agenda items or to suggest future staff assignments. No new items will be taken-up after 10:30 p.m. without a two-thirds vote of the City Council.

*City Council meetings are aired live and replayed on City of Malibu Government Access Channel 3 and on the City's website at [www.malibucity.org/video](http://www.malibucity.org/video). Copies of the staff reports or other written documentation relating to each item of business described above are on file in the office of the City Clerk, Malibu City Hall, 23825 Stuart Ranch Road, Malibu, California, and are available for public inspection during regular office hours, which are 7:30 a.m. to 5:30 p.m. Monday through Thursday and 7:30 a.m. to 4:30 p.m. Friday. Written materials distributed to the City Council within 72 hours of the City Council meeting are available for public inspection immediately upon distribution in the City Clerk's office at 23825 Stuart Ranch Road, Malibu, California (Government Code Section 54957.5.b.2). Copies of staff reports and written materials may be purchased for \$0.10 per page. Pursuant to State law, this agenda was posted at least 72 hours prior to the meeting.*

*The City Hall phone number is (310) 456-2489. To contact City Hall using a telecommunication device for the deaf (TDD), please call (800) 735-2929 and a California Relay Service operator will assist you. In compliance with the Americans with Disabilities Act, if you need special assistance to participate in this meeting, please contact Environmental Sustainability Director Craig George, (310) 456-2489, ext. 229. Notification 48 hours prior to the meeting will enable the City to make reasonable arrangements to ensure accessibility to this meeting. [28 CFR 35.102-35.104 ADD Title II]. Requests for use of audio or video equipment during a Council meeting should be directed to Alex Montano at (310) 456-2489 ext. 227 or [amontano@malibucity.org](mailto:amontano@malibucity.org). Material must be submitted by 12:00 p.m. on the meeting day.*

*I hereby certify under penalty of perjury, under the laws of the State of California that the foregoing agenda was posted in accordance with the applicable legal requirements. Regular and Adjourned Regular meeting agendas may be amended up to 72 hours in advance of the meeting. Dated this 11<sup>th</sup> day of August 2016.*

  
Heather Glaser, Acting City Clerk



# Council Agenda Report

To: Mayor La Monte and the Honorable Members of the City Council

Prepared by: Heather Glaser, Acting City Clerk

Approved by: Reva Feldman, City Manager 

Date prepared: August 9, 2016 Meeting date: August 22, 2016

Subject: Second Reading and Adoption of Ordinance No. 408

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**RECOMMENDED ACTION:** Conduct second reading, unless waived, and adopt Ordinance No. 408 amending Chapter 10.08 of the Malibu Municipal Code to establish speed limits on City streets.

**FISCAL IMPACT:** None.

**DISCUSSION:** At the Regular City Council meeting on August 8, 2016, the City Council introduced on first reading Ordinance No. 408.

Ordinance No. 408 is presented to the City Council for adoption.

**ATTACHMENTS:** Ordinance No. 408

ORDINANCE NO. 408

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MALIBU  
AMENDING CHAPTER 10.08 OF THE MALIBU MUNICIPAL CODE TO  
ESTABLISH SPEED LIMITS ON CITY STREETS

The City Council of the City of Malibu does hereby ordain as follows:

SECTION 1.

Section 10.08.030 of the Malibu Municipal Code is amended to read as follows:

**10.08.030 Speed limits.**

The prima facie speed limit on the following roads are hereby declared to be as follows:

1. BUSCH DRIVE between Calpine Drive and Merritt Drive, thirty (30) miles per hour.
2. CIVIC CENTER WAY between Malibu Canyon Road and Webb Way, forty, (40) miles per hour.
3. CORRAL CANYON ROAD between City Limit and Pacific Coast Highway, thirty (30) miles per hour.
4. DUME DRIVE between Heathercliff Road and Cliffside Drive, thirty (30) miles per hour.
5. ENCINAL CANYON ROAD between North City Limit and Pacific Coast Highway, forty-five (45) miles per hour.
6. GUERNSEY AVENUE between Morning View Drive and Pacific Coast Highway, thirty (30) miles per hour.
7. KANAN DUME ROAD between North City Limit to Pacific Coast Highway, fifty (50) miles per hour.
8. LATIGO CANYON ROAD between North City Limit to Pacific Coast Highway, thirty (30) miles per hour.
9. MALIBU CANYON ROAD between North City Limit to Civic Center Way, forty-five (45) miles per hour.
10. MALIBU CANYON ROAD between Civic Center Way and Pacific Coast Highway, forty-five (45) miles per hour.
11. MERRITT DRIVE between Morning View Road and Busch Drive, thirty (30) miles per hour.
12. MORNING VIEW DRIVE between Guernsey Avenue and Via Cabrillo, thirty (30) miles per hour.
13. MORNING VIEW DRIVE between Via Cabrillo and Pacific Coast Highway, thirty (30) miles per hour.
14. PHILLIP AVENUE between Morning View Drive and Cuthbert Road, thirty (30) miles per hour.

15. TRANCAS CANYON ROAD between North City Limit and Pacific Coast Highway, thirty (30) miles per hour.
16. WESTWARD BEACH ROAD between Pacific Coast Highway and Birdview Avenue, thirty (30) miles per hour.

The prima facie speed limit for local streets and roads, twenty-five (25) miles per hour, shall apply to the following roads:

1. BIG ROCK DRIVE between Cool Oak Way and Pacific Coast Highway.
2. BIRDVIEW AVENUE between Westward Beach Road and Cliffside Drive.
3. BLUEWATER ROAD between Birdview Avenue and Dume Drive.
4. BONIFACE DRIVE between Portshead Road and Firnhill Drive.
5. BROAD BEACH ROAD between Pacific Coast Highway and Pacific Coast Highway.
6. BUSCH DRIVE between Merritt Drive and Pacific Coast Highway.
7. CARBON CANYON ROAD between Carbon Mesa Road and Pacific Coast Highway.
8. CARBON MESA ROAD between Terminus and Carbon Canyon Road.
9. CIVIC CENTER WAY between Webb Way and Cross Creek Road.
10. CLIFFSIDE DRIVE between Birdview Avenue and Fernhill Drive.
11. CROSS CREEK ROAD between Civic Center Way and Pacific Coast Highway.
12. FERNHILL DRIVE between Grayfox Street and Cliffside Drive.
13. FERNHILL DRIVE between Wildlife Road and Grayfox Street.
14. HEATHERCLIFF ROAD between Pacific Coast Highway and Wandermere Road.
15. JOHN TYLER DRIVE between Pepperdine University Entrance and Pacific Coast Highway.
16. LAS FLORES CANYON ROAD between North City Limits and Pacific Coast Highway.
17. MALIBU COUNTRY DRIVE between John Tyler Drive (Private Road) and John Tyler Drive.
18. MALIBU ROAD between Pacific Coast Highway and West of Webb Way.
19. MALIBU ROAD between East of Webb Way and Pacific Coast Highway.
20. PORTSHEAD ROAD between Pacific Coast Highway and Boniface Drive.
21. PUERCO CANYON ROAD between Pacific Coast Highway and 1000 ft. North of Pacific Coast Highway.
22. RAMBLA PACIFICO between Pacific Coast Highway and 750 ft. North of Pacific Coast Highway.
23. RAMBLA VISTA between Pacific Coast Highway and Pacific Coast Highway.
24. WILDLIFE ROAD between Zumirez Drive and Terminus.
25. ZUMIREZ DRIVE between Pacific Coast Highway and Terminus.

SECTION 2. The City Clerk shall certify to the passage and adoption of this ordinance and enter it into the book of original ordinances.

PASSED, APPROVED AND ADOPTED, this \_\_\_\_\_<sup>th</sup> day of \_\_\_\_\_, 2016.

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LOU LA MONTE, Mayor

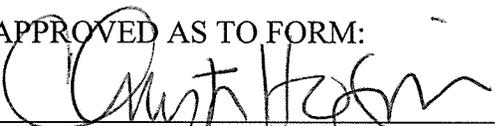
ATTEST:

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HEATHER GLASER, Acting City Clerk  
(seal)

Date: \_\_\_\_\_

APPROVED AS TO FORM:



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CHRISTI HOGIN, City Attorney

**Item**  
**3.B.2.**

**WARRANT REGISTER NO. 578**

On August 22, 2016, the Malibu City Council allowed and approved the above warrant demand numbers 48191 – 48303 from the General Fund. The City Manager is hereby directed to pay out the funds named hereon to each of the claimants listed above, the amount appearing opposite their name for the purpose stated on the respective demands, making a total of \$522,279.20. City of Malibu payroll check numbers 4688 - 4691 and ACH deposits were issued in the amount of \$169,887.69.

PASSED, APPROVED and ADOPTED this 22nd day of August 2016.

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Lou La Monte  
Mayor

ATTEST:

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Heather Glaser  
Acting City Clerk

**CERTIFICATE**

In accordance with Government Code Section 37202, I certify that the above demands are accurate and that funds are available for payment thereof. This certification is based on an examination of source documents relating to randomly selected sample of transactions and analysis of cash flow reports.

EXECUTED this 22nd day of August 2016, AT MALIBU, CALIFORNIA

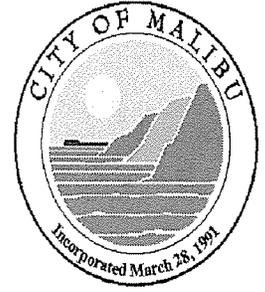
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Reva Feldman  
City Manager

# Accounts Payable

## Checks by Date - Summary By Check Number

User: jhand  
Printed: 8/10/2016 - 10:22 AM



Check Number	Vendor No	Vendor Name	Check Date	Check Amount
48191	ACCOUNT	OfficeTeam A Robert Half Compa	07/28/2016	5,032.90
48192	BALSLEY	Debra Balsley	07/28/2016	40.00
48193	BLAKEG	Guy S Blake	07/28/2016	24.00
48194	CARTERB	Bill Carter	07/28/2016	46.00
48195	CASTRATE	California Strategies & Advocacy	07/28/2016	12,500.00
48196	CCCA	California Contract Cities Associa	07/28/2016	20.00
48197	ELYJRS	Hilario Simental Jr	07/28/2016	1,380.00
48198	EMPIRE	Empire Chemical Company Inc	07/28/2016	732.00
48199	FEDEXP	FedEx	07/28/2016	15.84
48200	GOYJER	Nanci Goyjer	07/28/2016	60.00
48201	GRANICUS	Granicus, Inc	07/28/2016	1,200.00
48202	HARTSEL	Harts Electric, Inc.	07/28/2016	747.61
48203	JOBSAVA	Jobs Available Inc	07/28/2016	2,047.50
48204	LACOCLE	LA County Registrar-Recorder LA	07/28/2016	75.00
48205	LACOCLE	LA County Registrar-Recorder LA	07/28/2016	75.00
48206	LACOUAD	Dept of Auditor Controller County	07/28/2016	935.75
48207	LAWSONS	Skylar Lawson	07/28/2016	3,857.00
48208	MEYERA	Andrew Meyer	07/28/2016	1,398.25
48209	NAICKERV	Vasudevan Naicker	07/28/2016	175.00
48210	NATIONA	National Construction Rentals, Inc	07/28/2016	2,579.56
48211	NEXTEL	Nextel / Sprint Communication	07/28/2016	90.76
48212	OHANNAH	Hannah O	07/28/2016	75.00
48213	PITNEYP	Pitney Bowes Global Financial Se	07/28/2016	256.66
48214	PRECISI	Precision Business Machine Inc	07/28/2016	776.55
48215	PROPET	ProPet Distributors, Inc.	07/28/2016	2,000.40
48216	PURCHAS	Purchase Power	07/28/2016	1,512.00
48217	READYREF	Nestle Waters North America Inc	07/28/2016	122.85
48218	SCOTTL	Lawrence Winfield Scott	07/28/2016	182.00
48219	STORAGE	StorageContainer.com	07/28/2016	198.00
48220	TELEPAC	TelePacific Communications	07/28/2016	1,696.23
48221	UNITEDSI	United Site Services of CA Inc	07/28/2016	334.34
48222	VALLEYCR	ValleyCrest Landscape Maintenan	07/28/2016	15,416.70
48223	WARDLE	Lesley Ward	07/28/2016	300.00
48224	XEROX	Xerox Corporation	07/28/2016	12.65
48225	YOUNGBRU	Bruce Young	07/28/2016	1,272.25
48226	BURNS	Burns Pacific Construction Inc	07/28/2016	71,610.91
48227	CAMPYE	Camp Yedid/David Levine	07/28/2016	50.00
48228	CHIATEW	Whitney Chiate	07/28/2016	145.00
48229	DEPTCON	Dept. of Conservation	07/28/2016	1,609.59
48230	ERICMY	Eric Myer Photography LLC	07/28/2016	500.00
48231	GOODEMI	Emily Russell Scher Goodman	07/28/2016	300.00
48232	HOODNER	Nerissa Hood	07/28/2016	200.00
48233	KENNKER	Kerri Kenney-Silver	07/28/2016	199.00
48234	LACOANI	LA Co Animal Care & Control	07/28/2016	5,097.33
48235	LACOWAT	LA Co MalibuTreasurer-Waterwo	07/28/2016	10,011.38

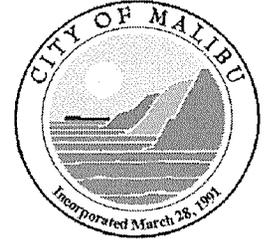
Check Number	Vendor No	Vendor Name	Check Date	Check Amount
48236	MAZZARL	Lisa Mazzarella	07/28/2016	279.00
48237	NEWBURY	Newbury Park Tree Service Inc	07/28/2016	40,000.00
48238	PITNEYP	Pitney Bowes Global Financial Se	07/28/2016	513.34
48239	PIZZARE	Annalisa Pizzarello	07/28/2016	300.00
48240	PURCHAS	Purchase Power	07/28/2016	3,000.00
48241	XEROX	Xerox Corporation	07/28/2016	2,727.18
48242	BlueShie	Blue Shield of California	08/02/2016	1,081.65
48243	DELTADE	Delta Dental of California	08/02/2016	6,695.80
48244	ICMA457	ICMA Retirement Trust 457 - 303	08/02/2016	14,420.59
48245	ICMACM	ICMA 401-Plan # 108658	08/02/2016	496.15
48246	ICMADH	ICMA 401-Plan # 108650	08/02/2016	461.52
48247	MANAGED	Managed Health Network	08/02/2016	133.76
48248	PERSHEA	CalPERS Health	08/02/2016	85,350.61
48249	PERSRET	CalPERS Retirement	08/02/2016	31,779.61
48250	STANDARD	Standard Insurance Company N2	08/02/2016	5,056.52
48251	STANDARD	Standard Insurance Company N2	08/02/2016	169.45
48252	USBANK2	U.S. Bank	08/02/2016	1,322.49
48253	AMERTORT	American Tortoise Rescue	08/04/2016	800.00
48254	MALIBUHI	Malibu High School PTSA	08/04/2016	4,000.00
48255	MALIBUPC	Malibu Presbyterian Church	08/04/2016	1,000.00
48256	OCEANPCC	Ocean Park Community Center	08/04/2016	38,000.00
48257	ACCOUNTTE	OfficeTeam A Robert Half Compa	08/04/2016	4,168.90
48258	ARTTREK	ART Trek, Inc	08/04/2016	100.00
48259	BRYANE	Erin Bryan	08/04/2016	185.00
48260	CALLMC	M.C. Callaghan	08/04/2016	462.00
48261	CAMEB	Barbara A. Cameron	08/04/2016	8,104.40
48262	CANON	Canon Solutions America, Inc	08/04/2016	200.30
48263	CHALLENGE	Challenger Sports Corp	08/04/2016	2,103.64
48264	CHEVRON	Chevron & Texaco Bus. Card Srv	08/04/2016	905.27
48265	COMPLIA	Compliance Biology, Inc.	08/04/2016	4,750.00
48266	COOPERM	Marsha Cooper	08/04/2016	609.00
48267	DIGITALT	Digital Telecommunications Corp	08/04/2016	315.00
48268	FEDEXP	FedEx	08/04/2016	22.21
48269	FERCANOL	Laura DeMieri Fercano	08/04/2016	229.60
48270	FIREWALL	Firewalls.com Inc	08/04/2016	1,347.80
48271	FRONTIER	Frontier California Inc	08/04/2016	364.99
48272	GIINDUS	GI Industries	08/04/2016	3,091.17
48273	GOVCONN	GovConnection Inc	08/04/2016	1,470.03
48274	IMPACTSC	Impact Sciences Inc	08/04/2016	630.00
48275	iRIS	Lorrie Feinberg	08/04/2016	6,270.00
48276	LACOCLE	LA County Registrar-Recorder L <sup>A</sup>	08/04/2016	75.00
48277	LACOCLE	LA County Registrar-Recorder L <sup>A</sup>	08/04/2016	75.00
48278	LACOCLE	LA County Registrar-Recorder L <sup>A</sup>	08/04/2016	75.00
48279	LAWSONS	Skylar Lawson	08/04/2016	3,451.00
48280	LIPPMAN	Peter Lippman	08/04/2016	250.00
48281	LIVESCAN	Paige S Apar	08/04/2016	165.00
48282	MALITIM	Malibu Times	08/04/2016	732.00
48283	MAUCK	Kevin Mauch	08/04/2016	195.00
48284	MCCRORYC	Charles McCrory	08/04/2016	450.00
48285	MONAHAN	Ann Monahan	08/04/2016	140.00
48286	MUCHMOR	Jessie Muchmore	08/04/2016	370.00
48287	MWPF1	Malibu Water Polo Foundation	08/04/2016	3,756.30
48288	PROHOLME	Priscilla Holmes	08/04/2016	2,200.00
48289	RAMOREB	Rebecca Ramos	08/04/2016	12.59
48290	ROSENTHA	Laura Rosenthal	08/04/2016	282.74

Check Number	Vendor No	Vendor Name	Check Date	Check Amount
48291	SOLIDWA	Solid Waste Solutions, Inc.	08/04/2016	24,473.56
48292	STAPLES	Staples Contract & Commercial Ir	08/04/2016	2,043.87
48293	STARTECH	StartechTel.com Inc	08/04/2016	718.45
48294	TRIYOGA	TriYoga International	08/04/2016	175.00
48295	VERIZONW	Verizon Wireless Services LLC	08/04/2016	1,932.20
48296	YOUNGBRU	Bruce Young	08/04/2016	651.00
48297	32357PCH	32357 PCH LLC	08/04/2016	23,800.00
48298	EFRAIM	Kena Efraim	08/04/2016	285.00
48299	LACOREGI	Registrar-Recorder/County Clerk	08/04/2016	30.00
48300	LEAGUE	League Of California Cities	08/04/2016	825.00
48301	MIMIAGA	Stephen Robert Mimiaga	08/04/2016	32,957.50
48302	MOONVES	Julie Chen Moonves	08/04/2016	80.00
48303	XANADU	Xanadu Service System	08/04/2016	2,250.00
Report Total:				522,279.20

# Accounts Payable

## Transactions by Account

User: jhand  
 Printed: 08/10/2016 - 10:38AM  
 Batch: 00000.00.0000



Checks from: 00048191 To: 00048303

Account Number	description	Vendor	Description	Check No	Amount
Fund: 100					
Dept:0000					
100-0000-2021-00	COBRA Payable	Blue Shield of California	PR 28.07.2016 Vision Care - Dele	48242	25.03
100-0000-2021-00	COBRA Payable	Blue Shield of California	PR 28.07.2016 Vision Care - Gun	48242	15.18
100-0000-2021-00	COBRA Payable	Blue Shield of California	PR 28.07.2016 Vision Care - Pete	48242	8.50
100-0000-2021-00	COBRA Payable	Blue Shield of California	PR 28.07.2016 Vision Care - Pop	48242	25.03
100-0000-2021-00	COBRA Payable	Blue Shield of California	PR 28.07.2016 Vision Care - Tho	48242	25.03
Vendor Subtotal for Dept:0000					98.77
Dept:0000					
100-0000-2021-00	COBRA Payable	Delta Dental of California	PR 28.07.2016 Dental Insurance -	48243	166.06
100-0000-2021-00	COBRA Payable	Delta Dental of California	PR 28.07.2016 Dental Insurance -	48243	102.15
100-0000-2021-00	COBRA Payable	Delta Dental of California	PR 28.07.2016 Dental Insurance -	48243	166.06
100-0000-2021-00	COBRA Payable	Delta Dental of California	PR 28.07.2016 Dental Insurance -	48243	52.69
100-0000-2021-00	COBRA Payable	Delta Dental of California	PR 28.07.2016 Dental Insurance -	48243	166.06
100-0000-2021-00	COBRA Payable	Delta Dental of California	PR 28.07.2016 Dental Insurance -	48243	-105.38
100-0000-2021-00	COBRA Payable	Delta Dental of California	PR 28.07.2016 Dental Insurance -	48243	-332.12
Vendor Subtotal for Dept:0000					215.52
Dept:0000					
100-0000-2021-00	COBRA Payable	CalPERS Retirement	PR 28.07.2016 PERS EEShare - I	48249	358.12
100-0000-2021-00	COBRA Payable	CalPERS Retirement	PR 28.07.2016 PERS ERShare - I	48249	488.99
Vendor Subtotal for Dept:0000					847.11
Dept:0000					
100-0000-3461-00	Municipal Facility Use Fee	Bill Carter	Refund-Facility Rental Fee P&R-	48194	46.00

Account Number	description	Vendor	Description	Check No	Amount
					Vendor Subtotal for Dept:0000
					46.00
Dept:0000					
100-0000-3467-00	Day Camp Fees	Debra Balsley	Refund-Softball-switching teams	48192	40.00
					Vendor Subtotal for Dept:0000
					40.00
Dept:0000					
100-0000-3467-00	Day Camp Fees	Erin Bryan	Refund-Funky Divas & Dudes Pe	48259	185.00
					Vendor Subtotal for Dept:0000
					185.00
Dept:0000					
100-0000-3467-00	Day Camp Fees	Whitney Chiate	Refund- Kamp Indy Flag Football	48228	145.00
					Vendor Subtotal for Dept:0000
					145.00
Dept:0000					
100-0000-3467-00	Day Camp Fees	Kena Efrain	Refund Surf Camp S7-Ben-Unabl	48298	285.00
					Vendor Subtotal for Dept:0000
					285.00
Dept:0000					
100-0000-3467-00	Day Camp Fees	Nerissa Hood	Refund-Imagine Machine Writing	48232	200.00
					Vendor Subtotal for Dept:0000
					200.00
Dept:0000					
100-0000-3467-00	Day Camp Fees	Kerri Kenney-Silver	Refund-Moving Making Camp-K	48233	199.00
					Vendor Subtotal for Dept:0000
					199.00
Dept:0000					
100-0000-3467-00	Day Camp Fees	Lisa Mazarella	Refund-Movie Making Camp-Gr	48236	199.00
					Vendor Subtotal for Dept:0000
					199.00
Dept:0000					
100-0000-3467-00	Day Camp Fees	Jessie Muchmore	Refund-Funky Divas&Dudes Per	48286	370.00

Account Number	description	Vendor	Description	Check No	Amount
					370.00
			Vendor Subtotal for Dept:0000		
Dept:0000					
100-0000-3467-00	Day Camp Fees	Hannah O	Refund-Tennis Camp S3-Jaden S1	48212	75.00
					75.00
			Vendor Subtotal for Dept:0000		
Dept:0000					
100-0000-3467-00	Day Camp Fees	Annalisa Pizzarello	Refund-Special Effects Camp-Nic	48239	300.00
					300.00
			Vendor Subtotal for Dept:0000		
Dept:0000					
100-0000-3468-00	Senior Adult Program Fee	Nanci Goyjer	Refund-Jet Propulson Lab Trip-N	48200	60.00
					60.00
			Vendor Subtotal for Dept:0000		
Dept:0000					
100-0000-3470-00	Community Classes	Lisa Mazzarella	Refund-Imagine Art Class S2 -Gr	48236	80.00
					80.00
			Vendor Subtotal for Dept:0000		
Dept:0000					
100-0000-3470-00	Community Classes	Julie Chen Moonves	Refund Soccer 5-7 S2-Charlie-Lo	48302	80.00
					80.00
			Vendor Subtotal for Dept:0000		
Dept:3001					
100-3001-4209-00	Disability Insurance	Standard Insurance Company N2	PR 28.07.2016 STD/LTD	48250	11.91
					11.91
			Vendor Subtotal for Dept:3001		
Dept:3001					
100-3001-5120-00	Street Maintenance	Burns Pacific Construction Inc	Routine Maint-Jun'16	48226	50,060.00
100-3001-5120-00	Street Maintenance	Burns Pacific Construction Inc	Groundbreaking CCWWTF	48226	3,460.00
100-3001-5120-00	Street Maintenance	Burns Pacific Construction Inc	Yard Rental-Jun'16	48226	2,600.00

Account Number	description	Vendor	Description	Check No	Amount
				Vendor Subtotal for Dept:3001	56,120.00
Dept:3001					
100-3001-5126-00	Wall/Sidewalk Maintenance	Burns Pacific Construction Inc	Sidewalk Maint-Jun'16	48226	1,760.00
				Vendor Subtotal for Dept:3001	1,760.00
Dept:3001					
100-3001-5127-00	Weed Abatement	Burns Pacific Construction Inc	Weed Abatement-Jun'16	48226	7,451.26
				Vendor Subtotal for Dept:3001	7,451.26
Dept:3001					
100-3001-5200-00	Tree Maintenance	Newbury Park Tree Service Inc	Tree Maint-Jun'16	48237	40,000.00
				Vendor Subtotal for Dept:3001	40,000.00
Dept:3001					
100-3001-5721-00	Telephone	Verizon Wireless Services LLC	Cell Phone Service 07/24-8/23/16	48295	68.92
100-3001-5721-00	Telephone	Verizon Wireless Services LLC	Cell Phone Service 07/24-8/23/16	48295	114.03
100-3001-5721-00	Telephone	Verizon Wireless Services LLC	Cell Phone Service 07/24-8/23/16	48295	62.42
				Vendor Subtotal for Dept:3001	245.37
Dept:3001					
100-3001-5725-00	Trash Pickup/Recycling	GI Industries	Garbage-Bluffs Park-Jul'16-18314	48272	371.24
100-3001-5725-00	Trash Pickup/Recycling	GI Industries	Garbage-Equestrian Park-Jul'16-1	48272	181.03
100-3001-5725-00	Trash Pickup/Recycling	GI Industries	Garbage-Bus Stop-Jul'16-183153:	48272	2,191.21
100-3001-5725-00	Trash Pickup/Recycling	GI Industries	Garbage-Cross Creek-Jul'16-1831	48272	175.83
				Vendor Subtotal for Dept:3001	2,919.31
Dept:3001					
100-3001-6160-00	Operating Supplies	Burns Pacific Construction Inc	PW supplies/Sandbags/DG/Coldn	48226	6,279.65

Account Number	description	Vendor	Description	Check No	Amount
				Vendor Subtotal for Dept:3001	6,279.65
Dept:3007					
100-3007-5723-00	Water	LA Co MalibuTreasurer-Waterworks	Water-CCSTF-5/4-7/6/16-Bill#32	48235	373.80
100-3007-5723-00	Water	LA Co MalibuTreasurer-Waterworks	Water-Broad Beach Irrigation-5/1	48235	978.02
				Vendor Subtotal for Dept:3007	1,351.82
Dept:3008					
100-3008-4209-00	Disability Insurance	Standard Insurance Company N2	PR 28.07.2016 STD/LTD	48250	30.87
				Vendor Subtotal for Dept:3008	30.87
Dept:3008					
100-3008-5107-00	Contract Personnel	OfficeTeam A Robert Half Company	Temp Staffing-PW-William W-W	48191	864.00
100-3008-5107-00	Contract Personnel	OfficeTeam A Robert Half Company	Temp Staffing-PW-William W-W	48191	1,080.00
100-3008-5107-00	Contract Personnel	OfficeTeam A Robert Half Company	Temp Staffing-PW-William W-W	48257	1,080.00
				Vendor Subtotal for Dept:3008	3,024.00
Dept:3008					
100-3008-5721-00	Telephone	Verizon Wireless Services LLC	Cell Phone Service 07/24-8/23/16	48295	137.84
				Vendor Subtotal for Dept:3008	137.84
Dept:3008					
100-3008-6160-00	Operating Supplies	Staples Contract & Commercial Inc	Office,supplies-Public Works	48292	14.16
100-3008-6160-00	Operating Supplies	Staples Contract & Commercial Inc	Office supplies-Public Works	48292	9.73
				Vendor Subtotal for Dept:3008	23.89
Dept:4001					
100-4001-4205-00	Life Insurance	Standard Insurance Company N2	PR 28.07.2016 Life Insurance	48250	0.56

Account Number	description	Vendor	Description	Check No	Amount
				Vendor Subtotal for Dept:4001	0.56
Dept:4001					
100-4001-4209-00	Disability Insurance	Standard Insurance Company N2	PR 28.07.2016 STD/LTD	48250	92.23
				Vendor Subtotal for Dept:4001	92.23
Dept:4001					
100-4001-5100-00	Professional Services	Compliance Biology, Inc.	City Biologist-Bluffs Parkland Pr	48265	187.50
				Vendor Subtotal for Dept:4001	187.50
Dept:4001					
100-4001-5405-00	Printing	Priscilla Holmes	Graphic Design-Fall 2016 Rec Gt	48288	2,200.00
				Vendor Subtotal for Dept:4001	2,200.00
Dept:4001					
100-4001-5721-00	Telephone	Verizon Wireless Services LLC	Cell Phone Service 07/24-8/23/16	48295	592.32
				Vendor Subtotal for Dept:4001	592.32
Dept:4001					
100-4001-6160-00	Operating Supplies	Nestle Waters North America Inc	Water-Bluffs/MHS Pool Staff 6/1	48217	122.85
				Vendor Subtotal for Dept:4001	122.85
Dept:4001					
100-4001-6160-00	Operating Supplies	Staples Contract & Commercial Inc	Office supplies-P&R	48292	66.89
				Vendor Subtotal for Dept:4001	66.89
Dept:4001					
100-4001-6160-00	Operating Supplies	United Site Services of CA Inc	Restrooms-Bluffs Park during 4th	48221	334.34

Account Number	description	Vendor	Description	Check No	Amount
				Vendor Subtotal for Dept:4001	334.34
Dept:4002					
100-4002-4209-00	Disability Insurance	Standard Insurance Company N2	PR 28.07.2016 STD/LTD	48250	-1.16
				Vendor Subtotal for Dept:4002	-1.16
Dept:4002					
100-4002-5107-00	Contract Personnel	Malibu Water Polo Foundation	Youth Water Polo League-MWPF	48287	3,756.30
				Vendor Subtotal for Dept:4002	3,756.30
Dept:4002					
100-4002-6160-00	Operating Supplies	Staples Contract & Commercial Inc	Office supplies-P&R-Aquatics	48292	18.93
				Vendor Subtotal for Dept:4002	18.93
Dept:4004					
100-4004-5107-00	Contract Personnel	Challenger Sports Corp	Camp instructor-Challenger Sport	48263	2,103.64
				Vendor Subtotal for Dept:4004	2,103.64
Dept:4004					
100-4004-5107-00	Contract Personnel	Skylar Lawson	Camp instructor-S Lawson-Surf C	48207	3,857.00
100-4004-5107-00	Contract Personnel	Skylar Lawson	Camp instructor-S Lawson-Surf C	48279	3,451.00
				Vendor Subtotal for Dept:4004	7,308.00
Dept:4004					
100-4004-5107-00	Contract Personnel	Andrew Meyer	Camp instructor-A Meyer-Basketl	48208	1,398.25
				Vendor Subtotal for Dept:4004	1,398.25
Dept:4004					
100-4004-5107-00	Contract Personnel	Bruce Young	Camp instructor-B Young-Tennis-	48225	1,272.25
100-4004-5107-00	Contract Personnel	Bruce Young	Camp instructor-B Young-Tennis	48296	651.00

Account Number	description	Vendor	Description	Check No	Amount
				Vendor Subtotal for Dept:4004	1,923.25
Dept:4006					
100-4006-6160-00	Operating Supplies	Staples Contract & Commercial Inc	Office supplies-P&R Youth Sport:	48292	89.71
				Vendor Subtotal for Dept:4006	89.71
Dept:4007					
100-4007-4202-00	Health Insurance	CalPERS Health	PR 28.07.2016 Health Ins Premiu	48248	1,556.75
				Vendor Subtotal for Dept:4007	1,556.75
Dept:4007					
100-4007-4209-00	Disability Insurance	Standard Insurance Company N2	PR 28.07.2016 STD/LTD	48250	-18.81
				Vendor Subtotal for Dept:4007	-18.81
Dept:4007					
100-4007-5107-00	Contract Personnel	M.C. Callaghan	Class instructor-MC Callaghan-S:	48260	126.00
100-4007-5107-00	Contract Personnel	M.C. Callaghan	Class instructor-MC Callaghan-S:	48260	336.00
				Vendor Subtotal for Dept:4007	462.00
Dept:4007					
100-4007-5107-00	Contract Personnel	Lawrence Winfield Scott	Class instructor-L Scott-Cartoonii	48218	182.00
				Vendor Subtotal for Dept:4007	182.00
Dept:4007					
100-4007-6160-00	Operating Supplies	Staples Contract & Commercial Inc	Office supplies-P&R-Comm Clas	48292	-208.62
100-4007-6160-00	Operating Supplies	Staples Contract & Commercial Inc	Office supplies-P&R Comm Clas:	48292	34.28
				Vendor Subtotal for Dept:4007	-174.34
Dept:4008					

Account Number	description	Vendor	Description	Check No	Amount
100-4008-4209-00	Disability Insurance	Standard Insurance Company N2	PR 28.07.2016 STD/LTD	48250	4.42
			Vendor Subtotal for Dept:4008		4.42
Dept:4008					
100-4008-5107-00	Contract Personnel	ART Trek, Inc	Senior instructor-Art Trek-Worksl	48258	100.00
			Vendor Subtotal for Dept:4008		100.00
Dept:4008					
100-4008-5107-00	Contract Personnel	Marsha Cooper	Senior instructor-M Cooper-Stretc	48266	609.00
			Vendor Subtotal for Dept:4008		609.00
Dept:4008					
100-4008-5107-00	Contract Personnel	Laura DeMieri Fercano	Senior instructor-L Fercano-Choit	48269	229.60
			Vendor Subtotal for Dept:4008		229.60
Dept:4008					
100-4008-5107-00	Contract Personnel	Ann Monahan	Senior instructor-A Monahan-Aer	48285	140.00
			Vendor Subtotal for Dept:4008		140.00
Dept:4008					
100-4008-5107-00	Contract Personnel	TriYoga International	Senior instructor-TriYoga-Chair/A	48294	175.00
			Vendor Subtotal for Dept:4008		175.00
Dept:4008					
100-4008-6160-00	Operating Supplies	Rebecca Ramos	Reimburse- food for folding team	48289	12.59
			Vendor Subtotal for Dept:4008		12.59
Dept:4008					
100-4008-6160-00	Operating Supplies	Staples Contract & Commercial Inc	Office supplies-P&R Senior Ctr	48292	111.98
			Vendor Subtotal for Dept:4008		111.98

Account Number	description	Vendor	Description	Check No	Amount
Dept:4009					
100-4009-5107-00	Contract Personnel	Lesley Ward	Creative Workshop-Summer in a .	48223	300.00
Vendor Subtotal for Dept:4009					300.00
Dept:4010					
100-4010-4209-00	Disability Insurance	Standard Insurance Company N2	PR 28.07.2016 STD/LTD	48250	9.58
Vendor Subtotal for Dept:4010					9.58
Dept:4010					
100-4010-5100-00	Professional Services	ValleyCrest Landscape Maintenance	City Parks-Landscape Maint-Jul '	48222	8,946.70
Vendor Subtotal for Dept:4010					8,946.70
Dept:4010					
100-4010-5100-00	Professional Services	Xanadu Service System	City Parks Janitorial Svcs-Jun '16	48303	2,250.00
Vendor Subtotal for Dept:4010					2,250.00
Dept:4010					
100-4010-5130-00	Parks Maintenance	National Construction Rentals, Inc	Temporary fencing for MP field a	48210	2,196.96
Vendor Subtotal for Dept:4010					2,196.96
Dept:4010					
100-4010-5610-00	Facility Maintenance	Harts Electric, Inc.	Exterior lighting on restroom buil	48202	604.36
100-4010-5610-00	Facility Maintenance	Harts Electric, Inc.	Las Flores service call	48202	143.25
Vendor Subtotal for Dept:4010					747.61
Dept:4010					
100-4010-5710-00	Facilities Rent	National Construction Rentals, Inc	Bluffs Portable Toilet rental-7/7-8	48210	382.60
Vendor Subtotal for Dept:4010					382.60

Account Number	description	Vendor	Description	Check No	Amount
Dept:4010					
100-4010-5723-00	Water	LA Co MalibuTreasurer-Waterworks	Water-PCH Median-5/4-7/6/16-B	48235	315.33
100-4010-5723-00	Water	LA Co MalibuTreasurer-Waterworks	Water-Equestrian Park-5/11-7/13/	48235	515.84
100-4010-5723-00	Water	LA Co MalibuTreasurer-Waterworks	Water-Equestrian Park-5/11-7/13/	48235	373.80
Vendor Subtotal for Dept:4010					1,204.97
Dept:4010					
100-4010-6160-00	Operating Supplies	ProPet Distributors, Inc.	Las Flores Park supplies-Dog p/u	48215	166.70
100-4010-6160-00	Operating Supplies	ProPet Distributors, Inc.	Bluffs Park supplies-Dog p/u bag	48215	666.80
100-4010-6160-00	Operating Supplies	ProPet Distributors, Inc.	Trancas Park supplies-Dog p/u ba	48215	500.10
Vendor Subtotal for Dept:4010					1,333.60
Dept:4011					
100-4011-4209-00	Disability Insurance	Standard Insurance Company N2	PR 28.07.2016 STD/LTD	48250	6.56
Vendor Subtotal for Dept:4011					6.56
Dept:4011					
100-4011-6160-00	Operating Supplies	Staples Contract & Commercial Inc	Office supplies-P&R-Events	48292	25.52
Vendor Subtotal for Dept:4011					25.52
Dept:7001					
100-7001-5104-00	Lobbyist Services	California Strategies & Advocacy LI	Lobbying Services-Jul '16	48195	12,500.00
Vendor Subtotal for Dept:7001					12,500.00
Dept:7001					
100-7001-5300-00	Travel and Training	Laura Rosenthal	Reimburse Mileage-meetings-6/1.	48290	282.74
Vendor Subtotal for Dept:7001					282.74
Dept:7001					

Account Number	description	Vendor	Description	Check No	Amount
100-7001-5330-00	Dues & Memberships	Dept of Auditor Controller County of	LAFCO Annual Fee FY 2016-17	48206	935.75
				Vendor Subtotal for Dept:7001	935.75
Dept:7001					
100-7001-5721-00	Telephone - Cellular Data	Verizon Wireless Services LLC	Cell Phone Service 07/24-8/23/16	48295	76.02
				Vendor Subtotal for Dept:7001	76.02
Dept:7001					
100-7001-5930-00	Community Grants	American Tortoise Rescue	FY 16/17 General Fund Grant-An	48253	800.00
				Vendor Subtotal for Dept:7001	800.00
Dept:7001					
100-7001-5930-00	Community Grants	Malibu High School PTSA	FY 16/17 General Fund Grant-MI	48254	4,000.00
				Vendor Subtotal for Dept:7001	4,000.00
Dept:7001					
100-7001-5930-00	Community Grants	Malibu Presbyterian Church	FY 16/17 General Fund Grant-Me	48255	1,000.00
				Vendor Subtotal for Dept:7001	1,000.00
Dept:7001					
100-7001-5930-00	Community Grants	Ocean Park Community Center	FY 16/17 General Fund Grant-Oc	48256	38,000.00
				Vendor Subtotal for Dept:7001	38,000.00
Dept:7002					
100-7002-4209-00	Disability Insurance	Standard Insurance Company N2	PR 28.07.2016 STD/LTD	48250	11.87
				Vendor Subtotal for Dept:7002	11.87
Dept:7002					
100-7002-6160-00	Operating Supplies	Eric Myer Photography LLC	Council & Dept Heads photos	48230	500.00
				Vendor Subtotal for Dept:7002	500.00

Account Number	description	Vendor	Description	Check No	Amount
Dept:7002					
100-7002-6170-00	Events	Emily Russell Scher Goodman	Use of photograph "The Wave"-B	48231	300.00
			Vendor Subtotal for Dept:7002		300.00
Dept:7003					
100-7003-4209-00	Disability Insurance	Standard Insurance Company N2	PR 28.07.2016 STD/LTD	48250	21.33
			Vendor Subtotal for Dept:7003		21.33
Dept:7003					
100-7003-5105-00	Grant Consultant	Barbara A. Cameron	Grant Consulting Services-Jul '16	48261	8,000.00
			Vendor Subtotal for Dept:7003		8,000.00
Dept:7003					
100-7003-5105-01	Grant Consultant Expenses	Barbara A. Cameron	Grant Consulting Expenses-Jul '16	48261	104.40
			Vendor Subtotal for Dept:7003		104.40
Dept:7003					
100-7003-5721-00	Telephone	Verizon Wireless Services LLC	Cell Phone Service 07/24-8/23/16	48295	53.79
			Vendor Subtotal for Dept:7003		53.79
Dept:7003					
100-7003-6160-00	Operating Supplies	California Contract Cities Associatio	CCCA Board of Directors meetin	48196	20.00
			Vendor Subtotal for Dept:7003		20.00
Dept:7007					
100-7007-4202-00	Health Insurance	CalPERS Health	PR 28.07.2016 Health Ins Premiu	48248	1,556.75
			Vendor Subtotal for Dept:7007		1,556.75

Account Number	description	Vendor	Description	Check No	Amount
Dept:7007					
100-7007-4209-00	Disability Insurance	Standard Insurance Company N2	PR 28.07.2016 STD/LTD	48250	-35.42
Vendor Subtotal for Dept:7007					-35.42
Dept:7007					
100-7007-5100-00	Professional Services	Granicus, Inc	Granicus-Open Platform-Aug'16	48201	400.00
100-7007-5100-00	Professional Services	Granicus, Inc	Granicus-City Council Streaming	48201	800.00
Vendor Subtotal for Dept:7007					1,200.00
Dept:7007					
100-7007-5107-00	Contract Personnel	OfficeTeam A Robert Half Company	Temp Staffing-CC-Kelsey P-WE	48191	1,066.50
100-7007-5107-00	Contract Personnel	OfficeTeam A Robert Half Company	Temp Staffing-CC-Kelsey P-WE	48257	1,066.50
Vendor Subtotal for Dept:7007					2,133.00
Dept:7007					
100-7007-5150-00	Elections	FedEx	Postage-Election paperwork-Nom	48268	22.21
Vendor Subtotal for Dept:7007					22.21
Dept:7007					
100-7007-5150-00	Elections	Malibu Times	Notice of Election-7/7 & 7/14/16	48282	72.00
Vendor Subtotal for Dept:7007					72.00
Dept:7007					
100-7007-5401-00	Advertising & Noticing	Malibu Times	Ordinance no. 406 & 407 adoptio	48282	72.00
Vendor Subtotal for Dept:7007					72.00
Dept:7007					
100-7007-6160-00	Operating Supplies	Staples Contract & Commercial Inc	Office supplies-City Clerk	48292	70.73

Account Number	description	Vendor	Description	Check No	Amount
				Vendor Subtotal for Dept:7007	70.73
Dept:7021					
100-7021-4209-00	Disability Insurance	Standard Insurance Company N2	PR 28.07.2016 STD/LTD	48250	5.88
				Vendor Subtotal for Dept:7021	5.88
Dept:7021					
100-7021-5721-00	Telephone	Nextel / Sprint Communication	Cell Phone 07/13-08/12/16	48211	90.76
				Vendor Subtotal for Dept:7021	90.76
Dept:7021					
100-7021-6160-00	Operating Supplies	FedEx	Test phone return to Verizon	48199	15.84
				Vendor Subtotal for Dept:7021	15.84
Dept:7031					
100-7031-5100-00	Professional Services	Kevin Mauch	Parking Citation Hearing Officer	48283	195.00
				Vendor Subtotal for Dept:7031	195.00
Dept:7031					
100-7031-5106-00	Animal Control Services	LA Co Animal Care & Control	Animal Control-Jun'16	48234	5,097.33
				Vendor Subtotal for Dept:7031	5,097.33
Dept:7031					
100-7031-6160-00	Operating Supplies	Staples Contract & Commercial Inc	Office supplies-Sheriff/VOP offic	48292	28.94
100-7031-6160-00	Operating Supplies	Staples Contract & Commercial Inc	Office supplies-Sheriff/VOP offic	48292	120.68
				Vendor Subtotal for Dept:7031	149.62
Dept:7031					

Account Number	description	Vendor	Description	Check No	Amount
100-7031-7800-00	Public Safety Equipment	Guy S Blake	Reimburse-VOP Fire Extinguisher	48193	24.00
			Vendor Subtotal for Dept:7031		24.00
Dept:7054					
100-7054-4209-00	Disability Insurance	Standard Insurance Company N2	PR 28.07.2016 STD/LTD	48250	19.94
			Vendor Subtotal for Dept:7054		19.94
Dept:7054					
100-7054-5100-01	City Treasurer	Peter Lippman	City Treasurer-Jul '16	48280	250.00
			Vendor Subtotal for Dept:7054		250.00
Dept:7054					
100-7054-5117-00	Film Permit Consultant	Solid Waste Solutions, Inc.	Film Permits-Jul '16	48291	24,473.56
			Vendor Subtotal for Dept:7054		24,473.56
Dept:7054					
100-7054-6160-00	Operating Supplies	Staples Contract & Commercial Inc	Office supplies-Finance	48292	187.37
100-7054-6160-00	Operating Supplies	Staples Contract & Commercial Inc	Office supplies-Finance	48292	116.24
			Vendor Subtotal for Dept:7054		303.61
Dept:7058					
100-7058-4209-00	Disability Insurance	Standard Insurance Company N2	PR 28.07.2016 STD/LTD	48250	6.46
			Vendor Subtotal for Dept:7058		6.46
Dept:7058					
100-7058-5320-00	Recruitment Expense	Jobs Available Inc	Recruitment Ads-PW, ESD, ASD,	48203	2,047.50
			Vendor Subtotal for Dept:7058		2,047.50
Dept:7058					

Account Number	description	Vendor	Description	Check No	Amount
100-7058-5320-00	Recruitment Expense	League Of California Cities	HR Recruiting-Western City Mag	48300	825.00
			Vendor Subtotal for Dept:7058		825.00
Dept:7058					
100-7058-5320-00	Recruitment Expense	Paige S Apar	LiveScan-Fingerprints-3 new hire	48281	165.00
			Vendor Subtotal for Dept:7058		165.00
Dept:7058					
100-7058-5320-00	Recruitment Expense	Charles McCrory	Background investigations-new h	48284	450.00
			Vendor Subtotal for Dept:7058		450.00
Dept:7058					
100-7058-6160-00	Operating Supplies	Staples Contract & Commercial Inc	Office supplies-HR-Ergonomic st	48292	55.14
100-7058-6160-00	Operating Supplies	Staples Contract & Commercial Inc	Office supplies-HR-Ergonomic st	48292	219.51
100-7058-6160-00	Operating Supplies	Staples Contract & Commercial Inc	Office supplies-HR	48292	19.25
			Vendor Subtotal for Dept:7058		293.90
Dept:7059					
100-7059-4201-00	Retirement	CalPERS Retirement	PR 28.07.2016 PERS ERShare - I	48249	0.01
			Vendor Subtotal for Dept:7059		0.01
Dept:7059					
100-7059-4205-00	Life Insurance	Standard Insurance Company N2	PR 28.07.2016 Life Insurance	48250	-0.02
			Vendor Subtotal for Dept:7059		-0.02
Dept:7059					
100-7059-4209-00	Disability Insurance	Standard Insurance Company N2	PR 28.07.2016 STD/LTD	48250	0.03
100-7059-4209-00	Disability Insurance	Standard Insurance Company N2	PR 28.07.2016 STD/LTD	48250	5.91
			Vendor Subtotal for Dept:7059		5.94

Account Number	description	Vendor	Description	Check No	Amount
Dept:7059					
100-7059-4212-00	Retiree Health Insurance	CalPERS Health	PR 07.2016 Health Ins - ER Share	48248	12,066.64
Vendor Subtotal for Dept:7059					12,066.64
Dept:7059					
100-7059-5205-00	Postage	Purchase Power	Postage Meter Refills 7/01-7/12/1	48216	1,512.00
100-7059-5205-00	Postage	Purchase Power	Postage Meter Refills 6/13-6/30/1	48240	3,000.00
Vendor Subtotal for Dept:7059					4,512.00
Dept:7059					
100-7059-5210-00	Service Fees & Charges	CalPERS Health	PR 07.2016 Health Ins - Admin F	48248	263.05
Vendor Subtotal for Dept:7059					263.05
Dept:7059					
100-7059-5640-00	Equipment Maintenance	Precision Business Machine Inc	Printer Gen Svc- Xerox 3320-Car	48214	95.00
Vendor Subtotal for Dept:7059					95.00
Dept:7059					
100-7059-5640-00	Equipment Maintenance	Xerox Corporation	Freight charges for copier supplie	48224	12.65
100-7059-5640-00	Equipment Maintenance	Xerox Corporation	Copier Maint-BGO968974-D110t	48241	3.08
100-7059-5640-00	Equipment Maintenance	Xerox Corporation	Copier Maint-XC60-E2B-652638	48241	7.40
Vendor Subtotal for Dept:7059					23.13
Dept:7059					
100-7059-5721-00	Telephone	TelePacific Communications	City Hall Fac Phone 7/16-8/15/16	48220	1,696.23
Vendor Subtotal for Dept:7059					1,696.23
Dept:7059					
100-7059-5800-00	Equipment Leases	Pitney Bowes Global Financial Servi	Postage Meter Rental 7/1-7/29/16	48213	256.66
100-7059-5800-00	Equipment Leases	Pitney Bowes Global Financial Servi	Postage Meter Rental 4/30-6/30/1	48238	513.34

Account Number	description	Vendor	Description	Check No	Amount
				Vendor Subtotal for Dept:7059	770.00
Dept:7059					
100-7059-5800-00	Equipment Leases	Xerox Corporation	Xerox Lease-D110CP-BG0-9685	48241	965.60
100-7059-5800-00	Equipment Leases	Xerox Corporation	Xerox Lease-D110CP-BG0-9689	48241	1,046.22
100-7059-5800-00	Equipment Leases	Xerox Corporation	Xerox Lease-XC60-E2B-652638-	48241	704.88
				Vendor Subtotal for Dept:7059	2,716.70
Dept:7059					
100-7059-6160-00	Operating Supplies	Canon Solutions America, Inc	Copier supplies-Staples for P&R	48262	200.30
				Vendor Subtotal for Dept:7059	200.30
Dept:7059					
100-7059-6160-00	Operating Supplies	Precision Business Machine Inc	Printer Supplies	48214	681.55
				Vendor Subtotal for Dept:7059	681.55
Dept:7059					
100-7059-6160-00	Operating Supplies	Staples Contract & Commercial Inc	Office supplies-City Hall-Paper	48292	440.62
100-7059-6160-00	Operating Supplies	Staples Contract & Commercial Inc	Office supplies-ASD	48292	18.07
100-7059-6160-00	Operating Supplies	Staples Contract & Commercial Inc	Office supplies-City Hall-Paper	48292	356.12
100-7059-6160-00	Operating Supplies	Staples Contract & Commercial Inc	Office supplies-City Hall-Paper	48292	-57.82
100-7059-6160-00	Operating Supplies	Staples Contract & Commercial Inc	Office supplies-ASD	48292	109.68
				Vendor Subtotal for Dept:7059	866.67
				Subtotal for Fund: 100	293,776.99
Fund: 101					
Dept:2001					
101-2001-4205-00	Life Insurance	Standard Insurance Company N2	PR 28.07.2016 Life Insurance	48250	0.56
				Vendor Subtotal for Dept:2001	0.56
Dept:2001					

Account Number	description	Vendor	Description	Check No	Amount
101-2001-4209-00	Disability Insurance	Standard Insurance Company N2	PR 28.07.2016 STD/LTD	48250	61.85
			Vendor Subtotal for Dept:2001		61.85
Dept:2001					
101-2001-5100-00	Professional Services	Lorrie Feinberg	Database updates-Planning-Jul'16	48275	914.37
			Vendor Subtotal for Dept:2001		914.37
Dept:2001					
101-2001-5100-01	Coastal Dev. Permit Services	Compliance Biology, Inc.	City Biologist-Jul '16	48265	4,562.50
			Vendor Subtotal for Dept:2001		4,562.50
Dept:2001					
101-2001-5107-00	Contract Personnel	OfficeTeam A Robert Half Company	Temp Staffing-Plan-Caleb A-WE	48191	1,011.20
101-2001-5107-00	Contract Personnel	OfficeTeam A Robert Half Company	Temp Staffing-Plan-Marina S-WE	48191	1,011.20
101-2001-5107-00	Contract Personnel	OfficeTeam A Robert Half Company	Temp Staffing-Plan-Marina S-WE	48257	1,011.20
101-2001-5107-00	Contract Personnel	OfficeTeam A Robert Half Company	Temp Staffing-Plan-Caleb A-WE	48257	1,011.20
			Vendor Subtotal for Dept:2001		4,044.80
Dept:2001					
101-2001-5210-00	Service Fees & Charges	LA County Registrar-Recorder LA C	CEQA Filing-31824 Seafield Driv	48204	75.00
101-2001-5210-00	Service Fees & Charges	LA County Registrar-Recorder LA C	CEQA Filing-26963 Sea Vista Dr.	48205	75.00
101-2001-5210-00	Service Fees & Charges	LA County Registrar-Recorder LA C	CEQA Filing-24910 Pacific Coas	48276	75.00
101-2001-5210-00	Service Fees & Charges	LA County Registrar-Recorder LA C	CEQA Filing-30040 Morning Vie	48277	75.00
101-2001-5210-00	Service Fees & Charges	LA County Registrar-Recorder LA C	CEQA Filing-31276 Bailard Roac	48278	75.00
			Vendor Subtotal for Dept:2001		375.00
Dept:2001					
101-2001-5401-00	Advertising & Noticing	Malibu Times	Public Notice ad-Times 7/7/16	48282	388.00
101-2001-5401-00	Advertising & Noticing	Malibu Times	Public Notice ad-Times-7/21/16	48282	200.00
			Vendor Subtotal for Dept:2001		588.00

Account Number	description	Vendor	Description	Check No	Amount
Dept:2001					
101-2001-5721-00	Telephone	Verizon Wireless Services LLC	Cell Phone Service 07/24-8/23/16	48295	56.60
Vendor Subtotal for Dept:2001					56.60
Dept:2001					
101-2001-6160-00	Operating Supplies	Staples Contract & Commercial Inc	Office supplies-Planning	48292	187.34
Vendor Subtotal for Dept:2001					187.34
Dept:2004					
101-2004-4202-00	Health Insurance	CalPERS Health	PR 28.07.2016 Health Ins Premiu	48248	1,556.75
Vendor Subtotal for Dept:2004					1,556.75
Dept:2004					
101-2004-4203-00	Vision Insurance	Blue Shield of California	PR 28.07.2016 Vision Care - Shel	48242	-25.03
Vendor Subtotal for Dept:2004					-25.03
Dept:2004					
101-2004-4204-00	Dental Insurance	Delta Dental of California	PR 28.07.2016 Dental Insurance -	48243	-166.06
Vendor Subtotal for Dept:2004					-166.06
Dept:2004					
101-2004-4205-00	Life Insurance	Standard Insurance Company N2	PR 28.07.2016 Life Insurance	48250	0.56
Vendor Subtotal for Dept:2004					0.56
Dept:2004					
101-2004-4209-00	Disability Insurance	Standard Insurance Company N2	PR 28.07.2016 STD/LTD	48250	56.25
Vendor Subtotal for Dept:2004					56.25

Account Number	description	Vendor	Description	Check No	Amount
Dept:2004					
101-2004-5100-00	Professional Services	Lorrie Feinberg	Database updates-Building Safety	48275	5,355.63
			Vendor Subtotal for Dept:2004		5,355.63
Dept:2004					
101-2004-5210-00	Service Fees & Charges	Dept. of Conservation	Strong Motion Instrumentation/Se	48229	1,609.59
			Vendor Subtotal for Dept:2004		1,609.59
Dept:2004					
101-2004-5721-00	Telephone	Verizon Wireless Services LLC	Cell Phone Service 07/24-8/23/16	48295	260.82
			Vendor Subtotal for Dept:2004		260.82
Dept:2004					
101-2004-6160-00	Operating Supplies	Staples Contract & Commercial Inc	Office supplies-Bldg Safety	48292	9.42
			Vendor Subtotal for Dept:2004		9.42
Dept:2010					
101-2010-4209-00	Disability Insurance	Standard Insurance Company N2	PR 28.07.2016 STD/LTD	48250	13.39
			Vendor Subtotal for Dept:2010		13.39
Dept:2010					
101-2010-5721-00	Telephones	Verizon Wireless Services LLC	Cell Phone Service 07/24-8/23/16	48295	53.79
			Vendor Subtotal for Dept:2010		53.79
Dept:2012					
101-2012-4209-00	Disability Insurance	Standard Insurance Company N2	PR 28.07.2016 STD/LTD	48250	5.04
			Vendor Subtotal for Dept:2012		5.04

Account Number	description	Vendor	Description	Check No	Amount
Dept:2012					
101-2012-5721-00	Telephone	Verizon Wireless Services LLC	Cell Phone Service 07/24-8/23/16	48295	-4.00
Vendor Subtotal for Dept:2012					-4.00
Dept:3003					
101-3003-4209-00	Disability Insurance	Standard Insurance Company N2	PR 28.07.2016 STD/LTD	48250	15.24
Vendor Subtotal for Dept:3003					15.24
Subtotal for Fund: 101					19,532.41
Fund: 103					
Dept:9050					
103-9050-4209-00	Disability Insurance	Standard Insurance Company N2	PR 28.07.2016 STD/LTD	48250	3.76
Vendor Subtotal for Dept:9050					3.76
Dept:9050					
103-9050-5100-00	Professional Services	ValleyCrest Landscape Maintenance	City Hall-Landscape Maint-Jul '16	48222	995.00
Vendor Subtotal for Dept:9050					995.00
Dept:9050					
103-9050-5610-00	Facilities Maintenance	StorageContainer.com	City Hall Storage Cont Rental 7/2	48219	198.00
Vendor Subtotal for Dept:9050					198.00
Dept:9050					
103-9050-6160-00	Operating Supplies	Empire Chemical Company Inc	City Hall supplies-bathrooms	48198	732.00
Vendor Subtotal for Dept:9050					732.00

Account Number	description	Vendor	Description	Check No	Amount
					Subtotal for Fund: 103
					1,928.76
Fund: 310					
Dept:9049					
310-9049-5100-00	Professional Services	Stephen Robert Mimiaga	CCWWTF-Construction Mgmt-Jt	48301	32,957.50
					Vendor Subtotal for Dept:9049
					32,957.50
					Subtotal for Fund: 310
					32,957.50
Fund: 500					
Dept:7008					
500-7008-5100-00	Professional Services	ValleyCrest Landscape Maintenance	Legacy Park-Landscape Maint-Ju	48222	5,275.00
500-7008-5100-00	Professional Services	ValleyCrest Landscape Maintenance	SuperCare-Landscape Maint-Jul	48222	200.00
					Vendor Subtotal for Dept:7008
					5,475.00
Dept:7008					
500-7008-5610-00	Facility Maintenance	Hilario Simental Jr	Septic pumping 23431 PCH-Anin	48197	460.00
500-7008-5610-00	Facility Maintenance	Hilario Simental Jr	Septic pumping 23431 PCH-Anin	48197	460.00
500-7008-5610-00	Facility Maintenance	Hilario Simental Jr	Septic pumping 23431 PCH-Anin	48197	460.00
					Vendor Subtotal for Dept:7008
					1,380.00
Dept:7008					
500-7008-5610-00	Facility Maintenance	GI Industries	Garbage-SuperCare-Jul'16-18316	48272	171.86
					Vendor Subtotal for Dept:7008
					171.86
Dept:7008					
500-7008-5723-00	Water	LA Co MalibuTreasurer-Waterworks	Water-Legacy Park-5/4-7/6/16-Bi	48235	74.77
500-7008-5723-00	Water	LA Co MalibuTreasurer-Waterworks	Water-Legacy Park irrigation-5/4-	48235	6,964.45
500-7008-5723-00	Water	LA Co MalibuTreasurer-Waterworks	Water-Super Care-5/4-7/6/16-Bill	48235	415.37
					Vendor Subtotal for Dept:7008
					7,454.59

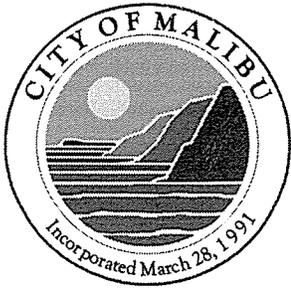
Account Number	description	Vendor	Description	Check No	Amount
Dept:7008					
500-7008-6160-00	Operating Supplies	ProPet Distributors, Inc.	Legacy Parksupplies-Dog p/u bag	48215	666.80
Vendor Subtotal for Dept:7008					666.80
Subtotal for Fund: 500					15,148.25
Fund: 601					
Dept:3005					
601-3005-6330-00	Vehicle Repair & Maintenance	Vasudevan Naicker	Car wash-City vehicles-7/21/16	48209	175.00
Vendor Subtotal for Dept:3005					175.00
Dept:3005					
601-3005-6500-00	Motor Fuels	Chevron & Texaco Bus. Card Srv	Gasoline for the period of 06/28-7	48264	905.27
Vendor Subtotal for Dept:3005					905.27
Subtotal for Fund: 601					1,080.27
Fund: 602					
Dept:7060					
602-7060-4209-00	Disability Insurance	Standard Insurance Company N2	PR 28.07.2016 STD/LTD	48250	7.79
Vendor Subtotal for Dept:7060					7.79
Dept:7060					
602-7060-5721-00	Telephone	Digital Telecommunications Corpora	Tech support for configuration ph	48267	315.00
Vendor Subtotal for Dept:7060					315.00
Dept:7060					
602-7060-5721-00	Telephone	Frontier California Inc	City Hall Fac Internet-7/28-8/27/1	48271	364.99
Vendor Subtotal for Dept:7060					364.99

Account Number	description	Vendor	Description	Check No	Amount
Dept:7060					
602-7060-5721-00	Telephone	StartechTel.com Inc	10 refurbished phone for replacen	48293	718.45
Vendor Subtotal for Dept:7060					718.45
Dept:7060					
602-7060-5721-00	Telephone	Verizon Wireless Services LLC	Cell Phone Service-Phone upgrad	48295	258.48
602-7060-5721-00	Telephone	Verizon Wireless Services LLC	Cell Phone Service 07/24-8/23/16	48295	201.17
Vendor Subtotal for Dept:7060					459.65
Dept:7060					
602-7060-6120-00	Computer Software < \$1,000	Firewalls.com Inc	Annual subscription for Software	48270	1,347.80
Vendor Subtotal for Dept:7060					1,347.80
Dept:7060					
602-7060-7400-00	Computer Equipment	GovConnection Inc	Memory module for NUC new PC	48273	37.71
602-7060-7400-00	Computer Equipment	GovConnection Inc	Intel NUC new PCs & SSD Drive	48273	1,432.32
Vendor Subtotal for Dept:7060					1,470.03
Subtotal for Fund: 602					4,683.71
Fund: 710					
Dept:0000					
710-0000-2270-04	Grading Bonds	32357 PCH LLC	Refund Grading Bond-32357 PCI	48297	23,800.00
Vendor Subtotal for Dept:0000					23,800.00
Dept:0000					
710-0000-2270-12	Parks - Security Deposits	Camp Yedid/David Levine	Refund Security Deposit	48227	50.00
Vendor Subtotal for Dept:0000					50.00
Dept:0000					

Account Number	description	Vendor	Description	Check No	Amount
710-0000-2270-54	Recorded Document Fees	Registrar-Recorder/County Clerk	Document Recording Fees-May '1	48299	30.00
			Vendor Subtotal for Dept:0000		30.00
Dept:0000					
710-0000-2271-24	Malibu Memorial Park & Chapel	Impact Sciences Inc	Malibu Memorial Park Initial Stu	48274	630.00
			Vendor Subtotal for Dept:0000		630.00
Fund: 900					
Dept:0000					
900-0000-2022-00	Health Insurance	CalPERS Health	PR Batch 70028.07.2016 Health I	48248	23.78
900-0000-2022-00	Health Insurance	CalPERS Health	PR Batch 70028.07.2016 Health I	48248	68,326.89
			Vendor Subtotal for Dept:0000		68,350.67
Dept:0000					
900-0000-2023-00	Vision Insurance	Blue Shield of California	PR Batch 70028.07.2016 Vision C	48242	1,007.91
			Vendor Subtotal for Dept:0000		1,007.91
Dept:0000					
900-0000-2024-00	Dental Insurance	Delta Dental of California	PR Batch 70028.07.2016 Dental I	48243	6,646.34
			Vendor Subtotal for Dept:0000		6,646.34
Dept:0000					
900-0000-2025-00	Life Insurance	Standard Insurance Company N2	PR Batch 70028.07.2016 Life Ins	48250	897.55
			Vendor Subtotal for Dept:0000		897.55
Dept:0000					
900-0000-2025-01	Additional Life Insurance	Standard Insurance Company N2	PR Batch 70028.07.2016 Additioi	48251	218.83

Account Number	description	Vendor	Description	Check No	Amount
900-0000-2025-01	Additional Life Insurance	Standard Insurance Company N2	PR 28.07.2016 Additional Life In	48251	-49.38
			Vendor Subtotal for Dept:0000		169.45
Dept:0000					
900-0000-2026-00	STD/LTD	Standard Insurance Company N2	PR Batch 70014.07.2016 STD/LI	48250	1,897.22
900-0000-2026-00	STD/LTD	Standard Insurance Company N2	PR Batch 70007.07.2016 STD/LI	48250	18.81
900-0000-2026-00	STD/LTD	Standard Insurance Company N2	PR Batch 70028.07.2016 STD/LI	48250	1,906.36
			Vendor Subtotal for Dept:0000		3,822.39
Dept:0000					
900-0000-2027-00	Employee Assistance	Managed Health Network	PR Batch 70028.07.2016 Employ	48247	133.76
			Vendor Subtotal for Dept:0000		133.76
Dept:0000					
900-0000-2040-00	PERS Retirement	CalPERS Retirement	PR Batch 70028.07.2016 PERS C	48249	118.80
900-0000-2040-00	PERS Retirement	CalPERS Retirement	PR Batch 70028.07.2016 PERS E	48249	11,066.70
			Vendor Subtotal for Dept:0000		11,185.50
Dept:0000					
900-0000-2040-01	PERS Retirement Prepaid	CalPERS Retirement	PR Batch 70028.07.2016 PEPRA	48249	2,308.67
900-0000-2040-01	PERS Retirement Prepaid	CalPERS Retirement	PR Batch 70028.07.2016 PERS C	48249	162.21
900-0000-2040-01	PERS Retirement Prepaid	CalPERS Retirement	PR Batch 70028.07.2016 PERS E	48249	15,110.70
			Vendor Subtotal for Dept:0000		17,581.58
Dept:0000					
900-0000-2040-02	PERS/PEPRA Retirement	CalPERS Retirement	PR Batch 70028.07.2016 PEPRA	48249	2,165.41
			Vendor Subtotal for Dept:0000		2,165.41
Dept:0000					
900-0000-2041-00	PARS	U.S. Bank	PR Batch 70028.07.2016 PARS -	48252	1,093.28

Account Number	description	Vendor	Description	Check No	Amount
900-0000-2041-00	PARS	U.S. Bank	PR Batch 70028.07.2016 PARS -	48252	229.21
			Vendor Subtotal for Dept:0000		1,322.49
Dept:0000					
900-0000-2042-00	Deferred Compensation 457	ICMA Retirement Trust 457 - 303615	PR Batch 70028.07.2016 ICMA I	48244	978.34
900-0000-2042-00	Deferred Compensation 457	ICMA Retirement Trust 457 - 303615	PR Batch 70028.07.2016 ICMA I	48244	10,386.34
900-0000-2042-00	Deferred Compensation 457	ICMA Retirement Trust 457 - 303615	PR Batch 70028.07.2016 ER Con	48244	2,600.00
			Vendor Subtotal for Dept:0000		13,964.68
Dept:0000					
900-0000-2042-01	ICMA Loan Program	ICMA Retirement Trust 457 - 303615	PR Batch 70028.07.2016 ICMA L	48244	455.91
			Vendor Subtotal for Dept:0000		455.91
Dept:0000					
900-0000-2043-00	Deferred Compensation 401	ICMA 401-Plan # 108658	PR Batch 70028.07.2016 ICMA -	48245	496.15
			Vendor Subtotal for Dept:0000		496.15
Dept:0000					
900-0000-2043-00	Deferred Compensation 401	ICMA 401-Plan # 108650	PR Batch 70028.07.2016 ICMA -	48246	461.52
			Vendor Subtotal for Dept:0000		461.52
Dept:0000					
			Subtotal for Fund: 900		128,661.31
			Report Total:		522,279.20



# Council Agenda Report

To: Mayor La Monte and the Honorable Members of the City Council

Prepared by: Amy Crittenden, Recreation Manager 

Approved by: Reva Feldman, City Manager 

Date prepared: August 2, 2016 Meeting date: August 22, 2016

Subject: Amendment to Agreement with Malibu Yellow Cab for Dial-A-Ride Services

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**RECOMMENDED ACTION:** 1) Authorize the City Manager to execute Amendment No. 2 to the Agreement with Malibu Yellow Cab, modifying the Scope of Services for the Dial-A-Ride (DAR) program; and 2) Adopt revised City Council Policy #42, DAR Program, to amend the program hours and use restrictions.

**FISCAL IMPACT:** The funding for DAR services is included in the Adopted Budget for Fiscal Year 2016-2017 under Account No. 203-3009-5145 (Transportation Services). The modification to the Scope of Services for the Professional Services Agreement (Agreement) with Malibu Yellow Cab will not exceed the contract amount of \$200,000.

**DISCUSSION:** Since 1993, the City has provided DAR services to eligible Malibu residents. DAR is a subsidized taxi service intended to provide transportation to senior and disabled residents who would not otherwise have means of transportation. To assess the effectiveness of the DAR program, the City hired an independent transit consultant in January 2013 to do a comprehensive study and provide staff with feedback on current program service needs. Based on information collected from focus groups and surveys, the DAR program was modified and a Request for Proposals was issued.

On June 12, 2013, the Council approved a three-year agreement with Malibu Yellow Cab to provide DAR services, and on June 13, 2016, the Council approved Amendment No. 1, which extended the term of the Agreement with Malibu Yellow Cab for another three years.

In late spring 2016, staff received feedback and concerns from DAR participants that the services were too limited and they requested the program be re-evaluated. Based on these concerns, staff created a needs assessment survey containing seven questions

related to current services, which asked people to rate the importance of certain DAR services. The survey was mailed out to over 500 members and a total of 89 surveys were returned with the following questions receiving the highest percentage of importance:

- 59% of members said it is very important to offer DAR outside of Malibu
- More than half said they would like weekly service hours in Malibu extended
- 40% said they would like to be able to go to multiple locations in one day

Of the 89 surveys received, 72% were currently using DAR services. To effectively apply these results to current services, staff reviewed all of the additional comments and suggestions (over 100 submitted) and found that several current DAR users were not familiar with some of the services. Specifically, there were several comments on the need to go to Kaiser in Woodland Hills and West Los Angeles, and to the Veterans Hospital, all of which are currently included in the DAR services. As a result, staff will conduct public outreach to educate DAR users on current services and, if approved, promote the modified services.

Based on the survey responses, the following modifications are recommended for the DAR program:

- Extend hours of service for Malibu to 8:00 AM to 5:30 PM on Monday, Tuesday and Wednesday (current services end at 4:30 PM)
- Allow riders three (3) one-way trips per day (currently limited to one (1) round-trip daily)
- Permit riders to go to Santa Monica for non-medical related appointments (currently restricted to medical appointments only)

Extension of the service hours is consistent with current programming in the Senior Center and also allows for an additional trip to the store or pharmacy on the way home from the center. Allowing for more flexibility in trips to Santa Monica will give DAR users more opportunities to enjoy services not available in Malibu without adding any extra cost or inconvenience to the driver.

If the Council approves the recommended modifications to the DAR program service and authorizes the City Manager to execute Amendment No. 2 to the Agreement with Malibu Yellow Cab (Attachment 1), the revised City Council Policy #42, Dial-A-Ride Program (Attachment 2), which outlines the service hours and restrictions on uses outside the Malibu City limits, will also need to be adopted.

ATTACHMENTS:

1. Amendment No. 2 to Agreement with Malibu Yellow Cab
2. Revised City Council Policy #42

AMENDMENT NO. 2 TO AGREEMENT

THIS AMENDMENT NO. 2 TO AGREEMENT is made and entered in the City of Malibu on August 22, 2016, by and between the CITY OF MALIBU, hereinafter referred to as City, and Malibu Yellow Cab, hereinafter referred to as Consultant.

The City and the Consultant agree as follows:

RECITALS

- A. On June 12, 2013, the City entered into an Agreement with Consultant for Dial-A-Ride Services.
- B. On June 13, 2016, the City approved Amendment No. 1, extending the Agreement for another three year term.
- C. The City desires to amend the Agreement by modifying the Scope of Services (Exhibit A), changing the service hours for Dial-A-Ride Services.

NOW THEREFORE, in consideration of their mutual promises, obligations and covenants hereinafter contained, the parties hereto agree as follows:

- 1. Section 1.0 – Scope of the Consultant’s Services, of the Agreement, is hereby amended as set forth in Exhibit A attached hereto.
- 2. All terms and conditions of the Agreement not amended by this Amendment No. 2 remain in full force and effect.

This Agreement is executed on \_\_\_\_\_, 2016, at Malibu, California, and effective as of August 22, 2016.

CITY OF MALIBU:

REVA FELDMAN, City Manager

ATTEST:

HEATHER GLASER, Acting City Clerk  
(seal)

APPROVED AS TO FORM:

Christi Hogin  
CHRISTI HOGIN, City Attorney

CONSULTANT:

By: Khaled R. Karame  
Title: Owner

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## SECTION I

### A. Demand-Response System (Dial-A-Ride) Specific Requirements

1. Provide daily (Monday through Friday except listed holidays) transportation to eligible City residents - The operator will be expected to provide trips scheduled one or more days in advance. Same day service may be offered on a space-available basis.
2. Eligible users are the City's senior (60+) and disabled population. Eligible users will register with the City of Malibu Department of Parks and Recreation. The City will maintain a list of eligible riders for the transit operator.
3. Hours of Service – The City provides service to clients Monday, Tuesday and Wednesday from 8:00 am – 5:30 pm (Malibu area only) and Thursday and Friday from 8:00 am – 4:30 pm.
4. Fares – \$1 per trip each way for trips to and from the Malibu Senior Center, \$2 per trip each way for trips within the Malibu city limits, \$4 each way for destinations outside of the Malibu city limits. These fees will be collected by the driver and credited to the City as part of the monthly billing. The City reserves the right to increase or decrease fares at its sole discretion.
5. Service Area – The Dial-A-Ride will provide service within the boundaries of the City of Malibu. Additionally, trips will be provided to designated locations outside of the City. Service to West Los Angeles and Santa Monica is provided at scheduled times. Specific locations and the number and timing of out of town trips may be adjusted periodically by the Director of Parks and Recreation to meet changing customer needs and City budgetary requirements. The current service area includes the City of Malibu, Woodland Hills Kaiser Permanente, West L.A. Veteran's Hospital, UCLA Medical Center and Santa Monica destinations between Ocean Avenue and 26 Street South of California Avenue, and North of Colorado Avenue. The service schedule is Malibu/Santa Monica/West L.A. (8:30am, 9:30am, 10:30am, noon and 3:00pm) and West L.A./Santa Monica/Malibu (11:00am, 1:00pm, 3:00pm and 4:30pm).
6. Shared Rides - Shared rides, in which more than one passenger is picked up, are encouraged. Personal care attendants, friends, family, and other companions accompanying passengers are required to pay full Dial-A-Ride fare.

7. Passenger Packages – Passengers traveling from shopping (grocery or otherwise) shall be limited to the number and size of packages that can be safely transported during the trip.
8. Vehicles – Because this program serves the elderly and limited mobility clients, a priority is placed on the availability of accessible vehicles for those customers who have wheelchairs, scooters or other physical limitations or special needs. Vehicles will be provided and maintained by the operator. If not new, vehicles should be replaced according to a schedule so that they do not exceed the Federal Transit Administration (FTA) approved useful life in terms of miles during the term of this agreement. The City of Malibu reserves the right to inspect and accept or reject any vehicles to be used as part of this program. The vehicles and their maintenance must meet all Federal, State, and local requirements as well as industry standards for public transportation vehicles.
9. Program Funding – This program is funded through Los Angeles County Proposition A Transportation funds. As such, the vendor will be required to assist the City in record keeping to meet all Metro and National Transportation Database (NTD) requirements. This may include preparation of monthly and annual reports as well as participation in the City's annual NTD audit. If the City is penalized for a failure on the part of the Contractor, the amount of the penalty will be deducted by the City from monies due to the Contractor.
10. Additional funding for this program may be received from grants or other outside funding sources. The vendor will be required to assist in preparation and implementation of any grants as needed. Grants or additional work which increases the original scope of work will be negotiated and addressed as an amendment to the initial agreement.
11. Overall program limits shall be subject to annual allocation of funds by the City Council. Future reductions in funding may require additional restrictions or limitations on the program not currently in place. Contractor will be required to cooperate with the implementation of any such program changes. The level of service provided under this contract may be increased or decreased by the City by up to 15% with no change in the rate charged the City by the Contractor unless the City opts to ask the Contractor to negotiate a different rate. Any other program changes which would alter the terms of this agreement shall be negotiated.
12. Contractor will cooperate with the City's marketing and evaluation efforts without additional charge as requested by the City. This may include distribution and collection of survey forms or other tasks as requested.

## **SECTION II**

The Contractor shall coordinate, manage, and control all necessary program activities which shall include operating the services, dispatch, vehicle maintenance and management personnel; providing driver and other personnel training; developing administrative procedures, performance statistics, and financial records; and developing methods to maximize service efficiency. The Contractor shall provide all equipment and personnel necessary to provide a safe and efficient service.

In performance of the services described herein, Contractor shall be responsible to comply with all applicable Federal, State and Local requirements.

### **A. Contractor's Personnel**

The Contractor shall be solely responsible for the satisfactory work performance of all employees and independent contractors as described in this scope of work or any reasonable performance standard established by the City. The Contractor shall be solely responsible for payment of all employees' wages and benefits and subcontractors' costs. Without any additional expense to the City, the Contractor shall comply with the requirements of employee liability, worker's compensation, employment insurance, and Social Security. The Contractor shall hold the City harmless from any liability, damages, claims, costs, and expenses of any nature arising from alleged violations of personnel practices.

During the performance of this contract, the contractor warrants that it will provide equal opportunities, and that the contractor will take affirmative action to ensure that its employment practices are such that persons are employed and employees are treated equally and without regard to, or because of race, creed, color, national origin, sex, sexual orientation, age, physical handicap, or medical condition.

The Project Manager will provide supervision and the management of the project's accounts and operating records and will report directly to and coordinate closely with the City.

The Project Manager shall be available by telephone or in person during all hours of the operational day to make decisions or provide coordination as necessary at the request of the City. At other times, or in the event of the Project Manager's absence, another responsible person shall be identified so that there is someone with the authority to make decisions at any time during the operational hours.

Contractor shall notify the City in writing when the Project Manager is replaced. If Project Manager is to be replaced, Contractor shall submit the resume and qualifications of an acceptable replacement no later than fifteen (15) working days prior to the departure of

## **B. Vehicle Operators**

Vehicle operators shall work on a schedule that will ensure a consistent and overall high quality of service. Vehicle operators must have all appropriate California Driver's Licenses and certificates as well as any other licenses, certificates or training required by applicable Federal, State, and local regulations. All vehicle operators must meet the minimum standards listed below. At a minimum, employee qualifications should include:

1. Not have been convicted of driving while intoxicated or under the influence of controlled substances within the preceding five years, or not have criminal charges pending for an offense for driving while intoxicated or under the influence of controlled substances.
2. No citations within the last three years for speeding or driving unsafely.
3. Not be addicted to the use of alcohol or controlled substances.
4. Not be subject to outstanding warrants for arrest.
5. Able to read, write and speak English.
6. Thorough knowledge of the service area street network.
7. Sensitivity to passengers' needs, including assisting passengers, upon their request.
8. Able to address complaints and problems as required.

Vehicle operators must be trained in all operational procedures relating to the system. Training must include customer service techniques for interacting with the public in a helpful and courteous manner, basic information about the service and the City of Malibu, and sensitivity and empathy training directed towards the needs of elderly and passengers with limited mobility, in compliance with the Americans with Disabilities Act.

Vehicle operators shall be trained to operate all types of vehicles, wheelchair lifts, ramps, and securement systems, as well as other equipment which they may be expected to use in the Dial-A-Ride services. This requirement pertains to all vehicle operators, both regularly assigned and relief vehicle operators.

While performing their duties, vehicle operators must maintain a clean and neat appearance. Operators shall wear nametags clearly displaying their names while performing their duties. If jackets are worn, they should display the drivers' nametag.

The Contractor shall conduct pre-employment DMV (Department of Motor Vehicles) checks of all personnel hired for service and shall join the California DMV Pull Notice Program, whereby the Contractor shall be notified of any activity on a vehicle operator's driving record. Any operator exceeding the California DMV point system or with a revoked or suspended license will not be allowed to operate a vehicle as part of the City's service. Contractor shall notify the City of the results of these checks and whatever corrective actions taken, if any. Any drug testing and/or surveillance efforts on the part of the Contractor shall be described explained to vehicle operators.

Vehicle operators may not request or in any way solicit tips from customers. Tips may be accepted if offered; however, any operator receiving more than one complaint for solicitation of tips will be removed from the program.

### **C. Maintenance Staff**

Contractor shall supply a sufficient number of properly qualified personnel to maintain and service all Contractor-provided equipment used for the City's service. If a maintenance contractor is to be used, proposer should list the name, address of the contractor, and describe its qualifications in the proposal.

Contractor shall ensure all mechanics are properly trained in the operation and maintenance of the vehicles and equipment specified in the scope of the program. Contractor shall provide mechanics with ongoing training in order to keep abreast of new maintenance techniques and equipment. The total number of annual training hours required for each mechanic shall be specified in the proposal.

### **D. Dispatching and Service Information Personnel**

Contractor shall have capable and courteous personnel who are responsible for taking Dial-A-Ride requests, accurately recording appointments, properly managing complaints and customer service requests and responding to telephone inquiries regarding transportation services.

### **E. Vehicles/Equipment**

All vehicles and vehicle equipment shall be maintained by the Contractor in good repair and in a condition satisfactory to the City. Contractor shall assume all responsibility for the proper maintenance of the vehicles. It shall be the expressed responsibility of the

Contractor to assume all coordination with the original manufacturer of the vehicles if necessary to keep the vehicles in safe and good operating condition. This shall include negotiating and processing all vehicle warranty claims through the manufacturer's own warranty department, and is responsible for collection of any monies, extended warranties, or credits as a result, for the length of time the warranty is in effect.

Each vehicle must receive a daily pre-trip inspection by the operator prior to being placed in service. Daily pre-trip inspections must be supplemented by regular time and mileage maintenance inspections to ensure safe and proper operating condition of vehicles. A record of all such inspections shall be kept by Contractor and made available to the City upon request.

For the Dial-A-Ride vehicles, preventive maintenance inspections and servicing shall occur not less than every 3,000 miles or thirty days, whichever is less.

Regular inspection of each vehicle shall be performed to ensure all lights are functioning, all seating is secure and that all tires, wheels, lugs, air brake systems (if applicable), wheelchair lifts and exit doors are in proper operating condition.

## **F. Applicable Codes and Regulations**

All vehicles used for Malibu services shall be safe for operation on public streets and meet all the appropriate requirements in the California Vehicle Code. All parts of the vehicle and all equipment mounted on or in the vehicle shall conform to the Federal Vehicle Safety Standards and the California Code of Regulation, Title 13. Particular attention shall be directed to the California Highway Patrol Motor Carrier Safety Regulations. The Contractor shall participate in and comply with the DMV Pull Notice Program. Contractor shall pay for all applicable license fees for drivers, other personnel, and vehicles.

Each vehicle, at minimum, must be inspected at the frequencies required by State law. The City may also inspect the vehicles. The City shall be notified of inspections performed by a governmental agency other than the City which meet or exceed the criteria for inspection established by the City. The results of those inspections shall be transmitted to the City.

## **G. Vehicle Maintenance**

At all times, the Contractor shall maintain all components of each vehicle including its body, frame, wheelchair lift, furnishing, mechanical, electrical, hydraulic or other operating systems in proper working condition free from damage and malfunction. The Contractor shall replace and repair immediately any vehicle damaged in any accident

or otherwise damaged which impairs the proper and safe mechanical operation of the vehicle.

Recognizing that the safety of the passengers is paramount, the Contractor's maintenance staff shall not:

1. Install mismatched tires.
2. Perform partial brake relines without determining the cause of abnormal or premature wear.
3. Allow tires to wear more than 3/32 tread depth.
4. Replace a dead battery without testing charging system to ensure the battery will not go dead due to system malfunction.
5. Fail to ensure on a daily basis that each vehicle is in proper condition to pass all scheduled and unscheduled inspections.
6. Allow any reported wear item to go un-repaired that would not hold up until the next scheduled inspection. The emphasis must be on preventing breakdowns.

The Contractor, at its sole cost and expense, shall maintain a supply inventory and provide lubricants, repairs, parts and supplies required for the maintenance and operation of all vehicles utilized in providing services.

Vehicles must be kept clean including exterior washing at least once weekly and after every rain, with the vehicle interiors swept or vacuumed daily to remove all dirt and debris. All painted graffiti must be removed each day so that no vehicle leaves the storage facility with any graffiti. Etching on windows must be removed and replaced as soon as practical but no later than one month.

Contractor shall maintain an individual file for each revenue vehicle to include date of action and all preventive maintenance functions including warranty work and any other pertinent maintenance data, including but not limited to fuel, lubricants and other fluid use.

The Contractor shall dispatch a spare vehicle in the event of a vehicle breakdown. The maximum allowable response time from the moment a trouble call is received until a substitute vehicle arrives shall not exceed 30 minutes. The Contractor shall maintain a two-way communications system for the Dial-A-Ride vehicles that will allow for the timely and efficient dispatching, coordinating and responding to service calls. The system may be of the Contractor's choice. The communication system must cover the routes of service.

The Contractor shall notify the City of all Dial-A-Ride related accidents, both by telephone (within one hour) and in writing (by the close of the next business day).

## **H. Operational Emergencies**

The Contractor shall be responsible for the enforcement of policies with regard to operational emergencies. The City may revise or establish additional policies. Contractor shall be responsible for the handling and resolution of all operational emergencies and contingencies including, but not limited to, the following:

### **1. Hazardous Conditions**

During Dial-A-Ride service hours, vehicle operators shall report all hazardous road conditions (i.e., downed trees, potholes and uneven road surfaces, malfunctioning signals, etc.) in the City to the Contractor's supervisor. Contractor, in turn, shall immediately notify the City of such conditions and shall take necessary precautions to safeguard passengers and personnel.

### **2. In-Service Vehicle Failures**

Contractor shall require the vehicle operators to report any in-service vehicle failure to the Contractor's supervisor. The supervisor will attempt to ascertain the problem, use good judgment, and instruct the vehicle operator to take appropriate corrective action. If necessary, the supervisor will immediately send a spare vehicle to the location and the operator and passengers will change vehicle and continue in service. Contractor, if necessary, shall send a mechanic to the location in order to take corrective measures and/or supervise the towing of the vehicle. Contractor shall report any in-service vehicle failures to the City immediately and not later than the start of the next service day.

### **3. Wheelchair Lift Failure**

Contractor shall be responsible for the proper operation and maintenance of all wheelchair lifts. Contractor shall require vehicle operators to report all in-service lift failures to the Contractor's supervisor. If the lift fails while attempting to board a wheelchair passenger, the supervisor shall promptly arrange for alternate transportation for the passenger in the wheelchair inconvenienced by the lift breakdown. If the lift fails while attempting discharge of a wheelchair passenger, the operator shall manually operate the lift and notify the supervisor. The supervisor shall arrange a vehicle change as quickly as reasonably possible following any lift failure. Contractor shall report all in-service lift failures to the City no later than the start of the next service day.

#### 4. Passenger Disturbances

Contractor shall instruct vehicle operators to report nonpayment of fares; graffiti or other vandalism on the vehicles; pushing, shoving and other disturbing or dangerous conduct; and other serious passenger disturbances to the vehicle operator's supervisor or dispatcher. The supervisor shall use good judgment in managing the passenger disturbance by appraising the situation, discharge of appropriate instructions from the operator and request law enforcement assistance if necessary.

#### 5. Medical Assistance to Passengers

Contractor's employees shall use good judgment in responding to passenger accidents, injuries, or illnesses occurring on the vehicles. In the event of a passenger requiring medical assistance, the vehicle operator shall immediately advise the Contractor's supervisor by phone/radio of the situation and location of the vehicle and the supervisor shall notify 911 or the County Fire Department/Paramedics for assistance as applicable. An incident report shall be completed documenting the incident with a copy to the City no later than the start of the next service day.

#### 6. Accidents

Contractor shall require all in-service vehicle operators to report any accident or incident involving the vehicle to the Contractor's supervisor. The supervisor shall use good judgment in the situation, and shall immediately call 911 if necessary. The supervisor shall report all accidents to City by telephone immediately. Both the operator and supervisor will complete an accident report approved by City with copy to the City no later than the start of the next service day. The Contractor shall submit all accident-related reports to the DMV as required.

### **I. Management**

The Contractor shall be responsible for program management according to specified operating procedures. The City may establish additional requirements which are reasonable for operation of this service after consultation with the Contractor.

#### 1. Operating Performance Standards

The Contractor shall operate vehicles with due regard for the safety, comfort and convenience of passengers and the public.

In the event that the Contractor fails to meet certain performance levels, including, but not limited to the service standards agreed upon, the City may deduct from sums due the Contractor as detailed below. Damages that would be suffered by the City cannot be ascertained with certainty, so the City and the Contractor agree liquidated damages of \$100 shall be assessed for failure to meet the on-time performance standards (90%) during any monthly service period.

Contractor and the City shall meet periodically to evaluate performance of the system based upon on-time service and customer complaints. If the standards are not fulfilling their intended purpose, they will be adjusted based upon recommendations made by Contractor with the concurrence and final decision by the City. Should it be found that the Contractor's performance has contributed to Contractor's failure to achieve these standards, Contractor shall take all reasonable actions requested by the City to correct deficiencies in performance. Should deficiencies persist, the City may assess liquidated damages. All liquidated damages assessed against the Contractor will be deducted from the monthly invoices by the same amount. The City's Director of Parks and Recreation shall maintain the right to assess liquidated damages against the Contractor, as set forth herein, based on the Contractor's failure to meet the established standards. Circumstances beyond the control of the Contractor, causing the Contractor to fail to comply with the stated performance requirement, will be considered as just cause on the part of the City not to assess liquidated damages against the Contractor.

Service should be provided as scheduled or according to any adjusted schedule established by the City, including route modifications required because of special events or a declared emergency. Contractor shall not be held responsible for the failure to provide on time service due to weather or traffic conditions, unavoidable vehicle malfunctions, and/or naturally occurring disasters.

Notwithstanding the above caveat, the City may impose liquidated damages on the following basis:

- a. Customer service is very important in building ridership and support for this service. Therefore, the fourth (and any additional) justified complaint about service in any 30-day period shall result in the Contractor paying a penalty \$100 per substantiated complaint except late pick-ups or trip delays covered below.
- b. The City reserves the right, at its sole discretion, to inspect and reject temporarily or permanently by notice to the Contractor, any vehicle the Contractor utilizes which the City deems unacceptable. In the event any revenue vehicle is rejected permanently by the City because of the vehicle's conditions, Contractor shall replace the vehicle with one that is acceptable to the City.

- c. If any regulatory agency or funding source penalizes the City for late, incomplete or inaccurate data which was the Contractor's responsibility to collect and/or provide to the City, the liquidated damages shall be the amount of the penalty and any administrative costs incurred by the City.
- d. For the purpose of performance evaluation, on-time performance is defined as follows:
  - 1) On time service for prescheduled trips means passengers are picked up within 30 minutes before or after the prearranged time of pick-up.
  - 2) Reasonable response time for same day service shall be within 30 minutes of the arranged pick-up time.
  - 3) Failure to meet any on-time performance standards (90%) shall result liquidated damages as specified above.
- e. If a trip request has been verified to be lost by dispatch and no vehicle was dispatched, the liquidated damages shall be \$100 per incident.
- f. Contractor must have sufficient telephone lines to handle calls from Malibu residents. Contractor shall provide a Customer Service telephone line which shall be a toll-free call from anywhere within the City of Malibu, to provide information and take Dial-A-Ride service requests. One TDD phone must also be provided for persons with hearing impairments. All personnel should be trained to respond accurately and professionally. All comments and complaints shall be received by the City and logged on a mutually agreed upon complaint form and referred to the Contractor who shall respond the next working day with a description of any follow-up action taken or anticipated. Contractor must have a facsimile machine compatible with the City's and email capabilities.

## 2. Personnel Performance Standards

Regularly assigned drivers or a trained back up must be available and on time to ensure consistent and reliable service.

All personnel are responsible for knowledge of the service system design, the City of Malibu, and route destinations. Project personnel must maintain a courteous attitude, answering to the best of their ability any passenger questions regarding the provision of service. Personnel must also report all passenger-complaints, as well as, operational and maintenance problems promptly to the Project Manager who shall forward the information to the City.

### 3. Fare Collection and Accountability

The cash fare for the Dial-A-Ride service will be \$1.00, \$2.00, and \$4.00 as previously described. The City reserves the right to change the fare or to issue passes, discount coupons, or tickets to be used in lieu of cash fares. The Contractor will be responsible for collecting fares per trip unless the City agrees to a prepay fare system. The Contractor shall ensure that all drivers are aware of and adhere to the fare structure.

Total fare box revenues are to be retained by the contractor, reported to City of Malibu, and deducted from the monthly cost of the service. Fare collection training shall be conducted by the Contractor, and proper fare collection shall be enforced by all project personnel.

### 4. Program Operational Records

Records and reports should be consistent with all National Transit Database (NTD) requirements, as well as, all other reporting required by the Los Angeles County Metropolitan Transportation Authority (Metro). In addition, the Contractor may be required to provide additional statistical information as requested in order to assist the City in complying with other grant and legislative requirements. The City will use the information requested in this section to monitor and evaluate the productivity of the service. Information must be submitted to the City according to the reporting schedule to be established by the City. All reports shall be submitted to the City in a format approved by the City. The Program Manager will prepare and submit to the City, with appropriate back up, no later than the sixth working day of each month, a summary report of operations for the service which will include at least:

- a. Daily totals of passenger counts, revenue hours, total hours, revenue miles, total miles, fare box revenue, passenger types (PCA or shared ride) any other operating data collected, documenting any discrepancies in the reported number of passengers carried and the amount of fares collected by the operator.
- b. Passenger pick-up and drop-off times and locations for the Dial-A-Ride service.
- c. Operational problems, accidents, incidents, passenger complaints, and any actions taken regarding the aforementioned events. Passenger complaints related to safety or serious operational deficiencies shall be reported by phone to the City no later than the next working day following Contractor's receipt of complaint.

Results of documentation may indicate the need for changes in the level of

service or in operational or routing modifications. The provider shall cooperate with the City to improve the transportation operation and maintain flexibility so that service modifications may be implemented quickly.

#### 5. City Access to Records

The City, or any of its duly authorized representatives, upon reasonable written notice, shall have access without charge, for the purpose of audit and investigation, to all original books, documents, log sheets, and records of the Contractor which pertains to the contract. Said original books, documents, log sheets and records must be retained by the Contractor in the Southern California Region for four years following final payment under the contract.

#### 6. Marketing/Public Outreach

The City shall be responsible for public relations as well as the production of schedules and marketing and other promotional materials, therefore, these costs should not be included in the proposal.

Contractor must refer all media requests to the City and may not provide any information without prior approval by the City. Contractor shall cause drivers and supervisors to cooperate and comply with reasonable requests by the City to distribute notices, schedules or other promotional materials to passengers in connection with the services provided. The City may also request the Contractor's personnel to collect data from passengers by handing out survey forms.

The Contractor may participate in the City's special events as requested by the City. These events may require the Contractor to display service vehicles in addition to providing manpower for a display booth for distributing brochures regarding the City's transit services.

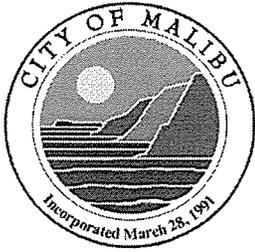
Vehicles used in the program represent the City and therefore, the City will reserve the right to refuse any advertising on program vehicles which it determines to be offensive or inappropriate.

#### 7. Operating During a Declared Emergency

As applicable, upon declaration of any emergency by the City Manager or his designated representative, the Contractor may be responsible for a number of transportation-related activities, including the development of emergency travel routes and the coordination with other agencies supplying common carrier services. In the event of a declared emergency, the Contractor may make available all program vehicles to the City, report to a designated City parking area immediately,

and deploy vehicles in a manner described by the Director of Public Works or his designee as part of the City's Emergency Response Plan.

The City shall be obligated to compensate the Contractor for services which significantly exceeds the normal expense of operating the service during such period of declared emergency. The Contractor shall be required to document and maintain all emergency- related services as requested by the City and provide these documents to the City at the declared conclusion of the emergency.



# City of Malibu

## *City Council Policy*

*Policy #42*

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Title: Dial-a-Ride Program

Purpose: To establish regulations as to the use of the Dial-a-Ride program by City residents

Policy Statement:

The City Council, through the budget process, may allocate funds to provide transportation services to City residents. This program is commonly referred to as the “Dial-a-Ride” program.

To ensure proper use of these services, the following regulations are to be followed in the use of this program.

Implementation:

Use of this program is restricted to City residents. The Parks and Recreation Director will be the administrator of the program and will coordinate the service of the transportation provider and the residents who use the program.

The program is open to residents who are either 60 years of age or older or disabled which prevents them from operating a vehicle.

To correspond with Senior Center programming hours, the hours of operation for trips within the Malibu City limits will be from 8:00 AM to 5:30 PM, Monday, Tuesday and Wednesday and from 8:00 AM to 4:00 PM on Thursday and Friday.

Program will include transportation Monday – Friday from 8:30 AM to 4:30 PM outside of Malibu City limits to the following locations:

- Geographical are of Santa Monica that includes the area between the ocean and 26<sup>th</sup> Street that is south of California Avenue and north of Colorado Avenue.
- UCLA Medical Center in West Los Angeles
- Kaiser Permanente Medical Centers in Woodland Hills and West Los Angeles
- Veterans Hospital in West Los Angeles

The City will subsidize all costs of the program, except as follows:

- Riders will be required to pay \$1.00 per one-way trip to the Malibu Senior Center, and \$2.00 per one-way trip to all locations within the City limits of Malibu.

- Riders will be required to pay \$4.00 per one-way trip to all locations outside the City limits of Malibu.

All persons who desire to use this program will be required to pre-register at the Malibu Senior Center. Registration will be available at no charge.

All trips outside of Malibu will be on a scheduled basis.

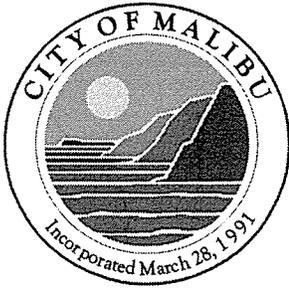
Date Adopted:

February 14, 2000

Date Amended:

June 12, 2013

August 22, 2016



# Council Agenda Report

To: Mayor La Monte and the Honorable Members of the City Council

Prepared by: Craig George, Environmental Sustainability Director

Approved by: Reva Feldman, City Manager 

Date prepared: August 3, 2016 Meeting date: August 22, 2016

Subject: Professional Services Agreement with Stone Environmental, Inc.

---

**RECOMMENDED ACTION:** 1) Authorize the City Manager to execute a Professional Services Agreement with Stone Environmental, Inc. to provide consulting services for updates and enhancements to the City's Integrated Wastewater Information Management System; and 2) Appropriate \$163,000 from the General Fund Undesignated Reserve to Account No. 101-2010-5100 (Wastewater Management Professional Services).

**FISCAL IMPACT:** Funding for this Professional Services Agreement was not included in the Adopted Budget for Fiscal Year 2016-2017. An appropriation of \$163,000 from the General Fund Undesignated Reserve to Account No. 101-2010-5100 (Wastewater Management Professional Services) is needed to fund the additional work. The projected General Fund Undesignated Reserve at June 30, 2017, is 23.3 million.

**DISCUSSION:** On July 26, 2016, the Administration and Finance Subcommittee recommended the City Council approve the appropriation of \$163,000 from the General Fund Undesignated Reserve for a Professional Services Agreement (Agreement) with Stone Environmental, Inc. (Stone) to provide consulting services for updates and enhancements to the City's Integrated Wastewater Information Management System (IWIMS).

In 2004, the City entered into an Agreement with Stone to provide consulting services for the design, operation, and maintenance of IWIMS. The City has since amended the Agreement to extend the term and to allow for the hosting and maintenance of IWIMS; however, the subsequent amendments do not allow for updates to the system.

The original implementation of IWIMS was developed as a component of a grant issued by the Santa Monica Bay Restoration Commission and the California State Coastal

Conservancy using state bond funds from the Safe Neighborhood Parks, Clean Water, Clean Air, and Coastal Protection Act of 2002. The grant authorized \$297,000 for the development of the IWIMS database tracking system. The database and the software utilized the available technologies and platforms available in 2004. Most, if not all, of these technologies are obsolete web applications, which no longer support improvements and modifications. In addition, the current version of IWIMS does not integrate with other City data and document management systems such as OnBase and the Development Database.

One of the key functionalities the City sought from the original version of IWIMS was the reporting capability of onsite wastewater treatment systems (OWTS) both temporally and spatially. This component proved to be cumbersome and ineffective and was seldom used. IWIMS 2.0 will support interactive reporting to produce custom reports may be created and shared. This will be an invaluable tool when the City adopts the Local Agency Management Plan (LAMP) in compliance with AB885, anticipated for early 2017.

IWIMS 2.0 provides a new streamlined interface with integrated GIS using current technologies. These improvements will allow the City to better manage and report OWTS information and permitting data. IWIMS 2.0 builds upon the technology developed in 2004, such as design, business logic, and application workflow.

IWIMS 2.0 will also enhance the functionality and reporting of the City's operating permit program, which was established as an OWTS tool. IWIMS 2.0 will be able to automatically generate operating permits, notifications for those permits needing renewal, and other similar functionality. The fees collected in this program are intended to be used in the development and enhancement of these management tools. In Fiscal Year 2015-2016, the City collected over \$330,000 in fees for the operating permit program.

Stone has submitted a scope of work and a cost proposal in the amount of \$163,000 to perform this additional work, which is included in the Agreement as Exhibit A. The cost summary included by Stone in the exhibit indicates a low end and a high end for each of the 12 tasks. Staff has reviewed the proposal and requests the approval of an appropriation of \$163,000 and authorizing the City Manager to execute the Agreement.

ATTACHMENTS: Professional Services Agreement with Stone

## AGREEMENT FOR PROFESSIONAL SERVICES

This Agreement is made and entered into as of August 22, 2016 by and between the City of Malibu (hereinafter referred to as the "City"), and Stone Environmental, Inc. (hereinafter referred to as "Consultant").

The City and the Consultant agree as follows:

### RECITALS

A. The City does not have the personnel able and/or available to perform the services required under this Agreement.

B. The City desires to contract out for consulting services to develop a new version of the City's Integrated Wastewater Information Management System (IWIMS).

C. The Consultant warrants to the City that it has the qualifications, experience and facilities to perform properly and timely the services under this Agreement.

D. The City desires to contract with the Consultant to perform the services as described in Exhibit A of this Agreement.

NOW, THEREFORE, the City and the Consultant agree as follows:

**1.0 SCOPE OF THE CONSULTANT'S SERVICES.** The Consultant agrees to provide the services and perform the tasks set forth in the Scope of Work, attached to and made part of this Agreement, except that, to the extent that any provision in Exhibit A conflicts with this Agreement, the provisions of this Agreement govern. The Scope of Work may be amended from time to time by way of a written directive from the City.

**2.0 TERM OF AGREEMENT.** This Agreement will become effective on July 1, 2016 and will remain in effect for a period of two years from said date unless otherwise expressly extended and agreed to by both parties or terminated by either party as provided herein.

**3.0 CITY AGENT.** The City Manager, or her designee, for the purposes of this Agreement, is the agent for the City; whenever approval or authorization is required, Consultant understands that the City Manager, or her designee, has the authority to provide that approval or authorization.

**4.0 COMPENSATION FOR SERVICES.** The City shall pay the Consultant for its professional services rendered and costs incurred pursuant to this Agreement in accordance with the Scope of Work's fee and cost schedule. The cost of services shall not exceed \$163,000. No additional compensation shall be paid for any other expenses incurred, unless first approved by the City Manager, or her designee.

4.1 The Consultant shall submit to the City, by no later than the 10<sup>th</sup> day of each month, its bill for services itemizing the fees and costs incurred during the previous month. The City shall pay the Consultant all uncontested amounts set forth in the Consultant's bill within 30 days after it is received.

**5.0 CONFLICT OF INTEREST.** The Consultant represents that it presently has no interest and shall not acquire any interest, direct or indirect, in any real property located in the City which may be affected by the services to be performed by the Consultant under this Agreement. The Consultant further represents that in performance of this Agreement, no person having any such interest shall be employed by it.

5.1 The Consultant represents that no City employee or official has a material financial interest in the Consultant's business. During the term of this Agreement and/or as a result of being awarded this contract, the Consultant shall not offer, encourage or accept any financial interest in the Consultant's business by any City employee or official.

5.2 If a portion of the Consultant's services called for under this Agreement shall ultimately be paid for by reimbursement from and through an agreement with a developer of any land within the City or with a City franchisee, the Consultant warrants that it has not performed any work for such developer/franchisee within the last 12 months, and shall not negotiate, offer or accept any contract or request to perform services for that identified developer/franchisee during the term of this Agreement.

## **6.0 GENERAL TERMS AND CONDITIONS.**

**6.1 Termination.** Either the City Manager or the Consultant may terminate this Agreement, without cause, by giving the other party ten (10) days written notice of such termination and the effective date thereof.

6.1.1 In the event of such termination, all finished or unfinished documents, reports, photographs, films, charts, data, studies, surveys, drawings, models, maps, or other documentation prepared by or in the possession of the Consultant under this Agreement shall be returned to the City. If the City terminates this Agreement without cause, the Consultant shall prepare and shall be entitled to receive compensation pursuant to a close-out bill for services rendered and fees incurred pursuant to this Agreement through the notice of termination. If the Consultant terminates this Agreement without cause, the Consultant shall be paid only for those services completed in a manner satisfactory to the City.

6.1.2 If the Consultant or the City fail to fulfill in a timely and proper manner its obligations under this Agreement, or if the Consultant or the City violate any of the covenants, agreements, or stipulations of this Agreement, the Consultant or the City shall have the right to terminate this Agreement by giving written notice to the other party of such termination and specifying the effective date of such termination. The Consultant shall be entitled to receive compensation in accordance with the terms of this Agreement for any work satisfactorily completed hereunder. Notwithstanding the foregoing, the Consultants shall not be relieved of liability for damage sustained by virtue of any breach of this Agreement and any payments due under this Agreement may be withheld to off-set anticipated damages.

**6.2 Non-Assignability.** The Consultant shall not assign or transfer any interest in this Agreement without the express prior written consent of the City.

**6.3 Non-Discrimination.** The Consultant shall not discriminate as to race, creed, gender, color, national origin or sexual orientation in the performance of its services and duties pursuant to this Agreement, and will comply with all applicable laws, ordinances and codes of the Federal, State, County and City governments.

**6.4 Insurance.** The Consultant shall submit to the City certificates indicating compliance with the following minimum insurance requirements no less than one (1) day prior to beginning of performance under this Agreement:

(a) Workers Compensation Insurance as required by law. The Consultant shall require all subcontractors similarly to provide such compensation insurance for their respective employees.

(b) Comprehensive general and automobile liability insurance protecting the Consultant in amounts not less than \$1,000,000 for personal injury to any one person, \$1,000,000 for injuries arising out of one occurrence, and \$500,000 for property damages or a combined single limit of \$1,000,000. Each such policy of insurance shall:

1) Be issued by a financially responsible insurance company or companies admitted and authorized to do business in the State of California or which is approved in writing by City.

2) Name and list as additional insured the City, its officers and employees.

3) Specify its acts as primary insurance.

4) Contain a clause substantially in the following words: "It is hereby understood and agreed that this policy shall not be canceled nor materially changed except upon thirty (30) days prior written notice to the City of such cancellation or material change."

5) Cover the operations of the Consultant pursuant to the terms of this Agreement.

**6.5 Indemnification.** Consultant shall indemnify, defend with counsel approved by City, and hold harmless City, its officers, officials, employees and volunteers from and against all liability, loss, damage, expense, cost (including without limitation reasonable attorneys fees, expert fees and all other costs and fees of litigation) of every nature arising out of or in connection with Consultant's performance of work hereunder or its failure to comply with any of its obligations contained in this Agreement, regardless of City's passive negligence, but excepting such loss or damage which is caused by the sole active negligence or willful misconduct of the City. Should City in its sole discretion find Consultant's legal counsel unacceptable, then Consultant shall reimburse the City its costs of defense, including without

limitation reasonable attorneys fees, expert fees and all other costs and fees of litigation. The Consultant shall promptly pay any final judgment rendered against the City (and its officers, officials, employees and volunteers) covered by this indemnity obligation. It is expressly understood and agreed that the foregoing provisions are intended to be as broad and inclusive as is permitted by the law of the State of California and will survive termination of this Agreement.

**6.6 Compliance with Applicable Law.** The Consultant and the City shall comply with all applicable laws, ordinances and codes of the Federal, State, County and City governments.

**6.7 Independent Contractor.** This Agreement is by and between the City and the Consultant and is not intended, and shall not be construed, to create the relationship of agency, servant, employee, partnership, joint venture or association, as between the City and the Consultant.

6.7.1. The Consultant shall be an independent contractor, and shall have no power to incur any debt or obligation for or on behalf of the City. Neither the City nor any of its officers or employees shall have any control over the conduct of the Consultant, or any of the Consultant's employees, except as herein set forth, and the Consultant expressly warrants not to, at any time or in any manner, represent that it, or any of its agents, servants or employees are in any manner employees of the City, it being distinctly understood that the Consultant is and shall at all times remain to the City a wholly independent contractor and the Consultant's obligations to the City are solely such as are prescribed by this Agreement.

**6.8 Copyright.** No reports, maps or other documents produced in whole or in part under this Agreement shall be the subject of an application for copyright by or on behalf of the Consultant.

**6.9 Legal Construction.**

(a) This Agreement is made and entered into in the State of California and shall in all respects be interpreted, enforced and governed under the laws of the State of California.

(b) This Agreement shall be construed without regard to the identity of the persons who drafted its various provisions. Each and every provision of this Agreement shall be construed as though each of the parties participated equally in the drafting of same, and any rule of construction that a document is to be construed against the drafting party shall not be applicable to this Agreement.

(c) The article and section, captions and headings herein have been inserted for convenience only, and shall not be considered or referred to in resolving questions of interpretation or construction.

(d) Whenever in this Agreement the context may so require, the masculine gender shall be deemed to refer to and include the feminine and neuter, and the singular shall refer to and include the plural.

**6.10 Counterparts.** This Agreement may be executed in counterparts and as so executed shall constitute an agreement which shall be binding upon all parties hereto.

**6.11 Final Payment Acceptance Constitutes Release.** The acceptance by the Consultant of the final payment made under this Agreement shall operate as and be a release of the City from all claims and liabilities for compensation to the Consultant for anything done, furnished or relating to the Consultant's work or services. Acceptance of payment shall be any negotiation of the City's check or the failure to make a written extra compensation claim within ten (10) calendar days of the receipt of that check. However, approval or payment by the City shall not constitute, nor be deemed, a release of the responsibility and liability of the Consultant, its employees, sub-consultants and agents for the accuracy and competency of the information provided and/or work performed; nor shall such approval or payment be deemed to be an assumption of such responsibility or liability by the City for any defect or error in the work prepared by the Consultant, its employees, sub-consultants and agents.

**6.12 Corrections.** In addition to the above indemnification obligations, the Consultant shall correct, at its expense, all errors in the work which may be disclosed during the City's review of the Consultant's report or plans. Should the Consultant fail to make such correction in a reasonably timely manner, such correction shall be made by the City, and the cost thereof shall be charged to the Consultant.

**6.13 Files.** All files of the Consultant pertaining to the City shall be and remain the property of the City. The Consultant will control the physical location of such files during the term of this Agreement and shall be entitled to retain copies of such files upon termination of this Agreement.

**6.14 Waiver; Remedies Cumulative.** Failure by a party to insist upon the performance of any of the provisions of this Agreement by the other party, irrespective of the length of time for which such failure continues, shall not constitute a waiver of such party's right to demand compliance by such other party in the future. No waiver by a party of a default or breach of the other party shall be effective or binding upon such party unless made in writing by such party, and no such waiver shall be implied from any omissions by a party to take any action with respect to such default or breach. No express written waiver of a specified default or breach shall affect any other default or breach, or cover any other period of time, other than any default or breach and/or period of time specified. All of the remedies permitted or available to a party under this Agreement, or at law or in equity, shall be cumulative and alternative, and invocation of any such right or remedy shall not constitute a waiver or election of remedies with respect to any other permitted or available right of remedy.

**6.15 Mitigation of Damages.** In all such situations arising out of this Agreement, the parties shall attempt to avoid and minimize the damages resulting from the conduct of the other party.

**6.16 Partial Invalidity.** If any provision in this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions will nevertheless continue in full force without being impaired or invalidated in any way.

**6.17 Attorneys' Fees.** The parties hereto acknowledge and agree that each will bear his/her or its own costs, expenses and attorneys' fees arising out of and/or connected with the negotiation, drafting and execution of the Agreement, and all matters arising out of or connected therewith except that, in the event any action is brought by any party hereto to enforce this Agreement, the prevailing party in such action shall be entitled to reasonable attorneys' fees and costs in addition to all other relief to which that party or those parties may be entitled.

**6.18 Entire Agreement.** This Agreement constitutes the whole agreement between the City and the Consultant, and neither party has made any representations to the other except as expressly contained herein. Neither party, in executing or performing this Agreement, is relying upon any statement or information not contained in this Agreement. Any changes or modifications to this Agreement must be made in writing appropriately executed by both the City and the Consultant.

**6.19 Notices.** Any notice required to be given hereunder shall be deemed to have been given by depositing said notice in the United States mail, postage prepaid, and addressed as follows:

<b>TO CITY:</b>	Craig George Environmental Sustainability Director City of Malibu 23825 Stuart Ranch Road Malibu, CA 90265-4861 TEL (310) 456-2489 x 229 FAX (310) 456-3356	<b>TO CONSULTANT:</b>	David J. Healy Vice President  Stone Environmental, Inc. 535 Stone Cutters Way Montpelier, Vermont 05602 TEL (802) 229-1879 FAX (802) 229-5417
-----------------	--	---------------------------	---

**6.20 Warranty of Authorized Signatories.** Each of the signatories hereto warrants and represents that he or she is competent and authorized to enter into this Agreement on behalf of the party for whom he or she purports to sign.

**7.0 GENERAL TERMS AND CONDITIONS. (City and Consultant initials required at EITHER 7.1 or 7.2)**

**7.1 Disclosure Required.** By their respective initials next to this paragraph, City and Consultant hereby acknowledge that Consultant is a "consultant" for the purposes of the California Political Reform Act because Consultant's duties would require him or her to make one or more of the governmental decisions set forth in Fair Political Practices Commission Regulation 18701(a)(2) or otherwise serves in a staff capacity for which disclosure would otherwise be required were Consultant employed by the City. Consultant hereby acknowledges his or her assuming-office, annual, and leaving-office financial reporting obligations under the California Political Reform Act and the City's Conflict of Interest Code and agrees to comply with those obligations at his or her expense. Prior to consultant commencing services hereunder, the City's Manager shall prepare and deliver to consultant a memorandum detailing the extent of Consultant's disclosure obligations in accordance with the City's Conflict of Interest Code.

City Initials \_\_\_\_\_  
Consultant Initials \_\_\_\_\_

Agreement for Professional Services  
Stone Environmental, Inc.  
Page 7 of 7

7.2 **Disclosure not Required.** By their initials next to this paragraph, City and Consultant hereby acknowledge that Consultant is not a "consultant" for the purpose of the California Political Reform Act because Consultant's duties and responsibilities are not within the scope of the definition of consultant in Fair Political Practice Commission Regulation 18701(a)(2)(A) and is otherwise not serving in staff capacity in accordance with the City's Conflict of Interest Code.

City Initials \_\_\_\_\_  
Consultant Initials   g  

This Agreement is executed on \_\_\_\_\_, 2016, at Malibu, California, and effective as of July 1, 2016.

CITY OF MALIBU:

\_\_\_\_\_  
REVA FELDMAN, City Manager

ATTEST:

\_\_\_\_\_  
HEATHER GLASER, Acting City Clerk  
(seal)

APPROVED AS TO FORM:  
Christi Hogin  
CHRISTI HOGIN, City Attorney

CONSULTANT:

By: David J. Hedby  
David J. Hedby  
Vice President

---

# Proposal for Development of IWIMS 2.0

A PROPOSAL FOR CITY OF MALIBU / MAY 6, 2016



Prepared by:



**STONE ENVIRONMENTAL**

---

535 Stone Cutters Way  
Montpelier, VT  
05602 USA

Phone / 802.229.4541  
Fax / 802.229.5417

Web Site / [www.stone-env.com](http://www.stone-env.com)

EXHIBIT A

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# Proposal for Development of IWIMS 2.0

A Proposal for:  
City of Malibu  
23825 Stuart Ranch Road  
Malibu, CA 90265

Submitted by:  
Barbara Patterson, Senior Application Developer  
802-229-6436  
bpatterson@stone-env.com  
Stone Environmental, Inc.  
535 Stone Cutters Way  
Montpelier, Vermont 05602

May 6, 2016

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*This document contains information proprietary to Stone Environmental, Inc., and is not to be disclosed in whole or in part without the express written consent of Stone Environmental, Inc.*

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## Introduction

IWIMS 1.0 is a highly customized web-based application for the management of the City of Malibu's on-site wastewater system data including permits and inspections. The application in its current form was developed in 2004 and has undergone few changes since that time. Current web application software has greatly advanced in the last 12 years and the City of Malibu could take advantage of these improvements by upgrading the IWIMS 1.0 application to a faster more streamlined system.

Stone has reviewed the current IWIMS architecture and database, and evaluated the effort required to develop a new version of IWIMS – "IWIMS 2.0." Migration to IWIMS 2.0 would greatly improve the City's ability to manage and report on the City of Malibu's on-site system and permit data and could integrate with other City data management systems.

There is a range of possibilities in terms of how much functionality and data are transferred from the current IWIMS to IWIMS 2.0. The budget below reflects the low and high ends, in terms of the level of effort. By using the application architecture Stone has implemented with other application development projects, there is significant cost savings. At the same time, however, all application code will be completely customized for IWIMS.

The first task, Project Start Up and IWIMS Re-Design, would allow Stone to define in detail exactly which components and data should be included in IWIMS 2.0. At the completion of this task, the budget for the remaining tasks would be further refined.

---

# 1. IWIMS 2.0 Application Development Tasks

The tasks described below include developing the core functionality of IWIMS 2.0. Please refer to Appendix A for a detailed description of Stone's application development approach which is based on Agile methodology. This approach allows for continuous improvements during the development process.

## 1.1 Task 1 - Project Start Up and IWIMS Re-Design

This task involves working closely with the City of Malibu to define what functionality would be included in IWIMS 2.0. We will evaluate what works well and what does not work well in the current version of IWIMS. We will also layout the workflow for the new application and further refine the scope of the remaining tasks. The higher cost estimate includes design of more forms and an on-site meeting in Malibu.

*Cost Estimate: \$5,500 - \$12,500*

## 1.2 Task 2 - Project Management, Communication, Meetings

All of our application development projects include biweekly status meetings and regular client communication throughout the duration of the project. At the start of the project, a biweekly meeting will be established between Stone's development team and key staff at the City of Malibu. We have found that this type of communication keeps projects on scope and on budget and is essential for application development in an Agile framework, as outlined in Section 1. The lower end estimate assumes a six month project duration while the higher estimate reflects a decision for additional optional application components which would increase the duration of the project.

*Cost Estimate: \$12,000 - \$15,000*

## 1.3 Task 3 - Server Setup and Web Service Configuration

This task includes establishing an Amazon server for both application development and production. The server will be configured with the necessary software packages to run the website. This task also includes the customization of a web service for communication between the front end user interface and the back end database.

*Cost Estimate: \$15,500 - \$17,500*

## 1.4 Task 4 – Migrate IWIMS Database to PostGreSQL

The current IWIMS database will be migrated to PostGreSQL which is the database platform required by IWIMS 2.0. The current database design will be reused as much as possible and all data that is required by IWIMS 2.0 will be transferred. Stone will work with the City to minimize any interruption in the use of IWIMS and make the transfer from the current IWIMS to IWIMS 2.0 as seamless as possible by transferring all data immediately prior to going live with IWIMS 2.0.

*Cost Estimate: \$7,000 - \$10,000*

---

### 1.5 Task 5 – Create Initial Application Framework

This task includes setting up the initial application with any high level functionality allowing users to login and see high level search and tab functionality for Parcels, Systems, and Permits. This will be a live site that can be viewed by the City of Malibu. This allows us to get immediate feedback about the look and feel of the application and make adjustments if necessary.

*Cost Estimate: \$8,000 - \$10,000*

### 1.6 Task 6 – Development of Data Entry Forms

This task includes both the front end user interface development of the data entry forms and the database code and logic to add, edit, and delete data for parcels, systems, contacts, system components, permits, and inspections

*Cost Estimate: \$24,000 - \$30,000*

### 1.7 Task 7 – Reporting Interface and Query Tool

The reporting tool will be a significantly improved user experience that will allow for quick querying of IWIMS data. The user will be able to select any number of criteria and view the results on screen or export to CSV text format (compatible with Microsoft Excel). In addition, users will be able to save reports and rerun them when desired. The higher cost estimate reflects inclusion of a query tool that allows users to create summary reports.

*Cost Estimate: \$7,000 - \$10,000*

### 1.8 Task 8 – Document Management – Integration with OnBase

This task includes integrating IWIMS 2.0 with OnBase document management. This would allow the City to streamline the storage of scanned documents. The task also includes transferring current IWIMS images to OnBase. There are still significant unknowns about this task which are reflected in the cost estimate range. The specifics of this task would be refined during Task 1.

*Cost Estimate: \$5,500 - \$10,000*

### 1.9 Annual Hosting

IWIMS 2.0 will be hosted on an Amazon Server. This cost includes a secure, backed-up, and highly available server platform to run the application. This will be a significant improvement in both accessibility and performance over the current IWIMS. The higher cost estimate reflects inclusion of an ArcGIS server license if the optional GIS Viewer task is included.

*Annual Hosting Cost Estimate: \$7,000 - \$9,500*

---

## 2. IWIMS 2.0 Optional Application Development Tasks

The following tasks are optional tasks. These tasks would further extend the functionality of IWIMS 2.0.

### 3.1 Optional Task 9 – IWIMS 2.0 GIS Viewer

GIS could be integrated with IWIMS 2.0 to allow users to dynamically view the location of parcels and systems in the City as they search. In addition, the GIS Viewer could take advantage of existing City of Malibu map services if they are available. The GIS functionality would also allow users to print a map of the current view.

*Cost Estimate: \$8,000 - \$10,000*

### 3.2 Optional Task 10 – Automated Generation of PDF Operation Permit

The current IWIMS allows for printing of a formatted Operation Permit in PDF format. Unfortunately, this functionality cannot be reused and the tool would have to be redeveloped. Stone does have other applications that are using current technology to create custom PDF reports and this existing code would be taken advantage of.

*Cost Estimate: \$7,000 - \$8,500*

### 3.3 Optional Task 11 – Notification System

An IWIMS 2.0 notification system would allow users to automatically generate lists of permits that have expired or are about to expire. This system could also generate custom formatted letters linked to the notifications. This task would require significant design and scoping and the large cost estimate range reflects the uncertainty.

*Cost Estimate: \$5,000 - \$15,000*

### 3.4 Optional Task 12 – Additional Data Entry Forms

There are currently several components in IWIMS that are not used and the development of these forms is not included in Task 6. These forms include system maintenance, enforcement, correspondence, and monitoring well data. If desired, any of these forms could be included in the project. The cost is dependent on how many additional forms are developed.

*Cost Estimate: \$5,000 - \$15,000*

## 4. Cost Summary

Task #	Task Description	Cost Estimate	
		Low End	High End
1	Project Start Up and IWIMS ReDesign	\$5,500	\$12,500
2	Project Management, Communication, Meetings	\$12,000	\$15,000
3	Server Setup and Web Service Configuration	\$15,500	\$17,500
4	Migrate IWIMS Database to PostGreSQL	\$7,000	\$10,000
5	Create Initial Application Framework	\$8,000	\$10,000
6	Development of Data Entry Forms	\$24,000	\$30,000
7	Reporting Interface and Query Tool	\$7,000	\$10,000
8	Document Management - Integration with OnBase	\$5,500	\$10,000
<b>Total Development Costs</b>		<b>\$84,500</b>	<b>\$115,000</b>
<b>Annual Hosting Cost</b>		<b>\$7,000</b>	<b>\$9,500</b>
9	OPTIONAL - GIS Viewer	\$8,000	\$10,000
10	OPTIONAL - PDF Generation of Permit	\$7,000	\$8,500
11	OPTIONAL - Notification System	\$5,000	\$15,000
12	OPTIONAL - Forms from IWIMS 1.0 not included above in Task 6	\$5,000	\$15,000
<b>Total Optional Development Costs</b>		<b>\$25,000</b>	<b>\$38,500</b>

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## 5. Summary

Development of IWIMS 2.0 will result in significant streamlining of on-site system data management, permit and inspection data management, and generation of reports. The system will also increase stability and responsiveness.

The existing IWIMS platform no longer supports modification or improvement. While the new IWIMS 2.0 system's underlying architecture may not be apparent to daily users, the upgraded architecture allows IWIMS 2.0's code-base to once again be updatable and modifiable. With this in mind, once the base system is upgraded, implementing the optional components listed above, or other additions and options in years to come will be possible.

Permit management systems need to fit the way that the town's permit maintenance workflow functions. Each town is different. IWIMS 1.0 was built to fit the needs of the City of Malibu many years ago, and has clearly served its purpose well. Upgrading IWIMS will allow the investment of time and energy already placed in building a system that works specifically for Malibu to not be discarded. Not only will the previous investment in workflow design be maintained, but the system will be streamlined and improved in all aspects. Stone feels that this evolution, as opposed to complete replacement, of IWIMS, is the only path forward for IWIMS that makes sense.

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## Appendix A

### Development Approach

#### A.1

##### Project Approach

Stone uses an iterative approach to building software based on the Agile methodology. The goal in this type of development is to embrace changing requirements for the final solution rather than try to nail down every detail of the final design at the start. Our experience, and the experiences of many others, has shown that the only realistic view of a major software development project is that it is a highly dynamic process where the end product is constantly evolving. It is critical for Stone and the client to develop a close understanding of project purpose, and to design an application that will evolve as the project moves forward.

The best way to deal with frequently evolving priorities and needs is to increase communication between the client and contractor such that the two sides are in regular communication.

##### A.1.1

###### Phase 1: Project Planning and Business Analysis

Stone will immediately kick-off the project with visioning exercises as part of the startup meeting where we try to capture the core vision that the various stakeholders of the final system really feel is necessary. See Section 2.1 for the task and estimated budget associated with this development phase. End results of the startup visioning process include a list of the requirements identified by the top priority stakeholders and a vision document containing the end goals of the project. This is an important tool during development to keep the entire team focused on the highest priorities the end goal.

After capturing that snapshot of stakeholder needs and wants, Stone will work with the permit management staff to better define the user requirements and to put more context and detail around the individual technical requirements. These meetings will involve users with a variety of skill levels and experience levels. Stone will create a high-level design document from these user stories showing what the stakeholders want, what the users require, and how those wants and needs are divided into immediately actionable development tasks. These tasks will then be used in the next section to build our queue of work items.

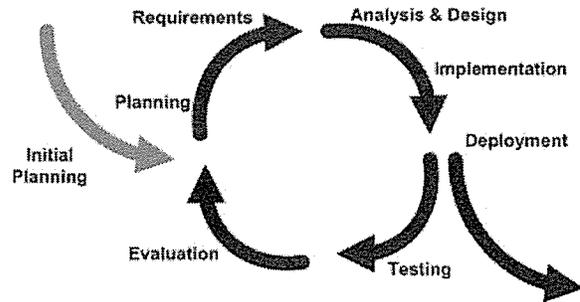
##### A.1.2

###### Phase 2: Development, Installation and Configuration

Before starting application development, Stone will perform a cost and time analysis of what has been requested. At this point if either side has concerns about the budget or schedule, those concerns can be worked through in a number of ways, such as changing priorities, adding resources, or omitting any non-core functionalities defined during the user-requirements meetings.

As noted above, Stone follows an iterative development approach. The goal of iterative development is to develop solidly working, but small, parts of the whole product as quickly as possible to allow for frequent client feedback. The process can be seen in the diagram at right.

To define the “parts” upon which each iteration will be based, the user stories will be broken down into a list of requirements, in priority order. This will be a dynamic, changing list-- new user stories and requirements can be added at any time. Once the list is created Stone’s team will assign an estimate of how much work each requirement will require. If any of the requirements appears too large, it will be refactored into multiple requirements that require less time to complete. A small subset of the requirements – such that the developers think they can accomplish in the iteration’s timeline (2 weeks) – will be the goals for the first iteration.



*Iterative Model (source: Wikipedia)*

The task of defining a work plan for the iterations is a matter of determining the following:

- **The length of each iteration.** Whatever length of time is chosen is absolute – the length of an iteration does not extend to allow more time to complete a task. If the task cannot be completed in the iteration, work on it can be broken up into smaller pieces that can be accomplished in future iterations.
- **A schedule for various events within each iteration.** Each iteration will have a planning meeting at the start to determine what to work on, a check-in with the developers, a meeting to plan for the next iteration, and an iteration wrap-up meeting. Meetings may be short, but they should happen at the same time interval within each iteration.
- **A plan for testing.** The City will be involved in some testing of delivered products, other tests will be automated.

Once a work plan is defined, Stone will begin each iteration by divvying up the requirements amongst the development team. The team will analyze their assigned requirements, and develop a rough design for how they will satisfy each one. There won’t be much, if any, formal design documentation – just enough for Stone developers to plan out an initial solution. The actual design of the solution may end up quite different from the initial design idea, but the key criterion is that it satisfies the requirement.

Once the design is complete the developers will implement each of the various solutions. When Stone developers complete the code, the program will be tested. Stone will assign staff not directly involved with development to perform user tests, and city staff will perform testing as well. When the testing is complete and the city agrees that the requirement has been addressed, the Stone team will move onto the next requirement goal in the list for that iteration.

Stone will proceed in this manner until either the 2 weeks has elapsed, or until all requirement goals are finished.

At the end of the 2 week iteration, the final deliverable product from that iteration will be assembled and tested. Only solutions to requirements that have passed their own individual tests will be integrated into the iteration’s final deliverable. If the process of integrating the solutions into the iteration deliverable is problematic for some reason, a new task to address this will be added to the list of goals for the next iteration. Once the final deliverable is built and tested internally at Stone, it will be made available to the City for review.

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Client review is an important element in iterative development. Once staff at the City can review the deliverable from a given iteration, they will likely have a better understanding of what the final product will look like. Having an actual part of the final product useable and visible often makes it easier for everyone to envision the finished product. City staff can give feedback to the developers about what works and does not work with this deliverable, how its relation to the final deliverable for the whole project might change, and relay if and how any priorities in the master list of requirements may have changed. All of this feedback for the developers can quickly alter the course of development and thus guide the final deliverable of the product towards what is truly needed and wanted. Initial development of the system will be performed on a development server provided by Stone and hosted either on the Amazon cloud, or in Stone's offices. This server will not be publically accessible, but will be fully accessible to State project staff.

Upon completion of the application, Stone will install/move the application to a server on the Amazon cloud for initial user testing and acceptance. Stone currently hosts and manages numerous separate client web applications with Amazon. We have extensive experience managing and deploying these applications.

Amazon will be a subcontractor to Stone for this purpose and, as such, Stone agrees to accept all liability for the hosting agreement with Amazon. The service level agreement (SLA) for Amazon's hosting environment can be found at the following links:

<http://aws.amazon.com/ec2-sla/>

***Deliverable:***

- Web Application
- Disaster recovery plan; Monthly application hosting, and installation server software updates



STONENV-01 TWILLIAMSON

## CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

8/3/2016

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

**IMPORTANT:** If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER Denis, Ricker & Brown - MTP PO Box 565 Montpelier, VT 05601-0565	CONTACT NAME:	
	PHONE (A/C, No, Ext): (802) 229-0563	FAX (A/C, No): (802) 229-9327
E-MAIL ADDRESS: e-doc@hbinsurance.com		
INSURER(S) AFFORDING COVERAGE		NAIC #
INSURER A : <b>Crum &amp; Forster</b>		
INSURER B : <b>Ohio Security Insurance Company</b>		
INSURER C : <b>West American Insurance Company</b>		
INSURER D :		
INSURER E :		
INSURER F :		

INSURED  
  
Stone Environmental, Inc  
535 Stone Cutters Way  
Montpelier, VT 05602

## COVERAGES

CERTIFICATE NUMBER:

REVISION NUMBER:

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR <input checked="" type="checkbox"/> Contr. Pollution  GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input checked="" type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC OTHER:	X		EPK-111797	03/10/2016	03/10/2017	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 100,000 MED EXP (Any one person) \$ 10,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMP/OP AGG \$ 2,000,000 Deductible \$ 10,000
B	AUTOMOBILE LIABILITY <input checked="" type="checkbox"/> ANY AUTO ALL OWNED AUTOS <input checked="" type="checkbox"/> HIRED AUTOS <input type="checkbox"/> SCHEDULED AUTOS NON-OWNED AUTOS			BAS57157375	03/10/2016	03/10/2017	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$
A	<input type="checkbox"/> UMBRELLA LIAB <input checked="" type="checkbox"/> OCCUR <input checked="" type="checkbox"/> EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE DED RETENTION \$			EFX-105122	03/10/2016	03/10/2017	EACH OCCURRENCE \$ 4,000,000 AGGREGATE \$ 4,000,000 \$
C	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y/N	N/A	XWW57157375	03/10/2016	03/10/2017	PER STATUTE <input checked="" type="checkbox"/> OTH-ER E.L. EACH ACCIDENT \$ 1,000,000 E.L. DISEASE - EA EMPLOYEE \$ 1,000,000 E.L. DISEASE - POLICY LIMIT \$ 1,000,000
A	Professional Liab			EPK-111797	03/10/2016	03/10/2017	Per Claim ded \$10000 1,000,000
A				EPK-111797	03/10/2016	03/10/2017	Aggregate 2,000,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

City of Malibu, its officers and employees are listed as an Additional Insured to the General Liability as required by written contract on a primary basis, but only as respects all covered operations of the Named Insured performed on behalf of the Additional Insured. End# EN0111-0211

## CERTIFICATE HOLDER

## CANCELLATION

City of Malibu 23825 Stuart Ranch Road Malibu, CA 90265	SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.
	AUTHORIZED REPRESENTATIVE 

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THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

## ADDITIONAL INSURED – OWNERS, LESSEES OR CONTRACTORS

This endorsement modifies insurance provided under the following:

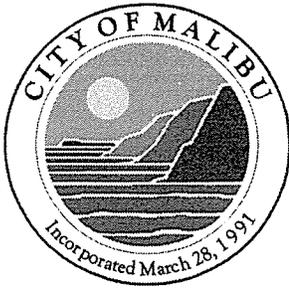
COMMERCIAL GENERAL LIABILITY COVERAGE PART  
CONTRACTORS POLLUTION LIABILITY COVERAGE PART

### SCHEDULE

**Name Of Additional Insured Person(s) or Organization(s)**  
Where Required By Written Contract

**SECTION III – WHO IS AN INSURED** within the Common Provisions is amended to include as an additional insured the person(s) or organization(s) indicated in the Schedule shown above, but only with respect to liability caused, in whole or in part, by “your work” for that insured which is performed by you or by those acting on your behalf.

ALL OTHER TERMS AND CONDITIONS OF THE POLICY REMAIN UNCHANGED.



# Council Agenda Report

To: Mayor La Monte and the Honorable Members of the City Council

Prepared by: Robert DuBoux, Assistant Public Works Director/City Engineer

Reviewed by: Robert L. Brager, Public Works Director/City Engineer

Approved by: Reva Feldman, City Manager 

Date prepared: August 3, 2016 Meeting date: August 22, 2016

Subject: Professional Services Agreement with Fugro Consultants, Inc.

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**RECOMMENDED ACTION:** Authorize the City Manager to execute a Professional Services Agreement with Fugro Consultants, Inc. (Fugro) for maintenance and monitoring services for the Big Rock Mesa, Malibu Road, and Calle Del Barco Landslide Assessment Districts.

**FISCAL IMPACT:** Funding for this project was included in the Adopted Budget for Fiscal Year 2016-2017 in Account Nos. 290-6002-5100 (Big Rock Mesa Landslide Maintenance District), 291-6003-5100 (Malibu Road Landslide Maintenance District) and 292-6004-5100 (Calle Del Barco Landslide Maintenance District).

**DISCUSSION:** On May 12, 2016, the City issued a Request for Proposals (RFP) for maintenance and monitoring of the City's three Landslide Assessment Districts (ADs); Big Rock Mesa AD 98-1, Calle Del Barco AD 98-2, and Malibu Road AD 98-3. On June 16, 2016, the City received three (3) proposals and on June 28, 2016, the following firms were interviewed:

- Cotton, Shires and Associates
- Fugro
- Geocomp

A selection panel reviewed the proposals and evaluated each consultant. The selection panel identified Fugro as the most qualified for this project. Fugro has successfully provided maintenance and monitoring services for the three Landslide Maintenance ADs since 2004. By awarding this contract to Fugro, the City will continue uninterrupted services for these Landslide Maintenance ADs.

**ATTACHMENT:** Professional Services Agreement with Fugro

## AGREEMENT FOR PROFESSIONAL SERVICES

This Agreement is made and entered into as of August 22, 2016 by and between the City of Malibu (hereinafter referred to as the "City"), and Fugro Consultants, Inc. (hereinafter referred to as "Consultant").

The City and the Consultant agree as follows:

### RECITALS

A. The City does not have the personnel able and/or available to perform the services required under this Agreement.

B. The City desires to contract out for consulting services for certain projects relating maintenance and monitoring for the Big Rock Mesa, Malibu Road, and Calle Del Barco Landslide Assessment Districts.

C. The Consultant warrants to the City that it has the qualifications, experience and facilities to perform properly and timely the services under this Agreement.

D. The City desires to contract with the Consultant to perform the services as described in Exhibit A of this Agreement.

NOW, THEREFORE, the City and the Consultant agree as follows:

**1.0 SCOPE OF THE CONSULTANT'S SERVICES.** The Consultant agrees to provide the services and perform the tasks set forth in Exhibit A, Scope of Work, attached to and made part of this Agreement, except that, to the extent that any provision in Exhibit A conflicts with this Agreement, the provisions of this Agreement govern. The Scope of Work may be amended from time to time by way of a written directive from the City.

**2.0 TERM OF AGREEMENT.** This Agreement will become effective on August 23, 2016 and will remain in effect for a period of 2 years from said date unless otherwise expressly extended one (1) year increments up to a total of three (3) additional years and agreed to by both parties or terminated by either party as provided herein.

**3.0 CITY AGENT.** The City Manager, or her designee, for the purposes of this Agreement, is the agent for the City; whenever approval or authorization is required, Consultant understands that the City Manager, or her designee, has the authority to provide that approval or authorization.

**4.0 COMPENSATION FOR SERVICES.** The City shall pay the Consultant for its professional services rendered and costs incurred pursuant to this Agreement in accordance with Exhibit "A", Scope of Work, and Exhibit "B", compensation schedule. However, each year, the compensation may increase based upon the Consumer Price Index, All Urban Consumers, Los Angeles-Riverside-Orange County, CA. No additional compensation shall be paid for any other

expenses incurred, unless first approved by the City Manager, or his designee.

4.1 The Consultant shall submit to the City, by no later than the 10<sup>th</sup> day of each month, its bill for services itemizing the fees and costs incurred during the previous month. The City shall pay the Consultant all uncontested amounts set forth in the Consultant's bill within 30 days after it is received.

**5.0 CONFLICT OF INTEREST.** The Consultant represents that it presently has no interest and shall not acquire any interest, direct or indirect, in any real property located in the City which may be affected by the services to be performed by the Consultant under this Agreement. The Consultant further represents that in performance of this Agreement, no person having any such interest shall be employed by it.

5.1 The Consultant represents that no City employee or official has a material financial interest in the Consultant's business. During the term of this Agreement and/or as a result of being awarded this contract, the Consultant shall not offer, encourage or accept any financial interest in the Consultant's business by any City employee or official.

5.2 If a portion of the Consultant's services called for under this Agreement shall ultimately be paid for by reimbursement from and through an agreement with a developer of any land within the City or with a City franchisee, the Consultant warrants that it has not performed any work for such developer/franchisee within the last 12 months, and shall not negotiate, offer or accept any contract or request to perform services for that identified developer/franchisee during the term of this Agreement.

## **6.0 GENERAL TERMS AND CONDITIONS.**

**6.1 Termination.** Either the City Manager or the Consultant may terminate this Agreement, without cause, by giving the other party ten (10) days written notice of such termination and the effective date thereof.

6.1.1 In the event of such termination, all finished or unfinished documents, reports, photographs, films, charts, data, studies, surveys, drawings, models, maps, or other documentation prepared by or in the possession of the Consultant under this Agreement shall be returned to the City. If the City terminates this Agreement without cause, the Consultant shall prepare and shall be entitled to receive compensation pursuant to a close-out bill for services rendered and fees incurred pursuant to this Agreement through the notice of termination. If the Consultant terminates this Agreement without cause, the Consultant shall be paid only for those services completed in a manner satisfactory to the City.

6.1.2 If the Consultant or the City fail to fulfill in a timely and proper manner its obligations under this Agreement, or if the Consultant or the City violate any of the covenants, agreements, or stipulations of this Agreement, the Consultant or the City shall have the right to terminate this Agreement by giving written notice to the other party of such termination and specifying the effective date of such termination. The Consultant shall be entitled to receive compensation in accordance with the terms of this Agreement for any work satisfactorily completed hereunder. Notwithstanding the foregoing, the Consultants shall not be

relieved of liability for damage sustained by virtue of any breach of this Agreement and any payments due under this Agreement may be withheld to off-set anticipated damages.

**6.2 Non-Assignability.** The Consultant shall not assign or transfer any interest in this Agreement without the express prior written consent of the City.

**6.3 Non-Discrimination.** The Consultant shall not discriminate as to race, creed, gender, color, national origin or sexual orientation in the performance of its services and duties pursuant to this Agreement, and will comply with all applicable laws, ordinances and codes of the Federal, State, County and City governments.

**6.4 Insurance.** The Consultant shall submit to the City certificates indicating compliance with the following minimum insurance requirements no less than one (1) day prior to beginning of performance under this Agreement:

(a) Workers Compensation Insurance as required by law. The Consultant shall require all subcontractors similarly to provide such compensation insurance for their respective employees.

(b) Comprehensive general and automobile liability insurance protecting the Consultant in amounts not less than \$1,000,000 for personal injury to any one person, \$1,000,000 for injuries arising out of one occurrence, and \$500,000 for property damages or a combined single limit of \$1,000,000. Each such policy of insurance shall:

1) Be issued by a financially responsible insurance company or companies admitted and authorized to do business in the State of California or which is approved in writing by City.

2) Name and list as additional insured the City, its officers and employees.

3) Specify its acts as primary insurance.

4) Contain a clause substantially in the following words: "It is hereby understood and agreed that this policy shall not be canceled nor materially changed except upon thirty (30) days prior written notice to the City of such cancellation or material change."

5) Cover the operations of the Consultant pursuant to the terms of this Agreement.

**6.5 Indemnification.** Consultant shall indemnify, defend with counsel approved by City, and hold harmless City, its officers, officials, employees and volunteers from and against all liability, loss, damage, expense, cost (including without limitation reasonable attorneys fees, expert fees and all other costs and fees of litigation) of every nature arising out of or in connection with Consultant's performance of work hereunder or its failure to comply with any of its obligations contained in this Agreement, regardless of City's passive negligence, but

excepting such loss or damage which is caused by the sole active negligence or willful misconduct of the City. Should City in its sole discretion find Consultant's legal counsel unacceptable, then Consultant shall reimburse the City its costs of defense, including without limitation reasonable attorneys fees, expert fees and all other costs and fees of litigation. The Consultant shall promptly pay any final judgment rendered against the City (and its officers, officials, employees and volunteers) covered by this indemnity obligation. It is expressly understood and agreed that the foregoing provisions are intended to be as broad and inclusive as is permitted by the law of the State of California and will survive termination of this Agreement.

**6.6 Compliance with Applicable Law.** The Consultant and the City shall comply with all applicable laws, ordinances and codes of the Federal, State, County and City governments.

**6.7 Independent Contractor.** This Agreement is by and between the City and the Consultant and is not intended, and shall not be construed, to create the relationship of agency, servant, employee, partnership, joint venture or association, as between the City and the Consultant.

6.7.1. The Consultant shall be an independent contractor, and shall have no power to incur any debt or obligation for or on behalf of the City. Neither the City nor any of its officers or employees shall have any control over the conduct of the Consultant, or any of the Consultant's employees, except as herein set forth, and the Consultant expressly warrants not to, at any time or in any manner, represent that it, or any of its agents, servants or employees are in any manner employees of the City, it being distinctly understood that the Consultant is and shall at all times remain to the City a wholly independent contractor and the Consultant's obligations to the City are solely such as are prescribed by this Agreement.

**6.8 Copyright.** No reports, maps or other documents produced in whole or in part under this Agreement shall be the subject of an application for copyright by or on behalf of the Consultant.

**6.9 Legal Construction.**

(a) This Agreement is made and entered into in the State of California and shall in all respects be interpreted, enforced and governed under the laws of the State of California.

(b) This Agreement shall be construed without regard to the identity of the persons who drafted its various provisions. Each and every provision of this Agreement shall be construed as though each of the parties participated equally in the drafting of same, and any rule of construction that a document is to be construed against the drafting party shall not be applicable to this Agreement.

(c) The article and section, captions and headings herein have been inserted for convenience only, and shall not be considered or referred to in resolving questions of interpretation or construction.

(d) Whenever in this Agreement the context may so require, the masculine gender shall be deemed to refer to and include the feminine and neuter, and the singular shall refer to and include the plural.

**6.10 Counterparts.** This Agreement may be executed in counterparts and as so executed shall constitute an agreement which shall be binding upon all parties hereto.

**6.11 Final Payment Acceptance Constitutes Release.** The acceptance by the Consultant of the final payment made under this Agreement shall operate as and be a release of the City from all claims and liabilities for compensation to the Consultant for anything done, furnished or relating to the Consultant's work or services. Acceptance of payment shall be any negotiation of the City's check or the failure to make a written extra compensation claim within ten (10) calendar days of the receipt of that check. However, approval or payment by the City shall not constitute, nor be deemed, a release of the responsibility and liability of the Consultant, its employees, sub-consultants and agents for the accuracy and competency of the information provided and/or work performed; nor shall such approval or payment be deemed to be an assumption of such responsibility or liability by the City for any defect or error in the work prepared by the Consultant, its employees, sub-consultants and agents.

**6.12 Corrections.** In addition to the above indemnification obligations, the Consultant shall correct, at its expense, all errors in the work which may be disclosed during the City's review of the Consultant's report or plans. Should the Consultant fail to make such correction in a reasonably timely manner, such correction shall be made by the City, and the cost thereof shall be charged to the Consultant.

**6.13 Files.** All files of the Consultant pertaining to the City shall be and remain the property of the City. The Consultant will control the physical location of such files during the term of this Agreement and shall be entitled to retain copies of such files upon termination of this Agreement.

**6.14 Waiver; Remedies Cumulative.** Failure by a party to insist upon the performance of any of the provisions of this Agreement by the other party, irrespective of the length of time for which such failure continues, shall not constitute a waiver of such party's right to demand compliance by such other party in the future. No waiver by a party of a default or breach of the other party shall be effective or binding upon such party unless made in writing by such party, and no such waiver shall be implied from any omissions by a party to take any action with respect to such default or breach. No express written waiver of a specified default or breach shall affect any other default or breach, or cover any other period of time, other than any default or breach and/or period of time specified. All of the remedies permitted or available to a party under this Agreement, or at law or in equity, shall be cumulative and alternative, and invocation of any such right or remedy shall not constitute a waiver or election of remedies with respect to any other permitted or available right of remedy.

**6.15 Mitigation of Damages.** In all such situations arising out of this Agreement, the parties shall attempt to avoid and minimize the damages resulting from the conduct of the other party.

**6.16 Partial Invalidity.** If any provision in this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions will nevertheless continue in full force without being impaired or invalidated in any way.

**6.17 Attorneys' Fees.** The parties hereto acknowledge and agree that each will bear his/her or its own costs, expenses and attorneys' fees arising out of and/or connected with the negotiation, drafting and execution of the Agreement, and all matters arising out of or connected therewith except that, in the event any action is brought by any party hereto to enforce this Agreement, the prevailing party in such action shall be entitled to reasonable attorneys' fees and costs in addition to all other relief to which that party or those parties may be entitled.

**6.18 Entire Agreement.** This Agreement constitutes the whole agreement between the City and the Consultant, and neither party has made any representations to the other except as expressly contained herein. Neither party, in executing or performing this Agreement, is relying upon any statement or information not contained in this Agreement. Any changes or modifications to this Agreement must be made in writing appropriately executed by both the City and the Consultant.

**6.19 Notices.** Any notice required to be given hereunder shall be deemed to have been given by depositing said notice in the United States mail, postage prepaid, and addressed as follows:

<b>CITY:</b>	Reva Feldman City Manager City of Malibu 23825 Stuart Ranch Road Malibu, CA 90265-4861 TEL (310) 456-2489 x 224 FAX (310) 456-2760	<b>CONSULTANT:</b>	Loree Berry Senior Engineer/Project Mgr. Fugro Consultants, Inc. 4820 McGrath St., Ste. 100 Ventura, CA 93003 TEL (805) 650-7000 FAX (805) 650-7010
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**6.20 Warranty of Authorized Signatories.** Each of the signatories hereto warrants and represents that he or she is competent and authorized to enter into this Agreement on behalf of the party for whom he or she purports to sign.

**7.0 GENERAL TERMS AND CONDITIONS. (City and Consultant initials required at EITHER 7.1 or 7.2)**

**7.1 Disclosure Required.** By their respective initials next to this paragraph, City and Consultant hereby acknowledge that Consultant is a "consultant" for the purposes of the California Political Reform Act because Consultant's duties would require him or her to make one or more of the governmental decisions set forth in Fair Political Practices Commission Regulation 18701(a)(2) or otherwise serves in a staff capacity for which disclosure would otherwise be required were Consultant employed by the City. Consultant hereby acknowledges his or her assuming-office, annual, and leaving-office financial reporting obligations under the California Political Reform Act and the City's Conflict of Interest Code and agrees to comply with those obligations at his or her expense. Prior to consultant commencing services hereunder, the City's Manager shall prepare and deliver to consultant a memorandum detailing the extent of

Agreement for Professional Services  
Fugro Consultants, Inc.  
Page 7 of 7

Consultant's disclosure obligations in accordance with the City's Conflict of Interest Code.

City Initials \_\_\_\_\_  
Consultant Initials \_\_\_\_\_

**7.2 Disclosure not Required.** By their initials next to this paragraph, City and Consultant hereby acknowledge that Consultant is not a "consultant" for the purpose of the California Political Reform Act because Consultant's duties and responsibilities are not within the scope of the definition of consultant in Fair Political Practice Commission Regulation 18701(a)(2)(A) and is otherwise not serving in staff capacity in accordance with the City's Conflict of Interest Code.

City Initials \_\_\_\_\_  
Consultant Initials lw

This Agreement is executed on \_\_\_\_\_, 2016, at Malibu, California, and effective as of August 23, 2016.

CITY OF MALIBU:

\_\_\_\_\_  
REVA FELDMAN, City Manager

ATTEST:

\_\_\_\_\_  
HEATHER GLASER, Acting City Clerk  
(seal)

CONSULTANT:

W. Ray Wood  
By: W. Ray Wood

APPROVED AS TO FORM:

Christi Hogan  
CHRISTI HOGIN, City Attorney



## EXHIBIT A: SCOPE OF WORK

### Task 1 \ Monitoring and Inventory

Our monitoring and inventory includes facilities from the Big Rock Mesa, Calle del Barco, and Malibu Road Landslide Maintenance and Monitoring areas. The number of facilities and monitoring frequency is described in the lists below and are based on an average rainfall year and during a year where no significant ground/slope movement is recorded. The frequency of field visits and/or measurements should be increased based on mutual decision between the Consultant and the City. Some scenarios that might trigger an increased monitoring frequency include: above average rainfall, detected landslide movement, erroneous or anomalous facility measurement, rise in groundwater elevation, and others.

In general, monitoring will be performed by a Fugro technician or staff professional at the interval indicated below. This task includes on-site monitoring time as well as time for our staff to coordinate with property owners and vendors, research weather, tides, and surf conditions, procure and ready equipment for the field and take a visual inventory of each facility that is visited. Daily field reports are provided as backup to monthly invoicing for this task.

#### Big Rock Mesa

- Standpipe Piezometers: Twenty-eight (28) standpipe piezometers will be measured on **monthly** basis.
- Pneumatic Piezometers: Sixteen (16) pneumatic piezometers will be measured on a **semi-annual** basis.
- Dewatering Wells: Twenty-three (23) dewatering wells will be measured **twice each month** between November and March and during the month following a recorded rainfall event of at least 1 inch. Outside of those cases, the dewatering wells will be measured **once each month** (generally April through October). Monthly measurements include recording the production volume and checking the well's operational status.
- Horizontal Drains: Thirty-one (31) horizontal drains will be measured **every other month** to record discharge volume and visually inspect condition and functionality.
- Slope Inclinometers: Twenty-seven (27) slope inclinometers are currently considered "functioning". Three (3) of those (SP-11, SP-26, and SP-27A) consistently show minor movement and will be measured **quarterly**. Fourteen (14) of the 27 have shown past movement and will be surveyed, processed, and analyzed **semi-annually** (SP-12, SP-14, SP-29, SP-30, SP-10, SP-28, SP-32, PC-1, SP-3A, SP-33, SP-17B, SP-34, SP-35, SP-36). The remaining 10 have no history of past movement and will be surveyed, processed, and analyzed **once per year** (SP-15, SP-19, SP-3, SP-9A, SP-16A, SP-17A, SP-20, SP-21, SP-22, SP-23).
- Water Quality Sampling Locations: Water quality sampling locations, constituent testing suite, frequency, and reporting will be in accordance with the Los Angeles Regional Water Quality Control Board NPDES Permit Conditions that is considered active or current at the time sampling is performed.

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## EXHIBIT A: SCOPE OF WORK

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### Calle del Barco

- Standpipe Piezometers: Nine (9) standpipe piezometers will be measured on **monthly** basis.
  - Pneumatic Piezometers: Nineteen (19) pneumatic piezometers will be measured on a **semi-annual** basis.
  - Dewatering Wells: Eleven (11) dewatering wells will be measured **monthly** to record production volume and check operational status.
  - Horizontal Drains: Eleven (11) horizontal drains will be measured **every other month** to record discharge volume and visually inspect their condition and functionality.
  - Slope Inclinometers: Twelve (12) are currently considered “functioning” and will be surveyed, processed, and analyzed semi-annually.
- Crack Gauges: Four (4) crack gauges located on Calle del Barco will be recorded on a **semi-annual** basis. Should movement be recorded in any of the existing crack gauges, the measuring frequency will be increased to monthly until three consecutive monthly crack gauge readings indicate no change.

### Malibu Road

- Standpipe Piezometers: Nine (9) standpipe piezometers will be measured on **monthly** basis.
- Pneumatic Piezometers: Nine (9) pneumatic piezometers will be measured on a **semi-annual** basis.
- Dewatering Wells: Ten (10) dewatering wells will be measured **monthly** to record production volume and check operational status.
- Horizontal Drains: Twenty-three (23) horizontal drains will be measured **every other month** to record discharge volume and visually inspect their condition and functionality.
- Slope Inclinometers: Five (5) are currently considered “functioning” and will be surveyed, processed, and analyzed **semi-annually**.

### Task 2 / Regulatory Compliance (Big Rock Mesa only)

This task includes water sample collection from locations outlined in the active Los Angeles Regional Water Quality Control Board (Board) NPDES discharge permit (No. CAG994004). The current active permit, dated May 15, 2015 calls for water sampling from ten (10) storm drain outfall locations along the Pacific Ocean and provides a list of constituents to be measured from each location on a monthly basis. The active permit also defines parameters for increased monitoring/testing frequency when non-compliant results are measured. The sampling location, sampling frequency, and constituent list may change at any time should the Board issue a new or revised permit for this project. The Consultant’s scope of work and fee should be reviewed and adjusted accordingly if a new or revised permit is issued.

The work for this task includes collecting water quality samples at the permit-designated sampling locations and at the permit-defined frequency, performing field pH and chlorine measurements, and properly transporting samples to a certified laboratory to perform testing for all constituents named on the active NPDES permit. Following receipt of the results, we will enter them into our database and review if any constituents exceed the specified limits. Where out-of-compliance samples are



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## EXHIBIT A: SCOPE OF WORK

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identified, we will continue to sample those constituents from the identified port on a weekly basis until three compliant results are obtained (per the current active permit).

This task includes labor time for preparing quarterly and annual reports to be submitted to the Los Angeles Regional Water Quality Control Board within 45 days of the end of a quarter or calendar year. Any required correspondence or meetings regarding the permit or compliance issues will also be billed to this task.

### **Task 3 \ Maintenance**

Facility maintenance will be performed as quickly as practical once an issue is identified. To help prioritize repairs and to budget for them accordingly, a given maintenance activity will be categorized as 1) routine; 2) minor; or 3) major/capital. The base annual budget includes an annual estimate for routine and minor repairs. Major/capital maintenance descriptions are provided in a later section and budgets will be developed annually based on the previous years' observations and included as their own line item in the City's Annual Assessment District Budget.

**Routine Maintenance.** We propose to perform routine maintenance on an as-needed basis when issues are identified during regular monitoring or as soon as a concern arises. In general, we define routine maintenance as those activities that can be completed by in-house staff with little or no outside direct costs for parts or tools. Routine maintenance will be performed concurrent with regular monitoring or on a second trip, where all identified routine repairs are completed at one time and typically over a one- or two-day period. We propose that special notification or approval need not be obtained for us to perform routine maintenance and funding for routine maintenance is built into our annual base budget. Some examples of routine maintenance are as follows:

- Dewatering well flow-meter repair and/or replacement;
- Minor cleaning out and repair of hydrauger discharge and conveyance lines;
- Repairing small portions of facilities damaged by vehicular or pedestrian traffic;
- Exposing facilities shallowly buried by 2- feet or less of sloughed soils;
- Labelling, painting, or improving identification or safety conditions around a facility;
- Replacing relatively inexpensive parts such as PVC couplers, well caps, vault covers, sampling ports, etc.; or
- Purchasing calibration solutions for field pH and chlorine measurements.

**Minor Maintenance.** For our approach, we define Minor Maintenance as activities that, in most cases, require the use of an outside vendor or subcontractor to complete the repair. We would notify the City with a description and an estimated fee for a specific minor maintenance activity and obtain verbal approval prior to proceeding. Minor maintenance would generally be funded by the annual maintenance budget for each District. Following the completion of minor maintenance, a brief summary memo of the completed work will be provided to the City. Some examples of what we consider to be minor maintenance include:

- Dewatering well electrical service maintenance;



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## EXHIBIT A: SCOPE OF WORK

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- Removal, inspection, or repair/replacement of well pumps, drop pipe, or pump-motors;
- Video logging of facilities for inspection;
- Calibration and/or parts repairs to our inclinometer probe;
- Significant repairs or replacement of dewatering well or hydrauger conveyance or discharge lines;
- Clean-out of facilities more deeply buried (2 to 3 feet or more) by sloughing soils/creep; or
- Vegetation clearing/trimming away from facilities.

### **Task 4 / Public Outreach and City Updates**

For this task, we have provided a fee estimate that accounts for our project manager and one field staff member to participate in both a Public Works Commission meeting (typically in the Fall) and the annual Budget approval meeting (early summer). Our fee also includes our project manager to attend (in-person) one, less than 1-hour-long, informal status update meeting with the City's overseeing manager every other month.

Additional public outreach meetings or non-routine city update meetings that are not identified above and that we are requested to attend, will be billed on a time-and-materials basis for the actual meeting time and any time needed to prepare for the meeting in accordance with our proposed labor rate schedule, which is provided herein.

### **Task 5 / Data Review, Plotting, Evaluation and Database Maintenance**

Following field data collection, that information will be entered into our database, promptly followed by a quality assurance procedure. That approach helps us flag potential issues before they become a problem and quickly identify an appropriate course of action for resolving it. For this task, we will enter data and perform quality assurance activities on a monthly basis and update time-history graphics (provided in the annual report) on a quarterly basis. We will review data for trends and alert the City of possible concerns for landslide movement or increasing groundwater levels.

Our cost estimate under this task includes a line item for working on and building to our GIS "pilot program" for the Malibu facilities, which would provide an electronic map interface for users to view historical and more recent data for select facilities. During the first year of the contract, we will focus on digitizing information for the standpipe piezometers. The second year will focus on digitizing information for the dewatering wells and horizontal drains. Ultimately, the goal would be to build the database as a website-based interface through Fugro's website. Additional improvements and enhancements to the GIS pilot program will be performed as future Capital Improvement projects.

### **Task 6 / Project Administration and Reporting**

Fugro will prepare annual reports for the City that summarize the data and maintenance operations that occurred over the previous fiscal year. Historical tables and graphics will be included that help demonstrate the existing groundwater and dewatering levels relative to rainfall, previous years, and current (if any) slope movement as measured in the inclinometers. Under this task, Fugro will oversee and manage invoicing including monthly budget updates, plan and coordinate ongoing monitoring and maintenance work, and manage field staff.



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## EXHIBIT A: SCOPE OF WORK

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Engineering evaluations, meetings, or reporting for which our support is requested by the City and is outside of what is outlined above will be billed on a time and materials basis in accordance to our proposed labor rate schedule.

### **Task 7 / Emergency Services**

Fugro will be available to support the City on a 24-hour, on-call emergency basis, should the need arise. We have also identified well contractor, Midwest Water Wells and general contractor, Sam Hill & Sons to support us with equipment or operator needs. Requests of this nature can be executed when called upon and will be billed on a time-and-materials basis in accordance with our proposed labor rate schedule and applicable hourly rates for our identified subcontractors. The primary contacts for emergency response will be Ms. Loree Berry ([Lberry@fugro.com](mailto:Lberry@fugro.com), 805-746-6856) and Mr. Nick Simon ([nsimon@fugro.com](mailto:nsimon@fugro.com), 805-218-5690).

### **Task 8 / Capital Improvements**

Major maintenance or capital improvements to the District monitoring facilities are those that require funding beyond the annual maintenance budgets due to the level of effort and fee associated with them. The scope and budget for a major repair, replacement, or capital improvement would need to be approved prior to execution and a description of the work performed would be documented in writing with as-built drawings, as applicable. Capital improvement projects will be identified annually during annual budget development and will be based on the previous years' observations, priorities for replacement, and available CIP funding. Capital improvement projects will be listed under their own line item in the City's Annual Assessment District Budget separate from the base monitoring and maintenance cost estimate.

In general, CIP efforts will involve replacing all or an expensive part of an existing facility or would include repairs that may take several days to complete with rented equipment or a subcontractor. Additional coordination such as traffic control with road encroachment or closures, permits, or disposal of generated and containerized soil and/or water would typically be a part of the work. Some examples of major/capital maintenance are as follows:

- Replacement of all or a significant part of an entire facility such as drilling and installing a new dewatering well, pump, or electrical system, drilling and installing a new piezometer casing, inclinometer casing, or horizontal drain casing;
- Pressure cleaning hydraugers (requires significant water usage and generates soil cuttings and solids along with turbid water to be containerized and disposed of);
- Installing and replacing significant lengths of buried discharge lines;
- Implementing new or digital technologies, GIS upgrades, or
- Design and construction of a structural element such as retaining wall.

### **2016-2017 Fiscal Year**

The following Capital Improvements are proposed for the 2016-2017 fiscal year:



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## EXHIBIT A: SCOPE OF WORK

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1. Replace Inclinometer SP-28 (Big Rock Mesa)
2. Replace Dewatering Well BYA-1 or BYA-15 (Big Rock Mesa)
3. Replace and/or Power Flush 250 feet of Hydrauger (Big Rock Mesa and Calle del Barco)



## EXHIBIT B. COST SCHEDULE

### Big Rock Mesa, FY 2016-2017 Annual Budget

Task No.	Task Name	Fee by Task
Task 1a	Facility Monitoring and Inventory - Inclonometers & Piezometers	\$ 55,000
Task 1b	Facility Monitoring and Inventory - Dewatering Wells	\$ 10,000
Task 1c	Facility Monitoring and Inventory - Hydraugers	\$ 5,000
Task 2	Regulatory Compliance	\$ 114,000
Task 3a	Maintenance – Dewatering Wells	\$ 25,500
Task 3b	Maintenance - Hydraugers	\$ 10,000
Task 4	Public Outreach and City Updates	\$ 1,000
Task 5	Data Review, Plotting, Evaluation, and Database	\$ 13,500
Task 6a	Project Administration	\$ 15,000
Task 6b	Annual Reporting	\$ 6,000
Task 7	Emergency Services	\$ ***
Task 8	Capital Improvements	\$ 112,000
	<b>Total Budget Big Rock Mesa FY 2016-2017</b>	<b>\$ 367,000</b>

\*\*\*All emergency services will be conducted on a Time and Materials basis

### Calle del Barco, FY 2016-2017 Annual Budget

Task No.	Task Name	Fee by Task
Task 1	Facility Monitoring & Inventory	\$ 16,000
Task 2	Regulatory Compliance (Big Rock Only)	\$ 0
Task 3	Maintenance	\$ 16,000
Task 4	Public Outreach and City Updates	\$ 1,000
Task 5	Data Review, Plotting, Evaluation, and Database	\$ 7,500
Task 6a	Project Administration	\$ 4,500
Task 6b	Annual Reporting	\$ 4,000
Task 7	Emergency Services	\$ ***
Task 8	Capital Improvements	\$ 22,000
	<b>Total Budget Calle del Barco FY 2016-2017</b>	<b>\$ 71,000</b>

\*\*\*All emergency services will be conducted on a Time and Materials basis



### Malibu Road, FY 2016-2017 Annual Budget

Task No.	Task Name	Fee by Task
Task 1	Facility Monitoring & Inventory	\$ 15,060
Task 2	Regulatory Compliance (Big Rock Only)	\$ 0
Task 3	Maintenance	\$ 19,000
Task 4	Public Outreach and City Updates	\$ 1,000
Task 5	Data Review, Plotting, Evaluation, and Database	\$ 6,320
Task 6a	Project Administration	\$ 4,620
Task 6b	Annual Reporting	\$ 3,370
Task 7	Emergency Services	\$ ***
Task 8	Capital Improvements	\$ 0
<b>Total Budget Malibu Road FY 2016-2017</b>		<b>\$ 49,370</b>

\*\*\*All Emergency Services will be conducted on a Time and Materials basis



**CITY OF MALIBU  
PROFESSIONAL AND TECHNICAL FEES – 2016 - 2018**

Fees for Fugro professional services will be performed on a time and materials (T&M) basis in accordance with the T&M rates listed below.

**Monitoring & Maintenance, Consultation, and Report Preparation for City of Malibu.**

Fees for Fugro professional services, including assessment district project administration, are based on the time of professional, technical, and other support personnel directly applied to the project. Personnel participating in judicial proceedings, whether it be expert or witness testimony, delivery of depositions, consultation to legal counsel, or preparation for such, will be billed at \$325 per hour. Rates for overtime (other than as described below), weekend work, and emergency response will be quoted on request.

<u>PROFESSIONAL STAFF</u>	<u>HOURLY RATE</u>
Staff Professional .....	\$ 115
Project Professional .....	125
Senior Professional .....	150
Associate .....	160
Principal .....	180
Senior Principal .....	215

<u>TECHNICAL AND OFFICE STAFF</u>	<u>HOURLY RATE</u>
Field Technician/Inspector - Non-Prevailing Wage, Straight Time .....	\$ 85
Field Technician/Inspector - Prevailing Wage, Straight Time .....	90
Field Engineer/Geologist .....	95
Construction Inspector .....	110
Construction Services Manager .....	130
Engineering Assistant .....	100
Office Assistant .....	60
Word Processor/Clerical .....	75
Laboratory Technician .....	75
Technical Assistant/Illustrator .....	80
Illustrator II .....	85
CADD Operator .....	95
GIS Technician .....	95
HSE Manager .....	160

*Overtime Rates for Technical and Office Staff:*

a. Saturday or over 8 hours/day during weekdays .....	1.3 x straight time
b. Saturdays over 8 hours or Sundays/holidays .....	1.5 x straight time
c. Swing or graveyard shift premium .....	1.3 x straight time

<u>HARDWARE/SOFTWARE INTERPRETIVE PROGRAMS</u>	<u>HOURLY RATE</u>
SMT/Fledermaus .....	\$ 25
GIS/ACAD .....	25
Finite Element/Finite Difference Packages .....	25

**OTHER DIRECT CHARGES**

Field vehicle with sampling & logging equipment .....	\$ 200/day
Basic staff vehicle .....	100/day

**LABORATORY AND SPECIALTY TESTING AND EQUIPMENT**..... See Separate Schedules

- 3.0 Reimbursable Expenses.** Expenses, other than salary costs, that are directly attributable to the performance of our professional services are billed either under separate fee schedules or as follows:
- Transportation in personal vehicles at Internal Revenue Service rates.
  - Authorized travel expenses at cost plus 15 percent.
  - Direct project expenses, other than travel, including, but not limited to, sample shipment, subcontractors, and outside reproduction, cost plus 15 percent.
  - Time of external personnel retained for the project is charged at an assigned billing rate comparable to others in our company of corresponding expertise and experience.
- 4.0 Other Services.** Projects may require other services, such as field exploration, field or laboratory testing, or specialized computer services that are not covered by this schedule. Fee schedules for other services can be provided upon request.

FUGRO CONSULTANTS, INC.  
2016-2018 FEE SCHEDULE  
LABORATORY AND MATERIALS TESTING



**CLASSIFICATION TESTS**

Moisture Content (ASTM D2216) .....	\$ 20
Moisture and Density (ASTM D2937).....	\$ 30
- add for shelby tube with above tests.....	\$ 20
Reaction with HCl (ASTM D2488).....	\$ 10
Irregular Shape Density (USACE).....	\$ 55
Plastic and Liquid Limits, wet prep, 3 point LL (ASTM D4318) .....	\$ 150
Specific Gravity (ASTM D854).....	\$ 80
Organic Content (ASTM D2974) .....	\$ 75
Sand Equivalent (ASTM D2419) .....	\$ 95
Sieve Analysis, up to 8 sieves (ASTM D422) ..	\$ 105
- add for each additional sieve in stack.....	\$ 10
- add for coarse fraction (>#4 sieve) .....	\$ 60
Percent Passing #200 Sieve (ASTM D1140)....	\$ 70
Hydrometer and Sieve (ASTM D422).....	\$ 160
Processing Clay Shales (USACE).....	\$ 75

**Tests listed above include classification (ASTM D2488 or D2487)**

**VOLUME CHANGE TESTS**

Incremental Consolidation (ASTM D2435)	
- up to 8 load increments.....	\$ 275
- additional load increment .....	\$ 30
Constant Rate of Strain Consolidation	
- to 16 ksf max (ASTM D4186).....	\$ 425
- with intermediate rebound and reload.....	\$ 500
Expansion Index (ASTM D4829/UBC 29-1).....	\$ 235
Swell and Collapse Tests	
- wet after load, 4 point (ASTM D4546-A)....	\$ 600
- wet after load, 1 point (ASTM D4546-B)....	\$ 160
- load after wet, 1 point (ASTM D4546-C)....	\$ 200

**STATIC STRENGTH TESTS**

Hand Penetrometer.....	\$ 15
Torvane .....	\$ 25
Miniature Vane (ASTM D4648) .....	\$ 50
Miniature Vane with Residual .....	\$ 55
Unconfined Compression	
- Soil (ASTM D2166) .....	\$ 100
- Rock, excludes strain (ASTM D7012-C)....	\$ 130
- Rock, with axial strain (ASTM D7012-D)....	\$ 200
- add for radial strain.....	\$ 125
Triaxial Compression	
- Unconsolidated Undrained (ASTM D2850) \$	140
- add for back pressure saturation.....	\$ 85
- *Consolidated Undrained with pore pressure measurements, per point (ASTM D4767)....	\$ 440
- *Consolidated Drained, per point (USACE) \$	650
Direct Shear, 3 points, (ASTM D3080).....	\$ 435
- add for residual strength, per point .....	\$ 50
Point Load Index (ASTM D5731).....	\$ 60

\*Multiply single point rate by 2 for up to 3 stages of consolidated, drained or undrained staged triaxial tests

**HYDRAULIC CONDUCTIVITY TESTS**

Constant Head, 2-3" Dia. (ASTM D2434).....	\$ 290
Constant Head, 6" Dia. Includes remolding (ASTM D2434).....	\$ 375
Flexible Wall (ASTM D5084) .....	\$ 290
- add for additional effective stress.....	\$ 100

**CLAY PROPERTIES & CHEMISTRY TESTS**

Double Hydrometer (ASTM D4221) .....	\$ 290
Pinhole Dispersion (ASTM D4647) .....	\$ 270
Crumb Test (ASTM 6572).....	\$ 45
X-Ray Diffraction.....	\$ 300
Soil Chemistry For Corrosion	
(pH, chloride, sulfate, resistivity).....	\$ 250
pH (soil or water) .....	\$ 30

**EARTHWORK TESTS**

Standard Proctor, 4 points (ASTM D698)	
- 4-inch mold .....	\$ 200
- 6-inch mold.....	\$ 240
Modified Proctor, 4 points (ASTM D1557)	
- 4-inch mold .....	\$ 235
- 6-inch mold .....	\$ 275
California Impact Compaction (Cal 216) .....	\$ 250
Moisture - Density Check Point	
- 4-inch mold .....	\$ 75
- 6-inch mold .....	\$ 100
- add for rock correction for above .....	\$ 90
Cement/ Lime Treatment	
- Moisture/Density Relation (ASTM D558) .....	\$ 275
- Wet & Dry Cycles, 2 spec., (ASTM D559) ..	\$ 500
- Strength, w/ molding, (ASTM D1633) .....	\$ 90
- Est. pH for Stabilization, (ASTM D6276)....	\$ 200
Index Density and Unit Weight (ASTM D4253)	
Maximum .....	\$ 315
Minimum .....	\$ 135
R-Value (ASTM D2844/Cal 301) .....	\$ 310
Treated Soil .....	\$ 325
Aggregate Base.....	\$ 335
Base with Admixture .....	\$ 350
CBR, per point (ASTM D1883) .....	\$ 340
Proctor Compaction with above CBR.....	\$ 210
Surcharge for Admixture .....	\$ 50
Sample Preparation for Soil with PI>20.....	\$ 55

**AGGREGATE TESTS**

Sieve Analysis (ASTM C136/Cal202)	
- Coarse Aggregate .....	\$ 60
- add for samples > 5000g.....	\$ 30
- Fine Aggregate .....	\$ 110
Sand Equivalent (ASTM D2419/Cal 217).....	\$ 95
Cleaness Value (ASTM C142/Cal 227).....	\$ 140
Durability Index (ASTM C3744/Cal 229)	
- Coarse Fraction.....	\$ 140
- Fine Fraction.....	\$ 140
Specific Gravity & Absorption	
- Coarse Aggregate (ASTM C127/Cal206) ..	\$ 80
- Fine Aggregate (ASTM C128/Cal 207) .....	\$ 125
% Crushed Particles, per fraction	
(ASTM D5821/Cal 205) .....	\$ 100
Flat & Elongated Particles (ASTM D4791).....	\$ 180
Uncompacted Void Content of Fine Aggregate (AASHTO T304).....	\$ 200
Moisture Content (ASTM C566) .....	\$ 60
Sulfate Soundness, per fraction	
(ASTM C88/Cal 214) .....	\$ 125
L.A. Abrasion 500 rev. (ASTM C131/Cal 211) \$	215
Percent Passing #200 Sieve (ASTM C117) .....	\$ 85
Unit Weight and Voids (ASTM C29/Cal 212) ...	\$ 95
Organic Impurities (ASTM C40) .....	\$ 50

FUGRO CONSULTANTS, INC.  
2016-2018 FEE SCHEDULE  
LABORATORY AND MATERIALS TESTING



**ASPHALT CONCRETE TESTS**

Stabilometer Value (ASTM D1560/Cal 366) ....	\$ 160
Lab Compacted Unit Weight	
- each briquette (Cal 304/Cal 308).....	\$ 110
- surcharge for rubberized AC.....	\$ 20
Unit Weight of AC Cores (Cal 308).....	\$ 65
Theoretical Max. S.G. (Cal 309).....	\$ 150
Extraction and Sieve (ASTM D2172/D5444).....	\$ 315
Asphalt Content by Ignition (Cal 382).....	\$ 150
Calibration Curve for Ignition Test .....	\$ 300
Slurry Wet Track Abrasion (ASTM D3910) .....	\$ 70

**CONCRETE, MASONRY, AND STEEL TESTS**

Concrete Compression	
- Each 6x12 or 4x8 Cylinder (ASTM C39).....	\$ 30
- Add for Elastic Modulus (ASTM C469) .....	\$ 185
- Hold or Additional Test.....	\$ 30
- Light Weight Concrete (CTM 548) .....	\$ 40
Cylinder Molds with Lids .....	\$ 8
Compression of Core (ASTM C42) .....	\$ 90
Shrinkage of Mortar and Concrete 3 Bars (ASTM C157).....	\$ 440
Unit Weight of Concrete Cylinders	
- Air-Dried.....	\$ 30
- Oven-Dried .....	\$ 40
Shotcrete Panel, Lab Coring & Compression	
- 3 cores (ASTM C42).....	\$ 375
Grout and Mortar Compression (ASTM C39)	
- Grout.....	\$ 45
- Mortar .....	\$ 35
Composite Prism Compression (ASTM E447)	
- 8x8 .....	Quote
- 8x12 .....	Quote
- 8x16 .....	Quote
CMU Block Compression (ASTM C140).....	Quote
CMU Absorption & Moisture (ASTM C140).....	\$ 95
Concrete Moisture Emission Test Kit, each .....	\$ 60
Rebar - Tensile and Bend (ASTM A-370) .....	Quote

**MISCELLANEOUS LABORATORY TESTS AND CHARGES**

Sample Remold Surcharge .....	\$ 50
Special Processing .....	Hourly Rates
Extrude Tube Sample and Visually Classify.....	\$ 70
Sample Tube Cutting, each cut.....	\$ 25
Sample Preparation - Non-Routine .....	\$ 100
Steel Drum - 55 Gallon with Lid .....	\$ 80
Gas Powered Generator.....	\$ 80
Shelby Tube with Caps.....	\$ 45
Addition of Soil Admixtures and Curing.....	\$ 95
Capping of Strength Test.....	\$ 40
Weight of Roofing Materials (ASTM D2829) .....	\$ 50
Density of Sprayed Fireproofing Materials .....	\$ 60
Static Friction Test	
- Per Surface Location (ASTM C1028) ...	\$ 375
Coring Equip/Bit Charge, per half day.....	\$ 85
Bit Charge - Difficult Materials, per half day ...	\$ 100
Specimen End Prep	
- Less than 4" Diameter, per cut.....	\$ 12
- 4" to 8" Diameter, per cut .....	\$ 18
Special Capping of Specimen .....	\$ 40
Patch or Grout Core Hole .....	\$ 35

Photograph of Sample .....	\$ 40
Additional Copies of Photographs .....	Cost + 15%
Local Site Pick up of Bulk or AC Sample	
- within 30-mile radius, per sample.....	\$ 60

**NOTES:**

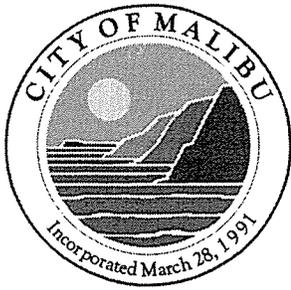
- 1) Fugro Consultants, Inc.'s laboratories are accredited or validated by AASHTO (R-18), Caltrans, USACE, DSA/(LEA).
- 2) The following are included at NO CHARGE:
  - a) Visual classification, natural water content and density with all triaxial, direct shear, volume change, and hydraulic conductivity tests.
  - b) Sample photographs for triaxial, hydraulic conductivity, and PLI tests.
- 3) Rates for other tests and test variations, including mix designs, can be furnished on request.
- 4) Rush assignments are subject to a 25% surcharge. Weekend or Holiday test assignments are subject to a 50% surcharge.
- 5) Testing for contaminated samples (EPA Level C & D) will be invoiced at 1.5 times listed rates.
- 6) Shipping or other outside costs at cost +15%.
- 7) Reusable thin-walled tube shipping boxes (ASTM D4220) can be provided at no cost (except for shipping charges) for samples shipped to Fugro's laboratory for testing.
- 8) Please contact the laboratory prior to shipping international soils to make proper arrangements and obtain our foreign soil permit.
- 9) A surcharge of \$1 per linear foot of test boring depth will be added to cover the cost of standard engineering field supplies including sample tubes and caps, stakes, etc.

FUGRO CONSULTANTS, INC.  
2016 FEE SCHEDULE  
FIELD EQUIPMENT AND SUPPLIES



**FIELD INSTRUMENTATION/EQUIPMENT**

Mini RAE (PID/LEL/CO <sub>s</sub> ) Detector .....	\$ 150/day	Baroid Drilling Fluid Test Kit.....	\$ 30/day
Dynamic or Stainless Steel Penetrometer..	\$ 50/day	Conductivity Probe (in situ) .....	\$ 55/day
Brass or Stainless Steel Sample Sleeves ..	\$ 8/each	Fisher TW-6 Metal Detector .....	\$ 50/day
Use of 10 Modified Cal. Sleeves .....	\$ 30/box	Gas Powered 120v Generator.....	\$ 80/day
Keyed-Alike Locks.....	\$ 25/each	Peristaltic Pump .....	\$ 50/day
55-gallon Drum.....	\$ 80/each	Positive Displacement Pump .....	\$ 25/day
Field Filter .....	\$ 25/unit	Temperature-pH-Conductivity Meter .....	\$ 25/day
Stainless Steel Hand-Auger Sampler.....	\$ 50/day	Pressure Transducer.....	\$ 75/day
Teflon Tape - 4" roll.....	\$ 75/roll	Water Level Indicator .....	\$ 20/day
Liquinox.....	\$ 23/bottle	Water Sampling Pump .....	\$ 200/day
Tyvek .....	\$ 15/each	(Bladder Pump or Electric Submersible)	
Nitrile Gloves.....	\$ 20/box	Well Bailer - Standard .....	\$ 25/day
Respirator Cartridges .....	\$ 10/set	Well Bailer - Disposable .....	\$ 15/each
Inclinometer Probe and Readout Device....	\$ 185/day	2-inch Diameter Water Meter .....	\$ 20/day
Rotary Hammer.....	\$ 40/day	4-inch Diameter Water Meter .....	\$ 40/day
CPN Corp. Hydroprobe .....	\$ 75/day	Well Cap 2" .....	\$ 22/each
Double-Ring Infiltrometer .....	\$ 75/day	Digital Camera .....	\$ 25/day
Downhole Soil Samplers.....	\$ 75/day	Field Computer.....	\$ 30/day
(2½-inch California liner, SPT)		Subcontracted Specialty Equipment .....	Cost + 15%
Kernlevel .....	\$ 20/day		
24-Channel Seismograph .....	\$ 1500/wk		
Instantel Mini Mate Pro4 Vibration Monitor	\$ 150/day		
Instantel Mini Mate Pro 6 Vibration Monitor	\$ 200/day		
Larsen/Davis LXT Sound Monitor .....	\$ 120/day		
Nuclear Gauge.....	\$ 50/day		
Manometer.....	\$ 55/day		
Asphalt/Concrete Patch .....	Cost +15%		



# Council Agenda Report

To: Mayor La Monte and the Honorable Members of the City Council

Prepared by: Brittany Saleaumua, Administrative Assistant

Reviewed by: Kristin Riesgo, Recreation Manager

Approved by: Reva Feldman, City Manager 

Date prepared: June 22, 2016 Meeting date: August 22, 2016

Subject: Professional Services Agreement with Swag Corporation

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**RECOMMENDED ACTION:** Authorize the City Manager to execute a Professional Services Agreement with Swag Corporation, a California Corporation doing business as Gates Security, to clear and secure Trancas Canyon Park, Equestrian Park and Las Flores Creek Park daily at sunset.

**FISCAL IMPACT:** If approved, the City will be responsible for a monthly payment of \$3,000 not to exceed \$36,000 annually for a total of \$108,000 over the term of the three-year agreement. Funding for the agreement is included in the Adopted Budget for Fiscal 2016-2017 in Account 100-4010-5100 (Park Maintenance). Funding for the remaining years will be included in the future year budgets.

**DISCUSSION:** The Coastal Development Permit for Trancas Canyon Park requires the park to be closed to the public at sunset each day. The City has contracted with Gates Security since July 1, 2010, to secure Trancas Canyon Park at closing on a daily basis. The work requires Gates Security to clear the site of park visitors and lock the restroom facilities and main entrance gate at sunset each day. In addition to closing and securing Trancas Park, Gates Security will be extending their services to clear and secure Las Flores Creek Park and Equestrian Park as stated in the Scope of Work.

**ATTACHMENTS:** Professional Services Agreement with Swag Corporation

## AGREEMENT FOR PROFESSIONAL SERVICES

This Agreement is made and entered into as of August 22, 2016 by and between the City of Malibu (hereinafter referred to as the "City"), and Swag Corporation, a California corporation doing business as Gates Security (hereinafter referred to as "Consultant").

The City and the Consultant agree as follows:

### RECITALS

A. The City does not have the personnel able and/or available to perform the services required under this Agreement.

B. The City desires to contract out for services to secure Trancas Canyon Park, Equestrian Park and Las Flores Park at closing.

C. The Consultant warrants to the City that it has the qualifications, experience and facilities to perform properly and timely the services under this Agreement.

D. The City desires to contract with the Consultant to perform the services as described in Exhibit A of this Agreement.

NOW, THEREFORE, the City and the Consultant agree as follows:

**1.0 SCOPE OF THE CONSULTANT'S SERVICES.** The Consultant agrees to provide the services and perform the tasks set forth in the Scope of Work, attached to and made part of this Agreement, except that, to the extent that any provision in Exhibit A conflicts with this Agreement, the provisions of this Agreement govern. The Scope of Work may be amended from time to time by way of a written directive from the City.

**2.0 TERM OF AGREEMENT.** This Agreement will become effective on August 22, 2016, and will remain in effect for a period of three years from said date unless otherwise expressly extended and agreed to by both parties or terminated by either party as provided herein.

**3.0 CITY AGENT.** The City Manager, or her designee, for the purposes of this Agreement, is the agent for the City; whenever approval or authorization is required, Consultant understands that the City Manager, or her designee, has the authority to provide that approval or authorization.

**4.0 COMPENSATION FOR SERVICES.** The City shall pay the Consultant for its professional services rendered and costs incurred pursuant to this Agreement in accordance with the Scope of Work's fee and cost schedule. The cost of services shall be \$3,000 per month, for a total amount not to exceed \$36,000. No additional compensation shall be paid for any other expenses incurred, unless first approved by the City Manager, or her designee.

4.1 The Consultant shall submit to the City, by no later than the 10<sup>th</sup> day of each month, its bill for services itemizing the fees and costs incurred during the previous month. The City shall pay the Consultant all uncontested amounts set forth in the Consultant's bill within 30 days after it is received.

**5.0 CONFLICT OF INTEREST.** The Consultant represents that it presently has no interest and shall not acquire any interest, direct or indirect, in any real property located in the City which may be affected by the services to be performed by the Consultant under this Agreement. The Consultant further represents that in performance of this Agreement, no person having any such interest shall be employed by it.

5.1 The Consultant represents that no City employee or official has a material financial interest in the Consultant's business. During the term of this Agreement and/or as a result of being awarded this contract, the Consultant shall not offer, encourage or accept any financial interest in the Consultant's business by any City employee or official.

5.2 If a portion of the Consultant's services called for under this Agreement shall ultimately be paid for by reimbursement from and through an agreement with a developer of any land within the City or with a City franchisee, the Consultant warrants that it has not performed any work for such developer/franchisee within the last 12 months, and shall not negotiate, offer or accept any contract or request to perform services for that identified developer/franchisee during the term of this Agreement.

## **6.0 GENERAL TERMS AND CONDITIONS.**

**6.1 Termination.** Either the City Manager or the Consultant may terminate this Agreement, without cause, by giving the other party ten (10) days written notice of such termination and the effective date thereof.

6.1.1 In the event of such termination, all finished or unfinished documents, reports, photographs, films, charts, data, studies, surveys, drawings, models, maps, or other documentation prepared by or in the possession of the Consultant under this Agreement shall be returned to the City. If the City terminates this Agreement without cause, the Consultant shall prepare and shall be entitled to receive compensation pursuant to a close-out bill for services rendered and fees incurred pursuant to this Agreement through the notice of termination. If the Consultant terminates this Agreement without cause, the Consultant shall be paid only for those services completed in a manner satisfactory to the City.

6.1.2 If the Consultant or the City fail to fulfill in a timely and proper manner its obligations under this Agreement, or if the Consultant or the City violate any of the covenants, agreements, or stipulations of this Agreement, the Consultant or the City shall have the right to terminate this Agreement by giving written notice to the other party of such termination and specifying the effective date of such termination. The Consultant shall be entitled to receive compensation in accordance with the terms of this Agreement for any work satisfactorily completed hereunder. Notwithstanding the foregoing, the Consultants shall not be relieved of liability for damage sustained by virtue of any breach of this Agreement and any payments due under this Agreement may be withheld to off-set anticipated damages.

**6.2 Non-Assignability.** The Consultant shall not assign or transfer any interest in this Agreement without the express prior written consent of the City.

**6.3 Non-Discrimination.** The Consultant shall not discriminate as to race, creed, gender, color, national origin or sexual orientation in the performance of its services and duties pursuant to this Agreement, and will comply with all applicable laws, ordinances and codes of the Federal, State, County and City governments.

**6.4 Insurance.** The Consultant shall submit to the City certificates indicating compliance with the following minimum insurance requirements no less than one (1) day prior to beginning of performance under this Agreement:

(a) Workers Compensation Insurance as required by law. The Consultant shall require all subcontractors similarly to provide such compensation insurance for their respective employees.

(b) Comprehensive general and automobile liability insurance protecting the Consultant in amounts not less than \$1,000,000 for personal injury to any one person, \$1,000,000 for injuries arising out of one occurrence, and \$500,000 for property damages or a combined single limit of \$1,000,000. Each such policy of insurance shall:

1) Be issued by a financially responsible insurance company or companies admitted and authorized to do business in the State of California or which is approved in writing by City.

2) Name and list as additional insured the City, its officers and employees.

3) Specify its acts as primary insurance.

4) Contain a clause substantially in the following words: "It is hereby understood and agreed that this policy shall not be canceled nor materially changed except upon thirty (30) days prior written notice to the City of such cancellation or material change."

5) Cover the operations of the Consultant pursuant to the terms of this Agreement.

**6.5 Indemnification.** The Consultant agrees, to the fullest extent permitted by law, to indemnify and hold harmless the City, its officers, officials, employees and volunteers (collectively, Client) against all damages, liabilities or costs, including reasonable attorneys' fees and defense costs, to the extent caused by the Consultant's negligent performance of professional services under this Agreement. The Client agrees, to the fullest extent permitted by law, to indemnify and hold harmless the Consultant, its officers, directors, employees and subconsultants (collectively, Consultant) against all damages, liabilities or costs, including reasonable attorneys' fees and defense costs, to the extent caused by the Client's negligent acts and the acts of its

contractors, subcontractors or consultants or anyone for whom the Client is legally liable. Neither the Client nor the Consultant shall be obligated to indemnify the other party in any manner whatsoever for the other party's negligence. The indemnifying party shall promptly pay any final judgment rendered against the indemnified party under this indemnity obligation. It is expressly understood and agreed that the foregoing provisions are intended to be as broad and inclusive as is permitted by the law of the State of California and will survive termination of this Agreement.

**6.6 Compliance with Applicable Law.** The Consultant and the City shall comply with all applicable laws, ordinances and codes of the Federal, State, County and City governments.

**6.7 Independent Contractor.** This Agreement is by and between the City and the Consultant and is not intended, and shall not be construed, to create the relationship of agency, servant, employee, partnership, joint venture or association, as between the City and the Consultant.

6.7.1. The Consultant shall be an independent contractor, and shall have no power to incur any debt or obligation for or on behalf of the City. Neither the City nor any of its officers or employees shall have any control over the conduct of the Consultant, or any of the Consultant's employees, except as herein set forth, and the Consultant expressly warrants not to, at any time or in any manner, represent that it, or any of its agents, servants or employees are in any manner employees of the City, it being distinctly understood that the Consultant is and shall at all times remain to the City a wholly independent contractor and the Consultant's obligations to the City are solely such as are prescribed by this Agreement.

**6.8 Copyright.** No reports, maps or other documents produced in whole or in part under this Agreement shall be the subject of an application for copyright by or on behalf of the Consultant.

**6.9 Legal Construction.**

(a) This Agreement is made and entered into in the State of California and shall in all respects be interpreted, enforced and governed under the laws of the State of California.

(b) This Agreement shall be construed without regard to the identity of the persons who drafted its various provisions. Each and every provision of this Agreement shall be construed as though each of the parties participated equally in the drafting of same, and any rule of construction that a document is to be construed against the drafting party shall not be applicable to this Agreement.

(c) The article and section, captions and headings herein have been inserted for convenience only, and shall not be considered or referred to in resolving questions of interpretation or construction.

(d) Whenever in this Agreement the context may so require, the

masculine gender shall be deemed to refer to and include the feminine and neuter, and the singular shall refer to and include the plural.

**6.10 Counterparts.** This Agreement may be executed in counterparts and as so executed shall constitute an agreement which shall be binding upon all parties hereto.

**6.11 [Intentionally left blank]**

**6.12 Corrections.** In addition to the above indemnification obligations, the Consultant shall correct, at its expense, all errors in the work which may be disclosed during the City's review of the Consultant's report or plans. Should the Consultant fail to make such correction in a reasonably timely manner, such correction shall be made by the City, and the cost thereof shall be charged to the Consultant.

**6.13 Files.** All files of the Consultant pertaining to the City shall be and remain the property of the City. The Consultant will control the physical location of such files during the term of this Agreement and shall be entitled to retain copies of such files upon termination of this Agreement.

**6.14 Waiver; Remedies Cumulative.** Failure by a party to insist upon the performance of any of the provisions of this Agreement by the other party, irrespective of the length of time for which such failure continues, shall not constitute a waiver of such party's right to demand compliance by such other party in the future. No waiver by a party of a default or breach of the other party shall be effective or binding upon such party unless made in writing by such party, and no such waiver shall be implied from any omissions by a party to take any action with respect to such default or breach. No express written waiver of a specified default or breach shall affect any other default or breach, or cover any other period of time, other than any default or breach and/or period of time specified: All of the remedies permitted or available to a party under this Agreement, or at law or in equity, shall be cumulative and alternative, and invocation of any such right or remedy shall not constitute a waiver or election of remedies with respect to any other permitted or available right of remedy.

**6.15 Mitigation of Damages.** In all such situations arising out of this Agreement, the parties shall attempt to avoid and minimize the damages resulting from the conduct of the other party.

**6.16 Partial Invalidity.** If any provision in this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions will nevertheless continue in full force without being impaired or invalidated in any way.

**6.17 Attorneys' Fees.** The parties hereto acknowledge and agree that each will bear his/her or its own costs, expenses and attorneys' fees arising out of and/or connected with the negotiation, drafting and execution of the Agreement, and all matters arising out of or connected therewith except that, in the event any action is brought by any party hereto to enforce this Agreement, the prevailing party in such action shall be entitled to reasonable attorneys' fees and costs in addition to all other relief to which that party or those parties may be entitled.

**6.18 Entire Agreement.** This Agreement constitutes the whole agreement between the City and the Consultant, and neither party has made any representations to the other except as expressly contained herein. Neither party, in executing or performing this Agreement, is relying upon any statement or information not contained in this Agreement. Any changes or modifications to this Agreement must be made in writing appropriately executed by both the City and the Consultant.

**6.19 Notices.** Any notice required to be given hereunder shall be deemed to have been given by depositing said notice in the United States mail, postage prepaid, and addressed as follows:

**CITY:** Reva Feldman  
City Manager  
City of Malibu  
23825 Stuart Ranch Road  
Malibu, CA 90265-4861  
TEL (310) 456-2489 x 224  
FAX (310) 456-2760

**CONSULTANT:** Scott Wagenseller  
Chief Executive Officer  
Gates Security  
1534 Moorpark Road  
Thousand Oaks, CA 91360  
TEL (310) 459-1447  
FAX (310) 459-7773

**6.20 Warranty of Authorized Signatories.** Each of the signatories hereto warrants and represents that he or she is competent and authorized to enter into this Agreement on behalf of the party for whom he or she purports to sign.

**7.0 GENERAL TERMS AND CONDITIONS. (City and Consultant initials required at EITHER 7.1 or 7.2)**

**7.1 Disclosure Required.** By their respective initials next to this paragraph, City and Consultant hereby acknowledge that Consultant is a "consultant" for the purposes of the California Political Reform Act because Consultant's duties would require him or her to make one or more of the governmental decisions set forth in Fair Political Practices Commission Regulation 18701(a)(2) or otherwise serves in a staff capacity for which disclosure would otherwise be required were Consultant employed by the City. Consultant hereby acknowledges his or her assuming-office, annual, and leaving-office financial reporting obligations under the California Political Reform Act and the City's Conflict of Interest Code and agrees to comply with those obligations at his or her expense. Prior to consultant commencing services hereunder, the City's Manager shall prepare and deliver to consultant a memorandum detailing the extent of Consultant's disclosure obligations in accordance with the City's Conflict of Interest Code.

City Initials \_\_\_\_\_

Consultant Initials \_\_\_\_\_

**7.2 Disclosure not Required.** By their initials next to this paragraph, City and Consultant hereby acknowledge that Consultant is not a "consultant" for the purpose of the California Political Reform Act because Consultant's duties and responsibilities are not within the scope of the definition of consultant in Fair Political Practice Commission Regulation 18701(a)(2)(A) and is otherwise not serving in staff capacity in accordance with the City's Conflict of Interest Code.

City Initials \_\_\_\_\_

Consultant Initials           

Agreement for Professional Services  
Gates Security  
Page 7 of 9

This Agreement is executed on \_\_\_\_\_, 2016, at Malibu, California,  
and effective as of August 22, 2016.

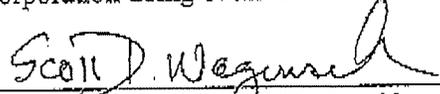
CITY OF MALIBU:

\_\_\_\_\_  
REVA FELDMAN, City Manager

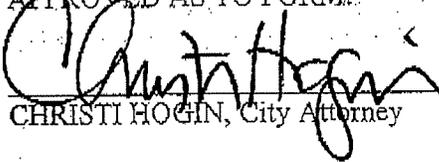
ATTEST:

\_\_\_\_\_  
HEATHER GLASER, City Clerk  
(seal)

CONSULTANT:  
Swag Corporation doing business as Gates Security

  
\_\_\_\_\_  
SCOTT WAGENSELLER, President

APPROVED AS TO FORM:

  
\_\_\_\_\_  
CHRISTI HOGIN, City Attorney

**SCOPE OF WORK  
FOR  
SECURING AND LOCKING MALIBU CITY PARKS  
Trancas Canyon Park, Equestrian Park and Las Flores Creek Park**

The Consultant will be responsible for clearing patrons and securing access gates daily at 7:00 pm or dusk, whichever is earlier at the following parks:

Trancas Canyon Park	6050 Trancas Canyon Road
Equestrian Park	6225 Merritt Drive
Las Flores Creek Park	3805 Las Flores Canyon Road

1. The service will take place each day of the year (365 days) including holidays.
2. Payments will be made for the work performed. Days in which the facility is not secured or locked will result in a deduction(s) from the monthly fee (\$33 per day per facility).
3. Officer will begin clearing the park 15 minutes prior to closing the park.
4. Officer will foot patrol and check the park and restrooms, respectfully removing any persons on site prior to securing the restroom facilities and entry gate.
5. Officer will contact the Los Angeles County Sheriff Department Lost Hills Division and request assistance when confronted by a park patron refusing to leave the park site.
6. Officer will remain on site until patrons leave the park or Sheriff's Deputies remove patrons from the park.
7. Consultant has 24 hours to provide written report to the Parks and Recreation Director in the event of an incident, accident involving an injury, or any situation where the Sheriff's Deputies are called.
8. The Consultant will be issued a combination to a lock box to access the keys to the facility or gates at each park. The key may not be taken off the premises at any time. In the event a key is missing or there is an instance that prevents the Consultant from locking the gates, the Consultant has 12 hours to report the incident to the Parks and Recreation Director.
9. In the event of a personnel change and an officer is removed from securing and locking the park, the Consultant must report those changes to the Parks and Recreation Director within 24 hours. A new combination to the lock box will be selected by the City, which will be given to the Consultant within 24 hours.
10. Estimated time to perform duties is 30-45 minutes each day.

## Fee Schedule

Year 1 ..... \$3,000 / per month  
Year 2 ..... \$3,000 / per month  
Year 3 ..... \$3,000 / per month

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Total Cost \$108,000

<sup>1</sup>A person shall not enter, be or remain in any park or in any building in any park from sunset to 8:00 a.m. except where such person is camping as provided for under Section 12.08.120 or as authorized or scheduled in writing by the city manager. The city manager may, from time to time, change the hours of use as stated above for any individual park. All persons shall comply with such changed hours. (Ord. 248 §2 (part), 2003; Ord. 244 §6, 2003)

Any person who violates this section or any rule or regulation relating to parks and recreation areas, is guilty of an infraction of the Malibu Municipal Code which is a misdemeanor, punishable by a fine of up to one thousand dollars (\$1,000.00) and/or imprisonment in the county jail for a period of up to six months.



# CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)  
6/22/2016

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER Tolman & Wiker Insurance Services LLC #OE52073 5001 California Ave. Suite 150 Bakersfield CA 93309	CONTACT NAME: Jessica Wilkison	
	PHONE (A/C, No, Ext): (661) 616-4700 FAX (A/C, No): (661) 616-4500 E-MAIL ADDRESS: jwilkison@tolmanandwiker.com	
INSURED SWAG Corporation, DBA: Gates Security dba Palisades 1534 N Moorpark Rd, #353 Thousand Oaks CA 91360	INSURER(S) AFFORDING COVERAGE	NAIC #
	INSURER A: Steadfast Ins Co	26387
	INSURER B: American Guarantee and Liabili	26247
	INSURER C: State Compensation Ins Fund	35076
	INSURER D:	
	INSURER E:	
	INSURER F:	

COVERAGES CERTIFICATE NUMBER: 16/17 Master REVISION NUMBER:

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL SUBR INSD WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR <input checked="" type="checkbox"/> Errors & Omissions <input checked="" type="checkbox"/> \$2,500 Deductible GEN'L AGGREGATE LIMIT APPLIES PER: <input checked="" type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC OTHER:	X	EOL542238010	6/24/2016	6/24/2017	EACH OCCURRENCE \$ 5,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 100,000 MED EXP (Any one person) \$ 5,000 PERSONAL & ADV INJURY \$ 5,000,000 GENERAL AGGREGATE \$ 5,000,000 PRODUCTS - COMP/OP AGG \$ 5,000,000
	<input type="checkbox"/> AUTOMOBILE LIABILITY <input type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> HIRED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> NON-OWNED AUTOS					COMBINED SINGLE LIMIT (Ea accident) \$ BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$
B	<input checked="" type="checkbox"/> UMBRELLA LIAB <input checked="" type="checkbox"/> OCCUR <input checked="" type="checkbox"/> EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE DED RETENTION \$		AUC017345202	6/24/2016	6/24/2017	EACH OCCURRENCE \$ 5,000,000 AGGREGATE \$ 5,000,000
	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y/N Y N/A				9086987-2016

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)  
City of Malibu, its officers and employees are included as additional insured for General Liability for the operations performed by the named insured but only as required by written contract per form UGL1175ECW 0412. These coverages are Primary Non-Contributory.

### CERTIFICATE HOLDER

### CANCELLATION

Bafusia@malibucity.org  City of Malibu Parks and Recreation 23825 Stuart Ranch Rd Malibu, CA 90265	SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.  AUTHORIZED REPRESENTATIVE  Shaun Kelly/JESSIW 
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ZURICH®

# Additional Insured – Automatic – Owners, Lessees Or Contractors

Policy No.	Eff. Date of Pol.	Exp. Date of Pol.	Eff. Date of End.	Producer No.	Add'l. Prem	Return Prem.
EOL542238010	06/24/2016	06/24/2017	06/24/2017			

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

**Named Insured:** SWAG Corporation dba; Gates Security

**Address (including ZIP Code):**

1534 N. Moorpark Rd, #353  
Thousand Oaks, CA 91360

This endorsement modifies insurance provided under the:

### Commercial General Liability Coverage Part

**A. Section II – Who Is An Insured** is amended to include as an insured any person or organization who you are required to add as an additional insured on this policy under a written contract or written agreement.

However, if you have entered into a construction contract or construction agreement with an additional insured person or organization, the insurance afforded to such additional insured only applies to the extent permitted by law.

**B. The insurance provided to the additional insured person or organization applies only to "bodily injury", "property damage" or "personal and advertising injury" covered under Section I – Coverage A – Bodily Injury And Property Damage Liability and Section I – Coverage B – Personal And Advertising Injury Liability, but only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by:**

1. Your acts or omissions; or
2. The acts or omissions of those acting on your behalf,

and resulting directly from your ongoing operations or "your work" as included in the "products-completed operations hazard", which is the subject of the written contract or written agreement.

**C. However, regardless of the provisions of Paragraphs A. and B. above:**

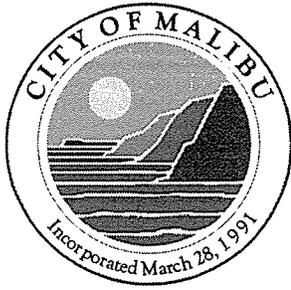
1. We will not extend any insurance coverage to any additional insured person or organization:
  - a. That is not provided to you in this policy; or
  - b. That is any broader coverage than you are required to provide to the additional insured person or organization, in the written contract or written agreement; and
2. We will not provide Limits of Insurance to any additional insured person or organization that exceed the lower of:
  - a. The Limits of Insurance provided to you in this policy; or
  - b. The Limits of Insurance you are required to provide in the written contract or written agreement.

**D. The insurance provided to the additional insured person or organization does not apply to:**

"Bodily injury", "property damage" or "personal and advertising injury" arising out of the rendering or failure to render any professional architectural, engineering or surveying services including:

1. The preparing, approving or failing to prepare or approve maps, shop drawings, opinions, reports, surveys, field orders, change orders or drawings and specifications; and
  2. Supervisory, inspection, architectural or engineering activities.
- E. The following is added to Paragraph 2. Duties In The Event Of Occurrence, Offense, Claim Or Suit of Section IV – **Commercial General Liability Conditions**:
- The additional insured must see to it that:
1. We are notified as soon as practicable of an "occurrence" or offense that may result in a claim;
  2. We receive written notice of a claim or "suit" as soon as practicable; and
  3. A request for defense and indemnity of the claim or "suit" will promptly be brought against any policy issued by another insurer under which the additional insured may be an insured in any capacity. This provision does not apply to insurance on which the additional insured is a Named Insured, if the written contract or written agreement requires that this coverage be primary and non-contributory.
- F. For the coverage provided by this endorsement:
1. The following paragraph is added to Paragraph 4.a. of the Other Insurance Condition of Section IV – **Commercial General Liability Conditions**:  
This insurance is primary insurance as respects our coverage to the additional insured person or organization, where the written contract or written agreement requires that this insurance be primary and non-contributory with respect to any other policy upon which the additional insured is a Named Insured. In that event, we will not seek contribution from any other such insurance policy available to the additional insured on which the additional insured person or organization is a Named Insured.
  2. The following paragraph is added to Paragraph 4.b. of the Other Insurance Condition of Section IV – **Commercial General Liability Conditions**:  
This insurance is excess over:  
Any of the other insurance, whether primary, excess, contingent or on any other basis, available to an additional insured, in which the additional insured on our policy is also covered as an additional insured on another policy providing coverage for the same "occurrence", offense, claim or "suit". This provision does not apply to any policy in which the additional insured is a Named Insured on such other policy and where our policy is required by written contract or written agreement to provide coverage to the additional insured on a primary and non-contributory basis.
- G. This endorsement does not apply to an additional insured which has been added to this policy by an endorsement showing the additional insured in a Schedule of additional insureds, and which endorsement applies specifically to that identified additional insured.

All other terms and conditions of this policy remain unchanged.



# Council Agenda Report

To: Mayor La Monte and the Honorable Members of the City Council

Prepared by: Jessica Colvard, Associate Planner

Reviewed: Bonnie Blue, Planning Director

Approved by: Reva Feldman, City Manager 

Date prepared: August 6, 2016 Meeting date: August 22, 2016

Subject: Amendments to Malibu Municipal Code Chapter 5.34 (Special Events)

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**RECOMMENDED ACTION:** 1) After the City Attorney reads the title of the ordinance, introduce on first reading Ordinance No. 409 (Attachment 1), determining the project is categorically exempt from the California Environmental Quality Act (CEQA) and amending Malibu Municipal Code (MMC) Chapter 5.34 (Special Events); and 2) Direct staff to schedule second reading and adoption of Ordinance No. 409 for the September 13, 2016 Regular City Council meeting.

**FISCAL IMPACT:** None.

**DISCUSSION:** On July 11, 2016, Council adopted Ordinance No. 406 to modify the City's requirements for special event permits found in MMC Chapter 5.34, including a new requirement for notice of an event to be mailed to surrounding property owners 10 days prior to the event, exempting memorial services. The ordinance goes into effect on August 11, 2016. Section 5.34.040(B) states:

B. Ten (10) days prior to the event, the City shall mail a notice to all property owners and tenants within a five-hundred (500) foot radius of the parcel on which the event will occur. The notice shall state the time, location and nature of the event, and applicant name and phone number. Memorial services are exempt from requiring the ten day notice.

While the noticing requirement serves to alert neighbors to events that they may want to plan around or contact the host about, it presents problems in that many special event permits that otherwise meet all of the requirements of MMC Chapter 5.34 would not be approvable because they were not submitted at least 10 days in advance of the event date. This could result in events occurring without the required permit and conditions of approval that serve to avoid impacts to the surrounding residential neighborhood. It also adds an administrative burden in terms of time and expense for staff to generate a notification radius map, notice postcard, and labels.

Ordinance No. 409 would require the applicant to post a notification sign at the event property on the date of the application approval or at least 10 in advance of the event, whichever is later. The notice would be printed by staff and provided to the applicant in the same 11 by 17 size and format as a Notice of Coastal Development Permit sign that must be posted on a project site. The sign would include basic event and contact information as shown on the attached example (Attachment 2).

The posted notice would provide surrounding neighbors notice of the event while still allowing compliant events to proceed with conditions of approval. Staff proposes to delete the exemption for memorial services since the posting requirement would not involve additional time.

ATTACHMENTS:

1. Ordinance No. 409
2. Posted Notice Example

ORDINANCE NO. 409

AN ORDINANCE OF THE CITY OF MALIBU DETERMINING THE PROJECT IS CATEGORICALLY EXEMPT FROM THE CALIFORNIA ENVIRONMENTAL QUALITY ACT AND AMENDING MALIBU MUNICIPAL CODE CHAPTER 5.34 (SPECIAL EVENTS)

The City Council of the City of Malibu does hereby ordain as follows:

SECTION 1. Environmental Review.

This Ordinance has been determined to be exempt from the California Environmental Quality Act pursuant to CEQA Guidelines Section 15061(b)(3) because there is no possibility that this Ordinance may have a significant effect on the environment.

SECTION 2. Amendment.

A. Amend MMC Section 5.34.040 (Special Event Permit Issuance) to read as follows:

A. The city manager, or his or her designee, shall issue a permit for special events that meet the requirements of this chapter within ten business days of receipt of a complete application. The city manager may impose conditions on the permit to protect against the event becoming a nuisance to the surrounding neighborhood due to the number of people in attendance, the amount of traffic to be generated, the type and volume of amplified music or entertainment to be utilized and other similar considerations. Conditions shall take into account the size of the residential property, the capacity of the street on which it is located, the availability of parking and the proximity to neighbors.

B. Ten (10) days prior to the event, or on the date of permit issuance, whichever is later, the event host or property owner(s) shall post a Notice of Special Event provided by the city in a conspicuous location on the property that is visible from the adjacent street. The Notice may be mounted to the exterior of the building, mailbox, fences, or mounted on a stake. The notice shall state the time, location and nature of the event, and applicant name and phone number.

SECTION 3. Severability. If any section, subsection, phrase, or clause of this ordinance is for any reason held to be unconstitutional, such decision shall not affect the validity of the remaining portions of this ordinance.

The City Council hereby declares that it would have passed this ordinance and each section, subsection, phrase or clause thereof irrespective of the fact that any one or more sections, subsections, phrases, or clauses be declared unconstitutional.

SECTION 4. The City Clerk shall certify to the passage and adoption of the ordinance and enter it into the book of original ordinances.

PASSED, APPROVED AND ADOPTED this \_\_\_\_ day of \_\_\_\_ 2016.

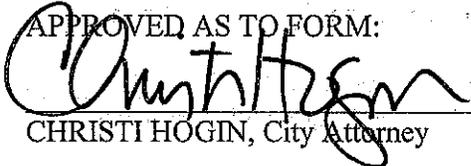
\_\_\_\_\_  
LOU LA MONTE, Mayor

ATTEST:

\_\_\_\_\_  
HEATHER GLASER, Acting City Clerk

Date: \_\_\_\_\_

APPROVED AS TO FORM:

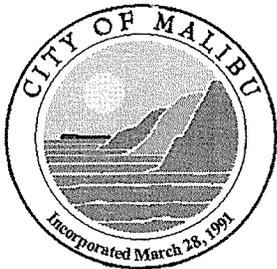
  
\_\_\_\_\_  
CHRISTI HOGIN, City Attorney

# NOTICE OF EVENT APPLICATION

**NOTICE IS HEREBY GIVEN** that the City of Malibu has received a **Special Event Permit** application for the following:

**SPECIAL EVENT PERMIT NO.:** \_\_\_\_\_ **NATURE OF EVENT:** \_\_\_\_\_  
**EVENT LOCATION:** \_\_\_\_\_ **EVENT DATE:** \_\_\_\_\_  
**NUMBER OF ATTENDEES:** \_\_\_\_\_ **EVENT TIMEFRAME:** \_\_\_\_\_  
**APPLICANT NAME:** \_\_\_\_\_ **APPLICANT PHONE:** \_\_\_\_\_  
**CASE PLANNER NAME:** \_\_\_\_\_ **CASE PLANNER PHONE:** \_\_\_\_\_

The application is available for review at the City of Malibu, Planning Department, 23825 Stuart Ranch Road, Malibu, California 90265 during regular business hours. Please contact Case Planner, in the Planning Department at (310) 456-2489 for further information.



**City of Malibu**  
**23825 Stuart Ranch Road**  
**Malibu, CA 90265**  
**(310) 456-2489 Fax (310) 456-7650**  
**[www.malibucity.org](http://www.malibucity.org)**



# Council Agenda Report

To: Mayor La Monte and the Honorable Members of the City Council

Prepared by: Craig George, Environmental Sustainability Director

Approved by: Reva Feldman, City Manager 

Date prepared: August 3, 2016 Meeting date: August 22, 2016

Subject: Power Purchase Agreement with PFMG Solar

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**RECOMMENDED ACTION:** Consider the terms of the Power Purchase Agreement (PPA) with PFMG Solar for the installation of solar carports at City Hall, and 1) Authorize the City Manager to execute the PPA with PFMG Solar or direct staff bring back to Council an agreement to purchase a solar carport system from Borrego Solar; or 2) Recommend that no solar power system be installed on City Hall property.

**FISCAL IMPACT:** There is no direct fiscal impact associated with entering into a PPA. The City will benefit from the lowered electrical rate per kilowatt hour (kWh) over what is currently paid to Southern California Edison (SCE).

**DISCUSSION:** On December 7, 2015, the City engaged a solar consultant to assist in the understanding of the City's solar needs and to participate in the selection of a firm to install the solar power system at City Hall. Paul Hullar, owner of Brightwave Energy, was the selected consultant.

On January 29, 2016, staff released a Request for Proposal (RFP) for a qualified firm to provide "Solar Photovoltaic Design, Build, and Maintenance Services." The intent of the RFP was to locate a firm that would be "responsible for design and preparation of complete plans and performance specifications, procurement of all materials, installation, commissioning and performance monitoring with a guaranteed maximum price for the turnkey project." The City received responses from the following firms:

1. Borrego Solar
2. Busch Design Build, Inc.
3. MD Energy, Inc.
4. PFMG Solar

The proposals were evaluated by a committee of four members, consisting of Public Works Director Brager, Environmental Sustainability Director George, City of Agoura Hills Building Official Hamidzadeh, and Solar Consultant Hullar. The committee reviewed the submittals for understanding of the RFP, completeness of the response, fulfillment of the services requested, innovative alternatives, qualifications and experience of key personnel, and related experience and approach to this type of project. A score was assigned by each committee member in each of these areas, and an average score was determined for each proposing firm.

Two of the responding firms, Borrego Solar and PFMG Solar, had approximately equal scores that separated them significantly from the other proposing firms. Both firms are located in Southern California. Additional interviews were conducted via teleconference to discuss their submittals. Although both firms have similar approaches to design, construction, operation and financing, they differed in the specific details of each. In addition, these firms provided two distinct financing options for consideration, a purchase price for the design, construction and commissioning of the system and an option for a PPA. Both options have advantages and disadvantages, which are discussed in detail below with an analysis of what each offers to the City when considering the construction of solar carports.

The committee unanimously selected carports as the most feasible option for the City. A roof-mounted system would require replacement of the City Hall roof making it a less desirable option. A ground-mounted option was also reviewed; however, insufficient area exists on City Hall property to consider this option. There were also concerns about the safety of a ground-mounted system at City Hall. One submittal proposed that panels be mounted as a façade on the south-facing walls of City Hall. This option was considered to be extremely innovative and artistic; however, such a system was considered inefficient due to the loss of electrical production by the panels in this configuration and the fact that they would need to be supplemented by a carport system. Additionally, this type of design has not yet been installed on any other public building. Finally, the firm proposing this option had a significant lack of experience and references, when compared to other firms, to validate the assumptions proposed in their response.

Both PFMG Solar and Borrego Solar provided extensive lists of completed public projects. Staff contacted references for both firms and received positive feedback regarding both. In a vast majority of these listed projects, a PPA was selected by the public agency.

In a PPA, instead of owning the photovoltaic system (PV), the City would host the system that is paid for and owned by a taxable entity (financier). The City would enter into a long-term contract with the financier to purchase the electricity generated by the solar power system. The cost of the electricity is set below what SCE currently charges

the City, with an annual increase in cost as set in the agreement. The financier is able to offer the energy at a lower rate because it is able to monetize state and federal solar taxes and direct incentives. For the City, it is a low-risk investment in a proven technology. The City is able to “go solar” and harness the many economic, environmental, and marketing benefits without having to pay for a capital investment.

On April 6, 2016, staff presented a recommendation to the Environmental Sustainability Subcommittee to install solar carports on the upper parking area and to contract with PFMG Solar to provide the design build of this system. Staff also made the recommendation to utilize a PPA and not appropriate funds for the purchase of the solar power system. The Environmental Sustainability Subcommittee recommended staff present this proposal with these options to the City Council. PFMG Solar has estimated the City may save approximately \$181,594 over the life of the solar power system. Solar Consultant Hullar used similar projections and assumptions as did PFMG Solar and estimated the City may save approximately \$258,397 in a PPA agreement. Though this savings is slightly less than the projected savings in 20 years if the system were to be purchased, there are no capital outlay or annual maintenance costs to consider.

PFMG Solar has installed solar power systems for the City of Palmdale, the County of Orange and multiple school districts throughout California. They are currently in the design phase of solar installations for the City of Oceanside and additional school districts. Of the 26 similar projects that PFMG Solar listed as references, 25 were PPA agreements. A main benefit of the PPA is that there is no capital cost for the City.

PFMG Solar will charge an aggregate rate per kWh of \$0.1275 for the first year of the agreement; the City currently pays \$0.1366 to SCE. The annual rate of increase for the cost per kWh is 3.9% for the first 15 years of the agreement, and 0.00% for the remainder of the agreement. It is anticipated that SCE rates may increase by as much as 5% per year with potentially greater increases in the later years of the agreement due to the production of electricity through non-sustainable sources such as oil and gas. PFMG Solar estimated the cost of the maintenance the firm would provide for the solar power system would be \$11,262 for the first year with an increase of 3% per year. This represents a significant savings in maintenance costs both yearly and over the life of the system.

The contract for the PPA was provided to the City Attorney for review. The City Attorney has reviewed the PPA agreement and has significant concerns about the terms of the agreement. The City Attorney has negotiated many of these issues with PFMG Solar and their counsel; however, there remains a concern regarding future liability for the City should specific issues arise during the life of the PPA.

The PPA from PFMG Solar is provided in the original form as an attachment. The primary concern is Article IX of the PPA; Events of Default; Remedies. The City

Attorney's position at this time is that this is a liability potential the City should not accept. There are six reasons enumerated in Section 9.1 of the PPA making the City responsible for liquidated damages. This "terminated value" or fair market value may be as much as \$1.2 million. This is a purely financial penalty. While default is unlikely, the potential harm to the City is significant. Therefore, Council must decide if the risks associated with the PPA are acceptable or, if not, to reject them and direct staff to proceed with an alternative.

ALTERNATIVES: 1) Recommend that the City purchase the solar power system as a capital investment. If this option is selected, staff would recommend Borrego Solar be selected. Borrego Solar provided a lower purchase option of \$963,842.00, 13% lower than PFMG Solar for a similar option. As a purchase, the City would need to engage Borrego Solar to perform the maintenance of the system. Borrego also had a lower maintenance cost per year of \$9,184.00 for the first year and an annual increase of 2%. Borrego Solar has provided solar installations for numerous school districts, colleges, and counties in California; or 2) Recommend that no solar power system be installed on City Hall property. Should this option be selected, the City would not have the benefit of a renewable energy source for its electrical demands, and would pay higher escalating rates for its electrical demand from SCE.

If Council selects the option to purchase, an appropriation from the General Fund Undesignated Reserve would be needed. The specific amount necessary to complete the work would be determined after City Council directs staff to move forward with the project, at which time an agreement and the recommended appropriation will be presented to the Administration and Finance Subcommittee for review and recommendation prior to submittal to Council for its consideration. The cost to purchase the carport solar power system is approximately \$1,000,000.

ATTACHMENTS: Power Purchase Agreement with PFMG Solar

**SOLAR ENERGY POWER PURCHASE AGREEMENT**

THIS POWER PURCHASE AGREEMENT (this “PPA” or “Agreement”) is dated as of \_\_\_\_\_, 2016 (the “Effective Date”), by and between PFMG Solar, LLC, a Delaware limited liability company, its successors and assigns (“Provider”), and City of Malibu, a California Municipal Corporation (“Host”). Provider and Host are sometimes hereinafter referred to individually as a “Party” and collectively as the “Parties.”

**RECITALS**

**WHEREAS**, Host desires to implement solar energy systems (each, a “System” and collectively the “Systems”) on a specified number of its properties (each System together with each such property, a “Project” and collectively, the “Projects”);

WHEREAS, California Government Code §§ 4217.10 et seq. authorizes Host to enter into agreements, contracts and related facility leases with private sector entities for developing energy conservation and production projects;

**WHEREAS**, Host and Provider are entering into that certain Solar Site Easement Agreement (each, an “Easement Agreement” and collectively the “Easement Agreements”, which are incorporated herein by this reference), pursuant to which Host agrees to grant exclusive and non-exclusive easements to Provider on and over a portion of a specified number of Host’s properties (with respect to each Project and as described in each relevant Easement Agreement, the “Property”) more particularly described in EXHIBIT A attached hereto as updated from time to time;

**WHEREAS**, Provider and its affiliates intend to install, finance, own and operate one or more Systems on each Property as more such Systems are described in EXHIBIT B and defined in Section 1.1 below; and

**WHEREAS**, Provider desires to deliver and sell to Host, and Host desires to receive and purchase from Provider, all of the Energy Output generated by each System during the Term in accordance with the terms and conditions of this Agreement;

**NOW THEREFORE**, for good and valuable consideration, the sufficiency and receipt of which is hereby acknowledged, the Parties agree as follows:

**ARTICLE I**

**DEFINED TERMS; RULES OF INTERPRETATION; RIGHT TO REQUEST SEPARATE POWER PURCHASE AGREEMENTS**

1.1 Defined Terms. The definitions provided below and elsewhere in this Agreement will apply to the capitalized terms used in this Agreement:

“Affiliate” means, with respect to any entity, any other entity that, directly or indirectly, through one or more intermediaries, controls, or is controlled by, or is under common control with, such entity.

“Annual Degradation Factor” shall mean the annual degradation factor of the Systems as set forth in EXHIBIT D.

“Applicable Law” means, with respect to any Governmental Authority, any constitutional provision, law, statute, rule, regulation, ordinance, treaty, order, decree, judgment, decision, certificate, holding, injunction, registration, license, franchise, permit, authorization, guideline, Governmental Approval, consent or requirement of such Governmental Authority, enforceable at law or in equity, along with the interpretation and administration thereof by any Governmental Authority.

“Bankrupt” means that a Party or other entity (as applicable): (i) is dissolved (other than pursuant to a consolidation, amalgamation or merger); (ii) becomes insolvent or is unable to pay its debts or fails (or admits in writing its inability) generally to pay its debts as they become due; (iii) makes a general assignment, arrangement or composition with or for the benefit of its creditors; (iv) has instituted against it a proceeding seeking a judgment of insolvency or bankruptcy or any other relief under any bankruptcy or insolvency law or other similar law affecting creditor’s rights, or a petition is presented for its winding-up, reorganization or liquidation, which proceeding or petition is not dismissed, stayed or vacated within 30 days thereafter; (v) commences a voluntary proceeding seeking a judgment of insolvency or bankruptcy or any other relief under any bankruptcy or insolvency law or other similar law affecting creditors’ rights; (vi) seeks or consents to the appointment of an administrator, provisional liquidator, conservator, receiver, trustee, custodian or other similar official for it or for all or substantially all of its assets; (vii) has a secured party take possession of all or substantially all of its assets, or has a distress, execution, attachment, sequestration or other legal process levied, enforced or sued on or against all or substantially all of its assets; (viii) causes or is subject to any event with respect to which, under the Applicable Laws of any jurisdiction, has an analogous effect to any of the events specified in clauses (i) to (vii) inclusive; or (ix) takes any action in furtherance of, or indicating its consent to, approval of, or acquiescence in, any of the foregoing acts.

“Bankruptcy Code” means the United States Bankruptcy Code.

“Business Day” means any day except a Saturday, Sunday, or a Federal Reserve Bank holiday. For purposes of this Agreement, “Business Day” shall also mean any day other than a school holiday on which the Host’s business office is closed. If the time for performing an obligation under this Agreement expires on a day that is not a Business Day, the time shall be extended until that time on the next Business Day.

“Host Termination Payment” means all amounts due and payable by the Host to Provider pursuant to Section 9.5.

“Capital Provider(s)” shall mean any and all individuals or entities or successors in interest thereof, providing capital or extending credit to Provider or an Affiliate of Provider with respect to the System(s), or investing equity in Provider or an Affiliate of Provider in a manner that will provide certain tax benefits from the System(s) to such individual or entity or successor in interest; (i) for the construction, term or permanent financing of the System(s); (ii) for working capital or other ordinary business requirement of the System(s) (including but not limited to the maintenance, repair, replacement or improvement of a System); (iii) for any development financing, bridge financing, credit enhancement or interest rate protection in connection with the System(s); (iv) for the ownership and operation of the System; or (v) for the purchase of the Systems and related rights and obligations of Provider.

“Commercial Operation” means that a System (i) has been completely installed and commissioned, including, but not limited to, the process of starting up and testing of all components, (ii) has been synchronized with the grid, and (iii) is capable of producing Energy Output.

“Commercial Operation Date” means the first day on which 1) a System reaches Commercial Operation, 2) is certified in writing by Provider to Host, and 3) begins production of Energy Output.

“Confidential Information” means any non-public confidential or proprietary information of a Party or its Affiliates or any of its or their Representatives relating to this Agreement (including price-related information), the Easement Agreements or any System and revealed to the other Party or its Affiliates or any of its or their Representatives during the Term. Confidential Information shall not include any information or data with respect to the general performance of the Systems that may be used by Provider or its Affiliates or service providers in connection with preparing marketing or promotional materials of such Persons.

“Contract Year” means the consecutive 12 month period commencing on the Commercial Operation Date of the last System in the Project Portfolio.

“CP Cutoff Date” shall have the meaning ascribed to such term in Section 2.3.

“Defaulting Party” shall have the meaning ascribed to such term in Section 9.1.

“Delivery Point(s)” means the agreed location or locations where Energy is to be delivered and received under this Agreement, as specified in the final as-built plans and specifications of each System.

“Dispute” means any and all claims or disputes arising out of or relating to this PPA or any Easement Agreement, or the breach hereof or thereof.

“Early Termination Date” shall have the meaning ascribed to such term in Section 9.2.

“Easement Agreement” shall have the meaning ascribed to such term in the Recitals.

“Energy” means electric energy (three-phase, 60-cycle alternating current, expressed in kilowatt-hours).

“Energy Output” means the amount of Energy generated by a System and delivered to Host at the applicable Delivery Point, as metered in whole kilowatt-hours (kWh) at the Metering Devices. Subject to Article VII, all Energy Output delivered to Host at the relevant Delivery Point shall be equal to the energy measured at the Metering Devices.

“Energy Payment Rate” shall have the meaning ascribed to such term in Section 3.2 and EXHIBIT C.

“Energy Shortfall Credit” shall have the meaning ascribed to such term in

EXHIBIT E.

“Environmental Financial Attributes” means each of the following financial rebates and incentives that is in effect as of the Effective Date or may come into effect in the future: (i) all monetary incentives and rebates, incentive tax credits or other tax benefits, and accelerated depreciation (collectively, “allowances”), howsoever named or referred to, with respect to any and all fuel, emissions, air quality, or other environmental characteristics, resulting from the use of solar generation or the avoidance of the emission of any gas, chemical or other substance into the air, soil or water attributable to the sale of Energy generated by a System; and (ii) all reporting rights with respect to such allowances. Environmental Financial Attributes, however, do not include Renewable Energy Credits, which are defined separately below.

“Event of Default” shall have the meaning ascribed to such term in Section 9.1.

“Exercise Notice” shall have the meaning ascribed to such term in Section 13.7(a).

“Exercise Period” shall have the meaning ascribed to such term in Section 13.7(a).

“Estimated Annual Production” shall mean the expected Energy Output for each Contract Year as set forth in EXHIBIT D.

“Extension Term” shall have the meaning ascribed to such term in Section 2.1(b).

“Fair Market Value” means the value of the System(s) as determined by the mutual agreement of Host and Provider. If Host and Provider cannot mutually agree to a Fair Market Value, then the Parties shall select a nationally recognized independent appraiser with experience and expertise in the solar photovoltaic industry to value such equipment. Such appraiser shall act reasonably and in good faith to determine the fair market value of the System(s) as if the System(s) were operational for the entire useful life thereof and shall set forth such determination in a written opinion delivered to the Parties. The valuation made by the appraiser shall be binding on the Parties in the absence of fraud or manifest error. The costs of the appraiser shall be borne by the Parties equally. If the Parties are unable to agree on the selection of an appraiser, such appraiser shall be selected by random lot from two firms proposed by each Party.

“FERC” shall mean the United States Federal Energy Regulatory Commission, or any successor agency.

“Force Majeure” means any event or circumstance that prevents the affected Party from performing its obligations in accordance with this Agreement, if such act or event is beyond the reasonable control, and not the result of the fault or negligence, of the affected Party and such Party had been unable to overcome such act or event with the exercise of due diligence (including the expenditure of reasonable sums). Subject to the foregoing conditions, Force Majeure shall include without limitation the following acts or events: (i) natural phenomena, such as storms, hurricanes, floods, lightning, volcanic eruptions and earthquakes; (ii) explosions or fires arising from lightning or other causes unrelated to the acts or omissions of the Party

seeking to be excused from performance; (iii) acts of war or public disorders, civil disturbances or riots, insurrection, sabotage, epidemic, terrorist acts, or rebellion; (iv) action by a Governmental Authority resulting in a moratorium on the activities related to this Agreement; and (v) the inability of one of the Parties, despite its reasonable efforts, to obtain, in a timely manner, any Permit necessary to enable the affected Party to fulfill its obligations in accordance with this Agreement, provided that the delay or non-obtaining of such Permit is not attributable to the Party in question and that such Party has exercised its reasonable efforts to obtain such Permit. Force Majeure will not be based on (i) Host's inability to use Energy purchased hereunder, (ii) Provider's ability to sell Energy at a price greater than the price of Energy under this Agreement, or (iii) Host's voluntary or involuntary shutting down or closing of the facilities located at the Property. Economic hardship of either Party shall not constitute Force Majeure.

"Governmental Authority" means any domestic governmental or regulatory authority, agency, court, commission or other regulatory entity. For purposes of this Agreement, the Host is not a Governmental Authority.

"Governmental Charges" means all applicable federal, state and local taxes (other than taxes based on income or net worth), governmental charges, emission allowance costs, duties, tariffs, levies, licenses, fees, permits, assessments, adders or surcharges (including public purposes charges and low income bill payment assistance charges), imposed or authorized by a Governmental Authority, utility, transmission and distribution provider or other similar entity, on or with respect to the Energy or this Agreement.

"Guaranteed Minimum Production" shall have the meaning ascribed to such term in

EXHIBIT E.

“Indemnity Claims” means all losses, liabilities, damages, costs, expenses and attorneys’ fees, whether incurred by settlement or otherwise.

“Independent Appraiser” means an individual who is a member of a national accounting, engineering or energy consulting firm qualified by education, experience and training to determine the value of solar generating facilities of the size and age and with the operational characteristics of the Systems. Except as may be otherwise agreed by the Parties, the Independent Appraiser shall not be (or within three years before his appointment have been) a director, officer or an employee of, or directly or indirectly retained as consultant or adviser to, Provider or any Affiliate of Provider or Host.

“Initial Term” shall have the meaning ascribed to such term in Section 2.1(a).

“Late Payment Interest Rate” means, for any date, the lesser of (i) ten percent (10%) per annum, or (ii) the maximum rate permitted by Applicable Law.

“Metering Device” means, with respect to a System, the revenue-grade meter or meter, and related equipment, used to measure, record, register and transmit information regarding the Energy generated by such System and delivered to the relevant Delivery Point. Such meter shall measure and log the following four parameters on a 15-minute average basis: (1) actual AC electricity production of the System (in kWh); (2) solar insolation measured in the global horizontal irradiation (GHI) in W/m<sup>2</sup>; (3) ambient air temperature (in °C); and (4) wind speed (in m/s).

“Non-Defaulting Party” shall have the meaning ascribed to such term in Section 9.2.

“Notices” shall have the meaning ascribed to such term in Section 16.1.

“Permit” means any authorization, license, permit, certificate of authority, approval, registration, franchise, clearance or similar consent granted or issued by any Governmental Authority.

“Person” means an individual, general or limited partnership, corporation, municipal corporation, business trust, joint stock company, trust, unincorporated association, joint venture, Governmental Authority, limited liability company, or any other entity of whatever nature.

“Preliminary Determination” shall have the meaning ascribed to such term in Section 13.5.

“Project” shall have the meaning ascribed to such term in the recitals.

“Project Portfolio” means, collectively, all of the Systems that achieve Commercial Operation.

“Property” shall have the meaning ascribed to such term in the recitals.

“Purchase Price” shall have the meaning ascribed to such term in Section 13.2.

“Qualifying Facility” is a generating facility which meets the requirements for Qualifying Facility status under the Public Utility Regulatory Policies Act of 1978 and part 292 of FERC’s Regulations (18 C.F.R. Part 292), and which has obtained certification of its Qualifying Facility status either through an application filed with FERC or through self-certification.

“Renewable Energy Credit” or “REC” means any and all credits, benefits, emissions reductions, offsets, reporting rights and allowances, howsoever entitled, attributable to the generation from any System, and its displacement of conventional energy generation, green-e tags (including tradable renewable certificates), or other transferable indicia denoting carbon offset credits or indicating generation of a particular quantity of energy from a renewable energy source by a renewable energy facility attributed to the Energy Output during the Term created under a renewable energy, emission reduction, or other reporting program adopted by a Governmental Authority, or for which a registry and a market exists (which, as of the Effective Date are certificates issued by Green-e in accordance with the Green-e Renewable Electric Certification Program, National Standard Version 1.3 administered by the Center of Resource Solutions) or for which a market may exist at a future time.

“Reporting Rights” means the right of Provider to report to any federal, state or local agency, authority or other party, including without limitation under Section 1605(b) of the Energy Policy Act of 1992 and provisions of the Energy Policy Act of 2005, or under any present or future domestic, international or foreign emissions trading program, that Provider owns all the Environmental Financial Attributes associated with the Energy Output and ownership of the System(s).

“Representatives” shall have the meaning ascribed to such term in Section 14.1(a).

“Schedule of Definitions and Rules of Interpretation” shall have the meaning ascribed to such term in Sections 1.1 and 1.2.

“System” “Systems” or “System(s)” shall mean the solar electric generating facility or facilities installed and operated delivering Energy Output pursuant to this Agreement, as more particularly described in EXHIBIT B.

“System Assets” means each and all of the assets comprising each System, including, but not limited to, racking systems, trackers, shade structures, solar energy panels, mounting systems, inverters, integrators, improvements and other related equipment installed on the Property, electric lines required to connect such equipment to the relevant Delivery Point, protective and associated equipment, improvements, and other tangible and intangible assets, permits, property rights and contract rights, including any warranties reasonably necessary for construction, operation and maintenance of the relevant System.

“System Loss” means loss, theft, damage or destruction of a System or System Assets, or any other occurrence or event that prevents or limits such System from operating in whole or in part, resulting from or arising out of any cause (including casualty, condemnation or Force Majeure) other than (i) Provider’s negligence or intentional misconduct, (ii) Provider’s breach of maintenance obligations under the PPA, or (iii) normal wear and tear of the Systems.

“System Loss Amount” means the current fair market value of the System Assets with respect to a Project.

“Term” means the Initial Term and any Extension Term.

“Termination Value” shall mean the values set forth or described in EXHIBIT F, as such values may be revised in connection with the completion of the Systems.

“Transaction” means any transaction between the Parties under the terms of the PPA or the Easement Agreements or any other agreements, instruments, or undertakings between the Parties.

“Transfer Date” shall have the meaning ascribed to such term in Section 13.9.

“Utility” shall mean the electric distribution company responsible for electric energy transmission and distribution service at the Property. The Parties acknowledge and agree that, as of the date of this Agreement, the Utility is Southern California Edison.

1.2 Rules of Interpretation. In this Agreement, unless expressly provided otherwise:

(a) the words “herein,” “hereunder” and “hereof” refer to the provisions of this Agreement and a reference to a recital, Article, Section, subsection or paragraph of this Agreement or any other agreement is a reference to a recital, Article, Section, subsection or paragraph of this Agreement or other agreement in which it is used unless otherwise stated;

(b) references to this Agreement, or any other agreement or instrument, includes any schedule, exhibit, annex or other attachment hereto or thereto;

(c) a reference to a paragraph also refers to the subsection in which it is contained, and a reference to a subsection refers to the Section in which it is contained;

(d) a reference to this Agreement, any other agreement or an instrument or any provision of any of them includes any amendment, variation, restatement or replacement of this Agreement or such other agreement, instrument or provision, as the case may be;

(e) a reference to a statute or other law or a provision of any of them includes all regulations, rules, subordinate legislation and other instruments issued or promulgated thereunder as in effect from time to time and all consolidations, amendments, re-enactments, extensions or replacements of such statute, law or provision;

- (f) the singular includes the plural and vice versa;
- (g) a reference to a Person includes a reference to the Person's executors and administrators (in the case of a natural person) and successors, substitutes (including Persons taking by novation) and permitted assigns;
- (h) words of any gender shall include the corresponding words of the other gender;
- (i) "including" means "including, but not limited to," and other forms of the verb "to include" are to be interpreted similarly;
- (j) references to "or" shall be deemed to be disjunctive but not necessarily exclusive, (i.e., unless the context dictates otherwise, "or" shall be interpreted to mean "and/or" rather than "either/or");
- (k) where a period of time is specified to run from or after a given day or the day of an act or event, it is to be calculated exclusive of such day; and where a period of time is specified as commencing on a given day or the day of an act or event, it is to be calculated inclusive of such day;
- (l) a reference to a Business Day is a reference to a period of time commencing at 9:00 a.m. local time on a Business Day and ending at 5:00 p.m. local time on the same Business Day;
- (m) if the time for performing an obligation under this Agreement expires on a day that is not a Business Day, the time shall be extended until that time on the next Business Day;
- (n) a reference to (i) a month is a reference to a calendar month and (ii) a year is a reference to a calendar year;
- (o) where a word or phrase is specifically defined, other grammatical forms of such word or phrase have corresponding meanings;
- (p) a reference to time is a reference to the time in effect in California on the relevant date;
- (q) if a payment prescribed under this Agreement to be made by a Party on or by a given Business Day is made after 5:00 pm on such Business Day, it is taken to be made on the next Business Day;
- (r) the Parties acknowledge and agree that although this Agreement relates to more than one System to be installed and operated at more than one site controlled by Host, it is the Parties' express intent and agreement that the rights and obligations of the Parties with respect to each System are separate and independent from the rights and obligations of the Parties with respect to all other Systems (and the Parties are using one agreement to address multiple Systems for administrative convenience).

1.3 Right to Separate Agreements for Systems. If requested by Provider in order to facilitate the financing of the Systems and compliance with legal requirements for ownership and placement in service of the Systems, Host shall cooperate with Provider to replace this Agreement with two or more sets of independent power purchase agreements, each with a separate Provider Affiliate and relating to one or more Systems, on terms and conditions substantively identical to this Agreement (including without limitation a pro rata allocation of the Host Termination Payment and credits with respect to Guaranteed Minimum Performance Output); provided that if Host exercises its Purchase Option under a particular power purchase agreement, it shall be required to simultaneously exercise its Purchase Option under each other power purchase agreement.

1.4 Right to Update Certain Exhibits for Mutually Agreed Changes. The Parties acknowledge and agree that the configuration and location of the Systems as of the date of execution of this Agreement are preliminary and may be updated by the mutual agreement of the Parties after the Effective Date in order to reflect the updated design and engineering of the Systems and to address any existing lien or other security interest in the Property that may affect the location of the Systems. The Parties may amend Exhibits A, B, D, E, F and G of this Agreement and amend the existing Easement Agreements or execute additional Easement Agreements in order to account for any such mutually agreed changes to the configurations and locations of the Systems. Any such mutually agreed amendments to Exhibits A, B, D, E, F and G of this Agreement shall replace the relevant Exhibits then in effect and shall automatically become the newly effective Exhibits for purposes of this Agreement without any further approval of the governing body of the Host.

1.5 Right to Update for Host-Requested Changes. In addition to Section 1.4, if Host requests prior to the CP Cutoff Date a modification, re-design or re-location of one or more Systems that increases the capital costs of such System(s) or adversely impacts the Estimated Annual Production of the System(s) or the Project Portfolio, Provider shall be entitled to an increase in the Energy Payment Rate and may amend EXHIBIT A through EXHIBIT F in order to account for such Host-requested changes. Such amendments agreed to by the Parties to the Energy Payment Rate and EXHIBIT A through EXHIBIT F shall replace the relevant Energy Payment Rate and Exhibits then in effect and shall automatically become the newly effective Energy Payment Rate and Exhibits for purposes of this Agreement and Host acknowledges that any such change shall be processed without further approval from any governing board of the Host.

## **ARTICLE II**

### **TERM, TERMINATION AND COMMERCIAL OPERATION**

#### 2.1 Term and Termination.

(a) Initial Term. The initial term of this Agreement (the “Initial Term”) shall commence on the Effective Date and shall be in effect until the sooner of (i) 11:59 pm Pacific Standard Time on the date of the twenty-fifth (25<sup>th</sup>) anniversary of the Commercial Operation

Date of the last System of the Project Portfolio or (ii) the date of this Agreement is validly terminated pursuant to the provisions herein.

(b) Extension Term. After the Initial Term the Parties may extend this Agreement for three (3) additional consecutive periods of five (5) years each (each such extension, an "Extension Term" and together with the Initial Term, the "Term") on rates to be negotiated by the Parties prior to the commencement of an Extension Term, if either Party provides written notice to the other Party at least one hundred and eighty (180) calendar days prior to the expiration of the Initial Term or prior to the then applicable Extension Term and the other Party accepts in writing within thirty (30) Business Days of receipt of the written notice, so long as no material breach of this Agreement exists at the time of the notice. Each such Extension Term shall expire at 11:59 pm Pacific Standard Time on the respective applicable anniversary of the last day of the Term in existence prior to an Extension Term, unless earlier terminated earlier pursuant to Section 9.2.

(c) Early Termination by Provider. Provider shall have the right, but not the obligation, to terminate this Agreement during the Term upon the occurrence of (i) an unstayed order of a court or administrative agency having the effect of subjecting the sales of Energy Output to federal or state regulation of prices and/or service, (ii) elimination or alteration of one or more Environmental Financial Attributes or other change in law that results in a material adverse economic impact on Provider, or (iii) upon an event of Force Majeure pursuant to the terms of Section 8.3. In the event that Provider terminates this Agreement pursuant to this Section 2.1(c), this Agreement shall terminate without triggering the default provisions of this Agreement or the Termination Value, and with no liability of either Party to the other Party except such amounts then due and owing under this Agreement as of the date of such termination.

## 2.2 Construction of the Systems.

(a) Promptly following the execution of this Agreement, Provider shall commence pre-installation activities relating to the Systems, which shall include, without limitation, the following:

(i) obtain or cause to be obtained complete financing for the installation of the Systems, including the investment of federal renewable energy tax credit equity, if any;

(ii) obtain applicable performance-based financial incentives;

(iii) obtain or cause to be obtained the legal right to use the Property for the installation, maintenance and operation of the Systems, subject to the terms of any proposed financing;

(iv) obtain or cause to be obtained all government approvals, permits, contracts, and agreements required for installation, operation and maintenance of the Systems and delivery of Energy Output to Host;

(v) obtain all necessary authority from any applicable regulatory entities for the operation of the Systems and sale and delivery of Energy Output to Host;

(vi) enter into contract(s) for installation of the Systems, subject to the terms of any proposed financing; and

(vii) enter into the Easement Agreements.

2.3 Commercial Operation. Provider shall use commercially reasonable efforts to cause the Commercial Operation Date of the last System of the Project Portfolio to occur on or before June 30, 2017 (the "Target Date"). Successful completion of the activities described in Section 2.2 above shall be conditions precedent to Provider's obligations to install and operate the System(s) and otherwise perform its obligations under this Agreement. If by December 31, 2016 the Provider has provided written notice that the activities contemplated in Section 2.2 are incomplete to its satisfaction (the "CP Cutoff Date") with respect to a System or the Systems, Provider or Host may terminate this Agreement with respect to such System(s) without triggering the default provisions of this Agreement or any liability under this Agreement and the Agreement shall continue to be effective with regards to all other System(s), if applicable; provided that such option to terminate shall expire if written notice of termination is not provided to the other Party within thirty (30) days after the CP Cutoff Date. In the event that the System has not achieved Commercial Operation before the Target Date, the Parties may mutually agree to amend this PPA to revise the Target Date and Term of this PPA.

2.4 Notice of Commercial Operation. Provider shall notify Host when a System is capable of Commercial Operation, and shall in such notice certify to Host the Commercial Operation Date of such System.

2.5 Removal of Systems at End of Term. Except as otherwise provided herein, Provider shall, within either (a) one hundred and eighty (180) calendar days following the end of the Term or (b) to the extent required by Section 9.3 or 9.4, one hundred and eighty (180) calendar days following the Early Termination Date, and at Provider's sole cost and expense in the case of Section 9.3, remove the Systems from the Property on a mutually convenient date. Provider and its agents, consultants, and representatives shall have access at all mutually agreed-upon times to the applicable Property and the Systems for purposes of such removal. Provider is responsible to repair any and all damage caused to the applicable Property by its removal of the Systems. Each portion of the Property upon which the System(s) are (is) installed shall be returned to its original condition to the extent reasonably possible and practical, excepting ordinary wear and tear.

2.6 Survival. Effective as of any termination of this Agreement, the Parties will no longer be bound by the terms and conditions of this Agreement, except (a) to the extent necessary to enforce any rights and obligations of the Parties, including payment obligations, arising under this Agreement prior to termination of this Agreement, (b) as provided in Section 14.1(b), that the obligations of the Parties under this Agreement with respect to indemnification will survive the termination of this Agreement and will continue (but only with

respect to claims for indemnification based upon events or circumstances occurring or arising on or before the termination of this Agreement) for a period of three (3) years following any termination of this Agreement.

**ARTICLE III**  
**PURCHASE AND SALE OF ENERGY; DELIVERY; GOVERNMENTAL CHARGES**

3.1 Purchase and Sale of Energy. In accordance with the terms and conditions hereof, commencing on the Commercial Operation Date of the first System of the Project Portfolio and continuing throughout the remainder of the Term, Provider shall deliver to Host at the Delivery Point(s) as and when available, and Host shall accept delivery from Provider at the Delivery Point(s), all of the Energy Output. Neither Party shall seek to change any of the rates or terms of this Agreement by making a filing or application with any local, state or federal agency with jurisdiction over such rates or terms or exercise any rights a Party may have, if any, to seek changes to such rates or terms during the Term of this Agreement. [Host acknowledges and agrees that solar power is an intermittent resource and that the Energy Output, which is dependent on the sun and other factors, will vary. Host further agrees to retain a source of electricity from the Utility.

3.2 Price for Energy Output. Host shall pay Provider a payment equal to the total Energy Output for each month multiplied by the applicable Energy Payment Rate set forth in EXHIBIT C. Host shall make such monthly payment to Provider pursuant to Section 10.1.

3.3 Title and Risk of Loss. Title to and risk of loss of the Energy Output will pass from Provider to Host at the Delivery Points. Provider warrants that it will deliver the Energy Output to Host at the Delivery Points free and clear of all liens, security interests, claims, and other encumbrances. Host acknowledges that adjustments in the terms and conditions of this Agreement may be necessary to account for rule changes in the Utility control areas, that could not be anticipated at the date of execution of this Agreement or that are beyond the control of the Parties, and the Host agrees to make such commercially reasonable amendments as are reasonably required to comply therewith.

3.4 Governmental Charges.

(a) Host shall be responsible for and pay all Governmental Charges imposed directly on Host in connection with or relating to the delivery and sale of Energy Output by Provider to Host, whether imposed before, upon or after the delivery of Energy Output to Host at each Delivery Point.

(b) Both Parties shall use reasonable efforts to administer this Agreement and implement its provisions so as to minimize Governmental Charges. In the event the sale of Energy hereunder is to be exempted from or not subject to one or more Governmental Charges, promptly upon Provider's request therefore, Host shall provide Provider with all necessary documentation to evidence such exemption or exclusion.

3.5 No Shading. Host shall not cause or permit any interference with any System's insolation and access to sunlight, as such access exists as of the Commercial Operation Date of the System(s). Host shall trim or cause to be trimmed any shrubbery, trees or other growth on the Property or under its control that would interfere with any System's insolation; and if Host does not perform such obligation upon ten (10) days written notice to Host, Provider shall have the right to perform such services at Host's expense and/or pursue damages for any such shading that results in decreased System performance or production.

3.6 Permanent Facility Closure. Host acknowledges and agrees that notwithstanding any temporary or permanent closure of the facilities located at the Property or connected to the Delivery Point, Host's obligation to purchase and pay for all Energy Output shall continue uninterrupted during the Term.

3.7 Estimated Annual Production; Guaranteed Minimum Production.

(a) Estimated Annual Production. Provider has estimated that the Systems will deliver the estimated annual production as indicated in EXHIBIT D (the "Estimated Annual Production").

(b) Insolation. Prior to the Commercial Operation of the System(s), Provider shall disclose the initial insolation level assumed in its calculation of the Estimated Annual Production. During the Term, Provider shall track the insolation level at each Property, and upon Host's reasonable request shall provide Host with access to such insolation level data. In the event that the insolation level at any Property is more than three percent (3%) less than the initial insolation level assumed in the calculation of the Estimated Annual Production over a period of three (3) years, then the Estimated Annual Production shall be adjusted to reflect such long-term insolation reduction. Provider shall be entitled to such adjustment of the Estimated Annual Production no more than once every three (3) years so long as the insolation level does not exceed ten percent (10%) less than the assumed insolation level of the Estimated Annual Production in effect.

(c) 90% Guaranteed Minimum Production. For each Contract Year, Provider guarantees the Project Portfolio shall deliver no less than the Guaranteed Minimum Production (as defined in

EXHIBIT E), applicable for such Contract Year. Beginning on the last day of the third Contract Year that occurs after the Commercial Operation Date of the Project Portfolio, Host shall notify Provider in writing of any Energy Shortfall Credit (as defined in

EXHIBIT E). The Energy Shortfall Credit shall be applied to, and amortized over, eight (8) months of payments due from Host pursuant to Section 10.1, beginning with the first month after Host provides Provider written notice of the Energy Shortfall Credit pursuant to this Section 3.5(e). Credit by the Provider of the Energy Shortfall Credit shall be the sole and exclusive remedy available to the Host for the Provider failing to cause the Project Portfolio to deliver the Guaranteed Minimum Performance Output.

(d) Annual Degradation Factor. Provider and Host agree that in accordance with the Systems manufacturer's specifications, performance of the Systems will degrade by an Annual Degradation Factor as defined in EXHIBIT D for every year of operation. The Estimated Annual Production will be reduced by the Annual Degradation Factor every Contract Year during the Term. The Annual Degradation Factor will be applied to the kWh energy values of the weather-adjusted Estimated Annual Production (as defined in Exhibit E as the "Calculated kWh").

(e) Notwithstanding any term to the contrary in this Agreement, if any act or omission by Host results in the System having any reduced production or performance failure, then during any such period of time (i) Provider shall not be responsible or liable for or deemed in breach of this Agreement for any delay or failure of performance of its obligations under this Agreement including but not limited to the Guaranteed Minimum Production and (ii) Host shall promptly pay Provider for the value of the expected Energy Output of the System during such period of time based on the preceding twelve (12) months average production plus the value of any and all Environmental Financial Attributes as set forth in Article IV.

3.8 Host-Caused Reduction in Production. Notwithstanding any term to the contrary in this Agreement, if any act or omission by Host results in the System having any reduced production or performance failure, then during any such period of time (i) Provider shall not be responsible or liable for or deemed in breach of this Agreement for any delay or failure of performance of its obligations under this Agreement, and (ii) Host shall promptly pay Provider for the value of the expected Energy Output of the System during such period of time based on the preceding twelve (12) months average production plus the value of any and all Environmental Financial Attributes as set forth in Article IV.

#### ARTICLE IV ENVIRONMENTAL FINANCIAL ATTRIBUTES

4.1 Title to Environmental Financial Attributes. Notwithstanding the purchase and sale of Energy pursuant to Section 3.1, all Environmental Financial Attributes relating to the Systems or the Energy Output shall remain the property of Provider. Provider shall have all right, title, and interest in and to any and all Environmental Financial Attributes that relate to the Systems or the Energy Output during the Term, and Host shall have no right, title or interest in or to any such Environmental Financial Attributes.

4.2 Reporting of Ownership of Environmental Financial Attributes. Host shall not report to any Person that any Environmental Financial Attributes relating to the Systems or the Energy Output belong to any Person other than Provider.

4.3 Renewable Energy Credits. Unless separately agreed to in writing by the Parties, all Renewable Energy Credits relating to the Energy Output shall be the property of Host or its assignee, and Provider shall have no right, title or interest in or to any such Renewable Energy Credits and shall not report to any Person that any such Renewable Energy Credits belong to any Person other than Host or its assignee. Host shall, at Host's sole cost and expense, be responsible for the registration, establishment, and maintenance of all accounts and mechanisms necessary for receiving Renewable Energy Credits from the Provider, including but not limited to a Western Renewable Energy Generation Information System (WREGIS) account.

4.4 Cooperation with Environmental Financial Attributes. At Provider's request, Host shall execute all such documents and instruments reasonably necessary or desirable to effect or evidence Provider's right, title and interest in and to the Environmental Financial Attributes. Host shall take all reasonable measures to assist Provider in obtaining all Environmental Financial Attributes currently available or subsequently made available in connection with the System(s). If Host fails to act in good faith in completing documentation or taking actions reasonably requested by Provider, and such failure results in a loss of Environmental Financial Attributes, Host shall reimburse Provider for the full amount of such lost Environmental Financial Attribute.

4.5 Impairment. Host shall not take any action or suffer any omission at the Property that would have the effect of impairing the value to the Provider of the Environmental Financial Attributes or Renewable Energy Credits. Host shall be solely responsible for notifying Provider of any action or omission that could impair such value and for consulting with Provider as necessary to prevent impairment of the value of the Environmental Financial Attributes.

4.6 Rebate Deposits. To the extent Provider pays any amounts due in connection with the application and reservation of performance based incentives under the California Solar Initiative (or any other applicable program), Provider shall be entitled to all such amounts that are refunded to the Host. Host shall remit all such refunds to the Provider within five (5) days of receiving any such refunded amounts.

## ARTICLE V CONSTRUCTION AND INSTALLATION OF THE SYSTEM

5.1 Installation and Removal. Subject to Section 5.3, Provider will cause each System to be designed, engineered, installed and constructed substantially in accordance with the terms of this Agreement and the Easement Agreements and at the sole cost of the Provider. Host shall have the right to review and approve all construction plans, which approval shall not be unreasonably denied, delayed or conditioned. Subject to the terms of the Easement

Agreements and to the extent commercially practical, Provider shall perform the installation of the Systems in a manner that minimizes inconvenience to and interference with Host. Notwithstanding the foregoing, in the event that Provider determines in its sole discretion that it is unable to install or interconnect a System at the applicable Property for any reason, it shall be under no obligation to do so, and this Agreement shall terminate with respect to such System and be of no further force and effect upon written notice from Provider to Host to that effect. The termination of this Agreement for such eliminated System shall not affect the Energy Payment Rate that Host pays for the remaining Projects.

5.2 Third Party Inspections. Provider shall be entitled to select (subject to Host's approval not to be unreasonably withheld) any company that performs inspections of the materials and equipment for the design, engineering, procurement, construction or installation of the Systems, including, but not limited to, any inspections to verify the Systems' compliance with the Applicable Law.

5.3 Utility Approvals. Provider shall be responsible for and bear all costs associated with applying for and obtaining all permits, licenses and approvals required for the installation, operation, and maintenance of the Systems, and costs associated with applying for all rebates and incentives. Provider shall be solely responsible for effecting the required interconnection and net metering approvals and agreements. Notwithstanding the foregoing, Host agrees to cooperate with Provider and use its best effort to assist Provider in obtaining all necessary permits, licenses and approvals in connection with the installation, operation and maintenance of the Systems, including but not limited to the submission of applications for interconnection of the Systems with the Utility and applications for the resale of excess power to the local utility. Upon request of Provider, Host shall execute all required interconnection and net metering applications and agreements. Host shall provide such assistance to Provider at no cost to Host, and should Host for any reason incur any costs associated with such assistance, Provider shall reimburse Host for the full amount of such costs promptly upon receipt of written documentation of such costs from Host. Host shall not make any material changes to its electrical equipment at any Property after the date on which the applicable utility interconnection application is submitted unless any such changes, individually or in the aggregate, would not adversely affect the approval by such utility of such interconnection. Should the local electric utility or the local inspector fail to approve the interconnection of a System with respect to the applicable Property or require equipment in addition to the equipment contemplated by Provider in connection with such Property, Provider may terminate this Agreement immediately with respect to such System subsequent to notification from the local utility. The Parties shall not be obligated to proceed with the installation of any System if the applicable utility or inspector approvals are conditioned upon material upgrades to the existing electrical infrastructure and neither Party elects to provide for such upgrades.

5.4 Interconnection and Net Metering Agreements. Throughout the Term, following interconnection of each System, Host shall at all times comply with the customer requirements of all applicable interconnection and net metering agreements so as to maintain the effectiveness of such agreements for the resale of excess power to the Utility (so long as net metering has not been made unavailable by the Utility to school districts generally). Host shall

not perform any action that would result in the breach of the terms and conditions of such agreements.

5.5 Host Cooperation and Responsibilities. Host will cooperate with Provider and any third parties with whom Provider contracts by providing access to each Property during working hours without unreasonable restrictions. Host shall cooperate with Provider in obtaining and maintaining all permits and licenses required for Commercial Operation, provided there is no cost to Host. In connection with the construction of the Systems, Host shall have provided Provider (at no additional cost to Provider) with access to the utilities and communications services/infrastructure on the Premises to be used by Provider for the start-up, maintenance, repair, replacement and operation of the Systems, which utilities and communications services/infrastructure shall include access to onsite electricity, water, telephone and cellular signals. In addition, Provider shall have the right to install on the Premises, at its sole discretion and expense, equipment to enable wireless connection of each System to the internet at locations approved by the Host, in the Host's reasonable discretion.

## ARTICLE VI OWNERSHIP; MAINTENANCE OF SYSTEM AND REPORTING REQUIREMENTS

### 6.1 Ownership of Systems by Provider.

(a) Provider shall own each System, and shall be entitled to own, claim, retain and transfer any and all federal, state, or local Environmental Financial Attributes associated with the ownership of each System, including any federal income tax credits or grants, as well as any and all state or local incentives, credits or grants for the installation of solar energy facilities or the production of electricity from renewable energy sources, including all RECs

(b) Host and Provider agree that each System shall at all times be the personal property of Provider severable from the applicable Property and shall not become a fixture on such Property. Host shall not take any position on any tax return or on any other filings indicating or suggesting that it is anything other than a purchaser of electricity from the Systems. Host will at all times keep each Property free from any legal process or lien attributable to any act or omission of Host, and will give Provider immediate notice if any legal process or lien is asserted or made against a System or against Host where a System or any Property may be subject to any lien, attachment or seizure by any Person. If Host breaches its obligations under this Section 6.1(b), it shall promptly cause such liens to be bonded, discharged and released of record without cost to Provider, and shall indemnify Provider against all costs and expenses (including reasonable attorneys' fees and court costs at trial and on appeal) incurred in bonding, discharging and releasing such liens.

(c) Notwithstanding Sections 6.1(a), 6.1(b) and 17.2, Provider may finance any System by means of a sale-leaseback financing, pursuant to which one or more third party investors (directly or indirectly via a trust or another special purpose entity) will own such System and lease it back to Provider.

(d) Host further covenants that with respect to any liens, security interests or other encumbrances to Host's title to any Property that may impact the Easements and/or a System, Host shall enter into a subordination and non-disturbance agreement ("SNDA"), in recordable form approved by Provider (such approval not to be unreasonably withheld by Provider), with any third party who now has or may in the future obtain an interest in the Property (as defined in the applicable Easement Agreement), including, without limitation, any lenders to Host, Host's landlord or any lenders to the fee title owner, as applicable. Such SNDA shall (i) acknowledge and consent to the Provider's rights in the Property, (ii) acknowledge that such third party has no interest in the Systems or Easements and shall not gain any interest in the Systems or Easements by virtue of the Parties' performance or breach of the Easement Agreement, (iii) subordinate such third party's interest in Property to the Easements and the Easement Agreement, (iv) acknowledge that Provider's rights in the Property granted under the Easement Agreement shall run with such Property throughout the term of such Easement Agreement, notwithstanding any sale, lease, transfer, assignment, mortgage, pledge or other alienation or encumbrance by such third party of the Property and (v) provided that so long as Provider shall not be in default under the Easement Agreement beyond the expiration of any applicable grace or cure period provided for thereunder, Provider's right of peaceable and quiet use and enjoyment of the Property pursuant to the Easements therein granted by Host shall not be disturbed by such third party.

6.2 Easement Agreements. Pursuant to the terms and conditions of the Easement Agreements, the Parties acknowledge and agree that with respect to each Project, Host is granting Provider exclusive and non-exclusive easements over the portion of the Property upon which the Systems are located.

6.3 Maintenance of Systems by Provider and Host.

(a) Provider, at its own cost and expense, shall maintain each System in good condition and repair in accordance with applicable contractor, subcontractor and vendor warranties and guarantees and manufacturer's instructions and specifications, all Applicable Laws and applicable standards with respect to the Systems, and the terms of this Agreement. In the event that criminal acts of third parties cause damage to a System, Provider shall only be obliged to repair or replace such System if such damage is material.

(b) Provider and its agents, consultants, and representatives shall have access at all reasonable times (including under emergency conditions) to each Property and each System, all System operations, and any documents, materials and records and accounts relating thereto for purposes of inspection and maintenance of the Systems. During any inspection or maintenance of the Systems, Provider, and its agents, consultants and representatives shall comply with Host's reasonable safety and security procedures, and Provider and its agents, consultants and representatives shall conduct such inspection and maintenance in such a manner as to cause minimum interference with Host's activities and the activities of Host's tenants.

6.4 Vandalism and Theft. Notwithstanding the foregoing, after the Commercial Operation of a System, Host shall conduct routine visual inspections of the Systems which are

not located on roof structures of the Property and shall notify Provider of any visible theft, damage or vandalism to the Systems, including graffiti within two (2) business days of any such discovery.

(a) Host shall be solely responsible for removing all graffiti and “tagging” of the following components of the Systems; provided, however, that Provider shall supply all paint that is reasonably required to remove graffiti from such System components: columns, beams, purlins, steel racking, panel boxes, protection barriers and skirts located underneath solar modules, canopy bollards and other equipment hanging from columns.

(b) Provider shall be solely responsible for, and shall have the exclusive right to remove graffiti and “tagging” of the following components of the System: inverters, combiner boxes, solar modules and all other electrical equipment having access to live disconnect switches from enclosures.

(c) Host shall fully cooperate with any and all investigations initiated by Host pertaining to any event of theft or vandalism affecting the System(s) including, but not limited to, filing police reports, witness statements and public announcements.

#### 6.5 Safety and Security.

(a) Provider shall take all reasonably necessary safety precautions in providing the Energy Output and shall comply in all material respects with all Applicable Laws pertaining to the safety of persons and real and personal property.

(b) Host shall provide and take all reasonable measures for the security and protection of the Systems, including commercially reasonable surveillance and monitoring of the Systems and Property.

(c) Provider shall in its sole discretion be permitted, but not required, to install and operate security measures including, but not limited to, security surveillance, barbed-wire fencing around ground-mounted arrays, security and safety signage and safety billboards.

6.6 Emergency Response Planning. If requested by Provider, Host agrees to fully cooperate with Provider to establish an emergency response protocol in the event of any naturally or non-naturally occurring emergency situation (e.g. earthquake, flood, fire, bomb threat, public demonstration, state and federal declared emergencies) directly affecting the operation of the Systems or the Property.

### **ARTICLE VII** **METERING DEVICES AND METERING**

7.1 Metering Equipment. A Metering Device shall be installed for each System, and the Provider shall provide, install, own, operate and maintain the Metering Devices.

7.2 Measurements. Readings of any Metering Device shall be conclusive as to the amount of Energy Output; provided that if a Metering Device is out of service, is discovered to be inaccurate pursuant to Section 7.3, or registers inaccurately, measurement of Energy Output shall be determined in the following sequence: first, by estimating Energy Output during periods when such Metering Device was registering inaccurately by obtaining the product of (i) the average ratio of kWh of Energy Output per System generating capacity (measured in kW) of each other System whose Metering Device was in service and registering accurately during such period multiplied by (ii) the System generating capacity (measured in kW) of the System whose Metering Device was registering inaccurately; and, second, applying such estimated Energy Output (a) for the actual period during which inaccurate measurements were made or (b) if no reliable information exists as to the period of time during which such Metering Device was registering inaccurately, to an assumed period equal to one-half of the period from the date of the last previous test of such Metering Device through the date the inaccuracy was identified and corrected; provided, however, that, in the case of clause (b), the period covered by the correction under this Section 7.2 shall not exceed six (6) months.

7.3 Standard of Metering Device Accuracy; Resolution of Disputes as to Accuracy. The following steps shall be taken to resolve any disputes regarding the accuracy of a Metering Device:

(a) If either Party disputes the accuracy or condition of such Metering Device, such Party shall so advise the other Party in writing.

(b) Provider shall, within fifteen (15) Business Days after receiving such notice from Host or issuing such notice to Host, advise Host in writing as to Provider's position concerning the accuracy of such Metering Device and Provider's reasons for taking such position.

(c) If the Parties are unable to resolve the dispute through reasonable negotiations, then either Party may request a test of such Metering Device.

(d) If such Metering Device is found to be inaccurate by not more than two percent (2%), any previous recordings of such Metering Device shall be deemed accurate, and the Party disputing the accuracy or condition of such Metering Device under Section 7.3(a) shall bear the cost of inspection and testing of such Metering Device.

(e) If such Metering Device is found to be inaccurate by more than two percent (2%) or if such Metering Device is for any reason out of service or fails to register, then (a) Provider shall promptly cause such Metering Device found to be inaccurate to be adjusted to correct, to the extent practicable, such inaccuracy, and (b) the Parties shall estimate the correct amounts of Energy delivered during the periods affected by such inaccuracy, service outage or failure to register as provided in Section 7.2. If as a result of such adjustment the quantity of Energy Output for any period is decreased (such quantity, the "Energy Deficiency Quantity"), Provider shall reimburse Host for the amount paid by Host in consideration for the Energy Deficiency Quantity, and shall bear the cost of inspection and testing of such Metering Device.

If as a result of such adjustment the quantity of Energy Output for any period is increased (such quantity, the "Energy Surplus Quantity"), Host shall pay for the Energy Surplus Quantity at the Energy Payment Rate applicable during the applicable Contract Year, and shall bear the cost of inspection and testing of such Metering Device.

### ARTICLE VIII

#### LOSS, DAMAGE OR DESTRUCTION OF SYSTEM; INSURANCE; FORCE MAJEURE

##### 8.1 System Loss.

(a) Subject to Host's obligation to indemnify Provider set forth in Section 12.1, Provider shall bear the risk of any System Loss on each Property. Provider shall provide and maintain insurance against any System Loss, including business interruption insurance, in an amount not less than the System Loss Amount, with the loss payable to Provider.

(b) In the event of any System Loss that, in the reasonable judgment of Provider, results in less than total damage, destruction or loss of any System, this Agreement will remain in full force and effect and Provider shall, at Provider's sole cost and expense, repair or replace the Systems as quickly as practicable. Provider shall be entitled to all proceeds of insurance with respect to the Systems; provided, however, that proceeds paid on account of damage to the Property shall be paid to Host.

##### (c) Total Damage or Destruction.

(i) In the event of any System Loss that, in the reasonable judgment of Provider, results in damage, destruction or loss of (A) all or substantially all of any System, (B) such magnitude that the cost to rebuild such System would not be economical as reasonably determined by Provider, or (C) such magnitude that Provider's financing parties will not permit the use of insurance proceeds for the purpose of rebuilding the relevant System(s), Provider shall, within twenty (20) Business Days following the occurrence of such System Loss, notify Host whether Provider is willing, notwithstanding such System Loss, to repair or replace the Systems subject to such System Loss.

(ii) In the event that Provider notifies Host that Provider is not willing to repair or replace any System subject to such System Loss, as described in Section 8.1(c)(i), (A) this Agreement will terminate with respect to such Systems, automatically effective upon the delivery of such notice, (B) from and after the date of delivery of such notice, each such System shall no longer constitute part of the Project Portfolio for all purposes hereunder and the aggregate payments with respect to the Project Portfolio under EXHIBIT D and

EXHIBIT E shall be correspondingly reduced, (C) Provider shall, at Provider's sole cost and expense, remove each such System from the Property as provided in Section 2.5, and (D) Provider shall be entitled to all proceeds of insurance with respect to the Systems, provided, however, that proceeds paid on account of damage to the Property shall be paid to Host.

## 8.2 Insurance.

(a) Provider. Provider shall maintain, at its sole expense, commercial general liability insurance, including products and completed operations and personal injury insurance, in a minimum amount of one million dollars (\$1,000,000) per occurrence and in the aggregate, providing contractual liability and including Host as an additional insured. The additional insured status can be provided by "blanket" endorsement. The minimum coverage limits of \$1,000,000 per occurrence and in the aggregate may be satisfied by a combination of a general liability policy and an excess/umbrella liability policy. Provider, if it has employees, shall also maintain at all times during the term of this Agreement Workers' Compensation insurance coverage in accordance with the applicable requirements of federal and state law. Such insurance shall be primary coverage without right of contribution from any insurance of Host. Provider shall provide certificates of insurance to the Host evidencing the insurance required under this Section within thirty (30) days of the written request by Host, and Provider shall provide certificate holder thirty (30) days written notice of cancellation (ten (10) days for non-payment of premium).

(b) Host. Host shall provide and maintain "all-risk" property damage insurance, covering the Property in the amount not less than the replacement value of the Host's buildings, tools, personal property and equipment, which comprise all or a portion of the Property, excluding coverage for the Systems, during all periods (construction and operation), waiving subrogation in favor of Provider and its affiliates. The waiver of subrogation can be provided by "blanket" endorsement. All such policies shall be with financially sound and reputable insurance companies that have an (i) A.M Best rating of A- and a financial strength category of "X" or higher, or (ii) a Standard & Poor's financial strength rating of A- or higher, or (iii) are otherwise reasonably satisfactory to the Provider or its assignee. Within thirty (30) days after execution of this Agreement and thereafter at each renewal date, Host shall deliver to Provider certificates of insurance evidencing such coverage. Provider shall be given at least thirty (30) days' prior written notice by the applicable insurer in the event of cancellation, non-renewal or termination of coverage (ten (10) days for non-payment of premium). Such insurance shall be primary coverage without right of contribution from any insurance of Provider. Provider shall not be liable for any damage to any Property, or any of Host's equipment, buildings, tools or personal property located thereon that results from perils that would be insured against in a so called "all-risk property damage" insurance policy. Failure of Provider to enforce the minimum insurance requirements listed above shall not relieve Host of responsibility for maintaining these coverages.

(c) Provider shall maintain or caused to be maintain "all risk" property insurance covering each of the Systems during all periods (construction and operation) that Provider is

the beneficial owner of such Systems. Provider agrees to waive subrogation in favor of Host and its affiliates under the “all-risk” property insurance policy being maintained pursuant to this provision.

(d) All insurance required hereunder shall waive the insurer’s right of subrogation. The provisions of this Agreement shall not be construed so as to relieve any insurer of its obligation to pay any insurance proceeds in accordance with the terms and conditions of valid and collectible insurance policies. The liability of the Parties shall not be limited by insurance.

### 8.3 Performance Excused by Force Majeure.

(a) Excused Performance. Except as otherwise specifically provided in this Agreement, neither Party shall be considered in breach of this Agreement or liable for any delay or failure to comply with the Agreement (other than the failure to pay amounts due hereunder), if and to the extent that such delay or failure is attributable to the occurrence of Force Majeure; provided that the Party claiming relief under this Section shall (i) immediately notify the other Party in writing of the existence of the Force Majeure, (ii) exercise all reasonable efforts necessary to minimize delay caused by such Force Majeure, (iii) notify the other Party in writing of the cessation or termination of said Force Majeure and (iv) resume performance of its obligations hereunder as soon as practicable thereafter.

(b) Termination in Consequence of Force Majeure Event. If an event of Force Majeure shall have occurred with respect to a Project that has affected Provider’s performance of its obligations hereunder and that has continued for a continuous period of ninety (90) days, then Provider shall have the right to terminate this Agreement with respect to such Project upon thirty (30) days’ prior written notice to Host. Upon such termination for Force Majeure, neither Party shall have any liability to the other with respect to such Project (other than any such liabilities that have accrued prior to such termination), and the provisions of Article IX (Events of Default; Remedies) shall be inapplicable to such Project.

## ARTICLE IX EVENTS OF DEFAULT; REMEDIES

9.1 Events of Default. An “Event of Default” means, with respect to a Party (a “Defaulting Party”), the occurrence of any of the following:

(a) the failure to make, when due, any payment required under this Agreement if such failure is not remedied within ten (10) Business Days after written notice for energy delivery payments and thirty (30) calendar days after written notice for all other payments; or

(b) Host materially interferes with the operation or energy production of the System(s), including but not limited to any interference or interruption which results in the decommissioning of any System or any component thereof; or

(c) Host breaches or fails to maintain any applicable interconnection or net metering agreement between Host and the Utility; or

(d) such Party becomes Bankrupt; or

(e) such Party fails to provide or maintain in full force and effect any required insurance, if such failure is not remedied within ten (10) Business Days after receipt of written notice from the Non-Defaulting Party to the Defaulting Party; or

(f) Host makes a transfer of the applicable Property without prior written notice to Provider, such Host transferee does not agree to be bound by the terms of the relevant Easement Agreement and this Agreement, or both; or

(g) Any event of default by Host under any Easement Agreement, which is not cured within the applicable cure period as set forth in the Easement Agreement.

9.2 Remedies for Event of Default. If at any time an Event of Default with respect to a Defaulting Party has occurred and is continuing, the other Party (the “Non-Defaulting Party”) will, without (except as otherwise provided in Section 9.3) limiting the rights or remedies available to the Non-Defaulting Party under this Agreement or Applicable Law, have the right:

(a) by notice to the Defaulting Party, to designate a date, not earlier than the date such notice is effective and not later than thirty (30) Business Days after the date such notice is effective, as an early termination date (“Early Termination Date”) in respect of this Agreement;

(b) to withhold any payments due to the Defaulting Party under this Agreement;  
and

(c) to suspend performance due to the Defaulting Party under this Agreement, subject to the requirements of the consent executed pursuant to Section 17.2(b). In the event that the Non-Defaulting Party designates an Early Termination Date, this Agreement will terminate as of the Early Termination Date.

9.3 Host Removal Rights Upon Termination for Default. In the event that Host is the Non-Defaulting Party, and that Host elects to terminate this Agreement as provided in Section 9.2, Host will be entitled, in its sole and absolute discretion to require that Provider remove the Systems as provided in Section 2.5 (or Host may remove and have stored the Systems at Provider’s sole cost and expense if Provider fails to remove the Systems within one hundred and eighty (180) calendar days after the Early Termination Date);

Host’s election of the remedy provided in this Section 9.3 is not intended to be exclusive and does not prevent Host from seeking any damages and remedies at law or in equity, subject to Section 9.8 below.

9.4 Provider Removal Rights Upon Termination for Default. In the event that Provider is the Non-Defaulting Party, and Provider elects to terminate this Agreement as provided in Section 9.2, Provider will be entitled to remove the Systems at Host's sole cost and expense. Provider's election of the remedy provided in this Section 9.4 is not intended to be exclusive and does not prevent Provider from seeking any damages and remedies at law or in equity, subject to Section 9.8 below.

9.5 Termination Payment for Host's Default. In addition to the exercise of any and all other remedies available under this Agreement or under Applicable Law upon termination of this Agreement as a result of an Event of Default by Host, Host shall be required to pay to Provider (i) any amount owed by Host to Provider for Energy Output delivered prior to the Early Termination Date, and (ii) as liquidated damages, the higher of the Fair Market Value or the Termination Value set forth in EXHIBIT F for the year in which the Early Termination Date occurs (collectively, "Host Termination Payment"). The Parties agree and acknowledge that given the complexity of the technology used by the System(s) and the volatility of energy markets, actual damages to Provider would be difficult if not impossible to ascertain, and the applicable Fair Market Value or Termination Value is a reasonable approximation of the damages suffered by Provider as a result of early termination of this Agreement. Notwithstanding anything to the contrary in this Agreement, any independent appraiser required by this Section 9.5 to determine the Fair Market Value will be selected by the Provider at its sole and absolute discretion and will be binding on the Host. Within forty-five (45) calendar days of written demand by Provider to Host of amounts due under this Section 9.5, Host shall pay to Provider in immediately available funds the Host Termination Payment calculated in accordance with this Section 9.5. For the avoidance of doubt, upon Host's payment of the Host Termination Payment to Provider, Host shall not acquire title to the System Assets, and except as set forth herein, both Parties' obligations under this Agreement shall terminate immediately.

9.6 Closeout Setoffs. Upon the termination of this Agreement in its entirety and the termination of all the Easement Agreements, either Party will be entitled, at its option and in its discretion, to set off, against any amounts due and owing from the other Party under this Agreement or the Easement Agreements, any amounts due and owing from the other Party under this Agreement, or the Easement Agreements.

9.7 Remedies Cumulative. Except as provided in Sections 9.3 and 9.4, the rights and remedies contained in this Article IX are cumulative with the other rights and remedies available under this Agreement or at law or in equity.

9.8 Limitation on Liability. IF NO REMEDY OR MEASURE OF DAMAGES IS EXPRESSLY PROVIDED HEREIN, THE DEFAULTING PARTY'S LIABILITY SHALL BE LIMITED TO DIRECT ACTUAL DAMAGES ONLY. SUCH DIRECT ACTUAL DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED UNLESS EXPRESSLY HEREIN PROVIDED. NEITHER PARTY SHALL BE LIABLE FOR CONSEQUENTIAL, INCIDENTAL, PUNITIVE, EXEMPLARY OR INDIRECT DAMAGES, LOST PROFITS OR OTHER BUSINESS INTERRUPTION DAMAGES, BY

STATUTE, IN TORT OR CONTRACT, UNDER ANY INDEMNITY PROVISION OR OTHERWISE EXCEPT (I) TO THE EXTENT PART OF AN EXPRESS REMEDY OR MEASURE OF DAMAGES HEREIN OR (II) WITH RESPECT TO A THIRD PARTY INDEMNITY CLAIM UNDER Article XII.

## **ARTICLE X** **INVOICING AND PAYMENT**

10.1 Invoicing and Payment. Commencing on the first month after the Commercial Operation Date of the first System of the Project Portfolio, Provider shall submit an invoice for payment for Energy Output to Host on the first day of each month during the Term. All invoices under this Agreement will be due and payable not later than thirty (30) calendar days after receipt of the applicable invoice (or on the next Business Day). Host shall make payment by immediately available funds, to any account designated in writing by Provider. Any amounts not paid by the applicable due date will accrue interest at the Late Payment Interest Rate until paid in full.

10.2 Taxes. Each Party shall be responsible for the timely payment of all taxes (including, without limitation, any and all transfer taxes) imposed on that Party by law and arising out of or in connection with this Agreement. However, Host shall be responsible for the payment of any applicable transfer taxes arising upon the sale or transfer, if any, of ownership of the Systems to Host pursuant to this Agreement. For the avoidance of doubt, and notwithstanding any term to the contrary in this Agreement, Provider will pay and be responsible for any sales or use tax imposed with respect to Provider's acquisition, installation and ownership of the System. Provider shall not be liable for any real property taxes or assessments associated with the Property, including any increased taxes or assessments on the Property caused by the presence of the System, or any taxes payable by or assessed against Host based on or related to Host's income or revenues. Host shall be responsible to pay any sales, use, excise, transfer and other similar taxes or assessments levied on the sale or deliveries of the Solar Services hereunder (regardless of whether such taxes or assessments are imposed on Provider or Host), together with any interest, penalties or additions to tax payable with respect to such taxes or assessments.

10.3 Late Payments. All undisputed amounts hereunder shall be paid by Host without set-off or deduction. Any payment not made within the time limit specified in Section 10.1, as well as any payments made following a resolution of a disputed amount under Section 10.4, shall bear interest from the date on which such payment was originally required to have been made (including, for disputed amounts, as though there had been no dispute) through and including the date such payment is actually received by Provider. Such interest shall accrue at the Late Payment Interest Rate.

10.4 Disputed Amounts. Within thirty (30) days after receipt of any invoice, Host may provide written notice to Provider of any alleged error therein. Host shall timely pay all amounts not disputed in good faith, including the undisputed portion of any invoice, in accordance with Section 10.1. If Provider notifies Host in writing within 30 days of receipt of

such notice that Provider disagrees with the allegation of error in the invoice, the Parties shall meet, by telephone conference call or otherwise, within ten days of Host's response for the purpose of attempting to resolve the dispute. If the Parties fail to resolve the dispute within 30 days after such initial meeting, such dispute shall be resolved pursuant to Article XV. Any amounts disputed hereunder shall be placed in escrow pending resolution of such dispute

10.5 Records and Audits. Each Party will keep, for a period not less than three (3) years after the expiration or termination of any Transaction, records sufficient to permit verification of the accuracy of billing statements, invoices, charges, computations and payments for such Transaction. During such period each Party may, at its sole cost and expense, and upon reasonable notice to the other Party, examine the other Party's records pertaining to Transactions during such other Party's normal business hours.

## **ARTICLE XI** **REPRESENTATIONS AND WARRANTIES; BUYER ACKNOWLEDGEMENT**

11.1 Host Representations and Warranties. Host hereby represents and warrants to Provider that:

(a) It is a [ ] duly organized, validly existing and in good standing under the laws of the State of California; that it has the power and authority to enter into and perform this Agreement; and that the execution, delivery and performance of this Agreement has been duly authorized by all necessary corporate action. Host covenants that during the Term it shall remain a duly organized and validly existing legal entity with authority to conduct business in the State of California and shall have the power and authority to perform this Agreement; and

(b) There is (i) no pending, or to its knowledge, threatened, legal action or proceedings that could materially adversely affect its ability to perform its obligations under this Agreement or Provider's right to construct, own, operate and maintain any System, and (ii) no environmental liability, environmental claim, or to its knowledge, potential or threatened environmental claim, asserted or threatened, against any Property which would adversely affect Host's ability to perform under this Agreement or Provider's rights to construct, own, operate and maintain any System; and

(c) The execution, delivery and performance of this Agreement by Host will not result in a breach of, default under or violation of any Applicable Law, or the provisions of any authorization or in a breach of, default under or violation of any provision of its articles of incorporation or bylaws or any promissory note, indenture or any evidence of indebtedness or security therefore, material lease, material contract or other material agreement by which it or its property is bound; and

(d) To the best knowledge of the Host, as of the date hereof, no governmental approval or consent is required in connection with the due authorization, execution and delivery of this Agreement or the performance of the Host of its obligations hereunder which

the Host has reason to believe that it will be unable to obtain in due course on or before the date required for Host to perform such obligations; and

(e) This Agreement constitutes a legal, valid and binding obligation enforceable against Host in accordance with its terms, except as the enforceability of such terms may be limited by applicable bankruptcy, reorganization, insolvency or similar laws affecting the enforcement of creditor's rights generally; and

(f) It has not entered into any contracts or agreements with any other person regarding the provision of services at the Property contemplated to be provided by Provider under this Agreement; and

(g) It is capable of assessing the merits of and understanding, and understands and accepts, the terms, conditions and risks of this Agreement and has made its own independent decision to enter into this Agreement; and

(h) It understands that the Provider is not acting as a fiduciary for or an adviser to it or its Affiliates; and

(i) That the various charges and fees contained in this Agreement are the result of arms' length transactions on the date of the execution and delivery of this Agreement; and

(j) Its real property interest in the Property is sufficient to carry it through the Term; and

(k) Subject to any Property for which Host shall obtain an SNDA in accordance with Section 6.1(b), Host further represents and warrants that there are no liens, security interests, claims and other encumbrances existing on any Property which would adversely affect Provider's rights to construct, own, operate and maintain the Systems on such Property and to perform its obligations under this Agreement; and

(l) None of the electricity to be generated by the Systems will be used to generate energy for the purpose of heating a swimming pool.

(m) It has made all necessary findings in accordance with California Government Code Section 4217.12.

(n) The audited financial statements of the Host of the past three fiscal years, (i) were prepared in accordance with generally accepted accounting principles consistently applied throughout the respective periods covered thereby, except as otherwise expressly noted therein, and (ii) present fairly the financial condition of Host as of the dates thereof and results of its operations for the periods covered thereby. Host further represents and warrants to Provider that (1) since the date of the most recent of the above-referenced audited financial statements, there has been no material adverse change in Host's financial condition and (2) Host shall provide its audited financial statements annually to Provider within thirty (30) days of completion.

11.2 Provider Representations and Warranties. Provider hereby represents and warrants to Host that:

(a) It is a limited liability company, duly organized, validly existing, and in good standing under the laws of the State of Delaware, that it has the power and authority to enter into and perform this Agreement, and that the execution, delivery and performance of this Agreement has been duly authorized by all necessary limited liability company action on its part. Further, Provider covenants that during the Term it shall remain a duly organized and validly existing legal entity with authority to conduct business in the State of California and shall have the power and authority to perform this Agreement; and

(b) No suit, action, arbitration, legal, administrative or other proceeding is pending or, to the best of Provider's knowledge, has been threatened against Provider that would affect the validity or enforceability of this Agreement or the ability of Provider to fulfill its commitments hereunder, or that would, if adversely determined have a material adverse effect on Provider's performance of this Agreement; and

(c) The execution, delivery and performance of this Agreement by Provider will not result in a breach of, default under or violation of any Applicable Law, or the provisions of any authorization or a breach of, default under or violation of any provision of its certificate of formation or other organizational documents or any promissory note, indenture or any evidence of indebtedness or security therefore, material lease, material contract or other material agreement by which it or its property is bound; and

(d) This Agreement constitutes a legal, valid and binding obligation enforceable against Provider in accordance with its terms, except as the enforcement of such terms may be limited by applicable bankruptcy, reorganization, insolvency or similar laws affecting the enforceability of creditor's rights generally; and

(e) It is not an electrical public utility or electrical corporation as defined by Cal. Pub. Util. Code § 218(b).

11.3 Host Acknowledgement Regarding Inapplicability of Bankruptcy Code Section 366. Host acknowledges and agrees that, for purposes of this Agreement, Provider is not a "utility" as such term is used in Section 366 of the Bankruptcy Code, and Host agrees to waive and not to assert the applicability of the provisions of Section 366 in any bankruptcy proceeding wherein Host is a debtor.

**ARTICLE XII**  
**INDEMNITY**

12.1 Indemnity.

(a) Host agrees to indemnify, defend and hold harmless Provider, its directors, officers, and employees, from and against any and all claims, whether or not involving a third-party claim, including demands, actions, damages, loss, costs, expenses, and attorney's fees (collectively, "Indemnity Claims"), arising out of or resulting from any breach, negligent act, error or omission or intentional misconduct by Host or its trustees, directors, officers, employees, contractors, subcontractors or agents under the terms of this Agreement or the Easement Agreements; provided, however, that Host will not have any obligation to indemnify Provider from or against any Indemnity Claims to the extent caused by, resulting from, relating to or arising out of the gross negligence or intentional misconduct of Provider or any of its directors, officers, employees or agents.

(b) Provider agrees to indemnify, defend and hold harmless Host, its trustees, directors, officers, and employees, from and against any and all Indemnity Claims, whether or not involving a third-party claim, arising out of or resulting from any breach, negligent act, error or omission or intentional misconduct by Provider or its affiliated companies, directors, officers, employees, contractors, subcontractors or agents under the terms of this Agreement or the Easement Agreements; provided, however, that Provider will not have any obligation to indemnify Host from or against any Indemnity Claims to the extent caused by, resulting from, relating to or arising out of gross the negligence or intentional misconduct of Host or any of its directors, officers, employees or agents.

(c) The Parties' indemnification obligations set forth in this Section 12.1 shall terminate three (3) years following the earlier of the end of the Term and, if applicable, the Early Termination Date.

**ARTICLE XIII**  
**SYSTEM PURCHASE AND SALE OPTIONS**

13.1 Grant of Purchase Option. Provider hereby grants Host the right and option to purchase all of Provider's right, title and interest in and to the total System Assets comprising the the Project Portfolio on the terms set forth in this Article XIII (the "Purchase Option"). The Purchase Option shall be irrevocable by Provider, and may be exercised by Host in accordance with this Agreement.

(a) Purchase Option Upon Expiration of Term. Host may elect to exercise the Purchase Option at the conclusion of the Term by providing written notice to Provider of its intent to exercise the Purchase Option no later than one hundred eighty (180) calendar days prior to the end of the Term.

(b) Purchase Option Prior to Expiration of Term. Host may elect to exercise the Purchase Option on or after the 7th, 10th and 15th anniversary of the Commercial Operation Date of the last System of the Project Portfolio, and only at any time during such applicable year, by providing written notice to Provider of its intent to exercise the Purchase Option on any day within such year of its intent to exercise the Purchase Option, provided that no uncured Event of Default by Host shall have occurred.

13.2 Calculation of Purchase Price. The purchase price (the “Purchase Price”) payable by Host for the System Assets under the Purchase Option shall be the greatest of (a) the aggregate Fair Market Value of all the System Assets in the Project Portfolio as agreed between the Parties (or if no agreement, as is determined by the Independent Appraiser, and (b) the Termination Value set forth in EXHIBIT F for the year in which the Purchase Price is to be paid.

13.3 Determination of Fair Market Value by Mutual Agreement of Parties. Within the first thirty (30) Business Days following the date of Provider’s receipt of notice to exercise the Purchase Option, the Parties shall meet and utilize their best efforts to agree upon the Fair Market Value of the System Assets. If the Parties are unable to agree upon such Fair Market Value during this thirty (30) Business Day period, the Parties shall select an Independent Appraiser in accordance with Section 13.3.

13.4 Selection of Independent Appraiser. Within ten (10) calendar days of the Parties’ failure to establish fair market value pursuant to Section 13.3, Provider and Host shall mutually agree upon the selection of an Independent Appraiser. If Provider and Host do not agree upon the appointment of an Independent Appraiser within such twenty (20) Business Day period, then at the end of such twenty (20) Business Day period an independent appraiser shall be selected by random lot from two firms proposed by each Party.

13.5 Determination of Fair Market Value by Independent Appraiser.

(a) The Independent Appraiser shall, within twenty (20) Business Days of appointment, make a preliminary determination of the Fair Market Value (the “Preliminary Determination”).

(b) Upon making such Preliminary Determination, the Independent Appraiser shall provide such Preliminary Determination to Provider and Host, together with all supporting documentation that details the calculation of the Preliminary Determination. Provider and Host shall have the right to object to the Preliminary Determination within twenty (20) Business Days of receiving such Preliminary Determination. If neither Party objects to the Preliminary Determination within such twenty (20) Business Day period, it shall be deemed accepted by both Parties. Within ten (10) Business Days after the expiration of such twenty (20) Business Day period, the Independent Appraiser shall issue the Independent Appraiser’s final determination of Fair Market Value (the “Final Determination”) to Provider and Host, which

shall specifically address the objections received by the Independent Appraiser and whether such objections were taken into account in making the Final Determination. Except in the case of fraud or manifest error, the Final Determination of the Independent Appraiser shall be final and binding on the Parties.

13.6 Costs and Expenses of Independent Appraiser. Provider and Host shall each be responsible for payment of one half of the costs and expenses of the Independent Appraiser.

13.7 Exercise of Purchase Option.

(a) Host shall have twenty (20) Business Days from the date of the Final Determination, or, if Host and Provider have mutually agreed upon a Purchase Price, the date that the Parties agree upon a Purchase Price (such period, the "Exercise Period"), to exercise the Purchase Option, at the Purchase Price calculated pursuant to Section 13.2. Host must exercise its Purchase Option during the Exercise Period by providing a notice (an "Exercise Notice") to Provider. Once Host delivers its Exercise Notice to Provider, such exercise shall be irrevocable.

(b) Provider shall, upon at least three (3) Business Days' prior written notice from Host to Provider at any time during the Exercise Period, make the System Assets, including records relating to the operations, maintenance, and warranty repairs, available to Host for its inspection during normal business hours.

13.8 Terms of Systems Purchase. On the Transfer Date (a) Provider shall surrender and transfer to Host all of Provider's right, title and interest in and to all System Assets and shall retain all liabilities arising from or related to the System Assets prior to the Transfer Date, (b) Host shall pay the Purchase Price, by certified check, bank draft or wire transfer and shall assume all liabilities arising from or related to the System Assets from and after the Transfer Date, and (c) both Parties shall (i) execute and deliver a bill of sale and assignment of contract rights containing such representations, warranties, covenants and other terms and conditions as are usual and customary for a sale of assets similar to the Systems, together with such other conveyance and transaction documents as are reasonably required to fully transfer and vest title to the System Assets in Host, and (ii) deliver ancillary documents, including releases, resolutions, certificates, third person consents and approvals and such similar documents as may be reasonably necessary to complete the sale of the System Assets to Host.

13.9 Transfer Date. The closing of any sale of the System Assets (the "Transfer Date") pursuant to this Article will occur no later than forty-five (45) calendar days following the date on which the Independent Appraiser issues the Final Determination.

13.10 Assignment of Warranties or Supply Contracts. In the event Host exercises the Purchase Option pursuant to this Article XIII, Provider shall assign to Host any then-existing equipment warranties, and, at Host's request, any equipment, maintenance, operations or supply contracts pertaining to the ownership and operation of the System(s).

**ARTICLE XIV**  
**CONFIDENTIALITY AND PUBLICITY**

14.1 Confidentiality.

(a) Neither Party will use any Confidential Information for any purpose except such Party's performance under this Agreement. Furthermore, neither Party may disclose any Confidential Information to any third party other than the Party's or the Party's Affiliates' officers, trustees, employees, lenders, counsel, accountants or advisors (collectively, "Representatives"), who have a need to know such information and who have agreed to keep such terms confidential or are otherwise bound by confidentiality obligations at least as restrictive as those contained herein, provided, however, that a Party may disclose Confidential Information in order to comply with the requirements of any Applicable Law or regulation or any exchange, control area or independent system operator rule, tariff or agreement or in connection with any judicial or regulatory proceeding or request by a Governmental Authority, provided further, however, that each Party will use reasonable efforts to prevent or limit any such disclosure.

(b) The obligations of the Parties under this Article will survive for a period of two (2) years from and after the termination of the Transaction to which any Confidential Information relates.

14.2 Publicity.

(a) The Parties share a common desire to generate favorable publicity regarding the Systems and their association with it. The Parties agree that they will, from time to time, issue press releases regarding the System(s) and that they shall cooperate with each other in connection with the issuance of such releases. Each Party agrees that it shall not issue any press release regarding the Systems without the prior consent of the other, and each Party agrees not to unduly withhold or delay any such consent.

(b) Host shall have the right to display photographs of the System(s) in its advertising and promotional materials, provided that any such materials identify Provider as the owner, operator and developer of the System. Without limiting the foregoing, the Systems shall be named "PFMG Solar Systems at City of Malibu", as applicable. On all signage at the Site, and in all publicly distributed materials and other public communications issued by either Party that refer to a System by name, such name shall be followed by a statement to the effect that Provider owns and operates the System, and that PFMG Solar served as developer of the project. Provider shall have the right to display photographs of the Systems, and the buildings or land upon which the Systems may be installed, in its advertising and promotional materials, including Provider's website, without the consent of the Host.

**ARTICLE XV**  
**DISPUTE RESOLUTION**

15.1 Dispute Resolution. Any bona fide dispute, controversy or claim arising out of or in connection with this Agreement (a "Dispute") shall be resolved in accordance with this Article XV.

(a) Either Party may deliver a notice to the other Party requesting the Dispute be referred to that Party's management. Any such notice shall include the names of the managers to resolve the Dispute. Any such notice shall be delivered within a reasonable period of time after the Dispute arises. Within seven (7) Business Days after a receipt of notice, the other Party shall provide written notice to the requesting Party indicating a schedule for Dispute resolution, which resolution shall commence within fourteen (14) Business Days of the notice of Dispute.

(b) If, after such Dispute resolution in accordance with paragraph (a) above remains unresolved, either Party may require that a non-binding mediation take place. In such mediation, representatives of the Parties with authority to resolve the Dispute shall meet for at least three (3) hours with a mediator whom they choose together. If the Parties are unable to agree on a mediator, then either Party is hereby empowered to request the American Arbitration Association to appoint a mediator. The mediator's fee and expenses shall be paid one-half by each Party.

(c) Any Dispute not resolved to the mutual satisfaction of the Parties pursuant to paragraphs (a) and (b) above each Party shall retain the right, but not the obligation, to pursue any legal or equitable remedy available to it in a court of competent jurisdiction.

(d) Either Party may seek a restraining order, temporary injunction, or other provisional judicial relief if the Party, in its sole judgment, believes that such action is necessary to avoid irreparable injury or to preserve the status quo. The Parties shall continue in good faith in the procedures hereunder despite any requests for provisional relief.

(e) During the conduct of any Dispute resolution procedures pursuant hereto the Parties shall continue to perform their respective obligations by virtue of the matters in Dispute.

(f) No termination of this Agreement following an Event of Default shall relieve the defaulting Party of its liability and obligations hereunder, and the non-defaulting Party may take whatever action may appear necessary or desirable to enforce performance and observance of any obligations under this Agreement.

**ARTICLE XVI**  
**NOTICES**

16.1 Notices. Any notice, demand, request, consent, approval confirmation or statements which is required or permitted under this Agreement shall be in writing and shall be given or delivered by personal service, Federal Express or comparable overnight delivery service, addressed to the Party receiving notice as specified below. Changes in such address and/or contact persons named shall be made by notice similarly given. Notices shall be deemed made upon actual personal delivery as shown by written delivery confirmation.

Host: City of Malibu

[ ]

[ ]

Phone:

Attention:

Provider:

PFMG Solar, LLC  
7777 Center Avenue, Suite 200  
Huntington Beach, CA 92647  
Phone: (714) 408-2982  
Fax: (714) 545-8883  
Attention: CEO

with a copy to:

PFMG Solar, LLC  
7777 Center Avenue, Suite 200  
Huntington Beach, CA 92647  
Phone: (714) 408-2982  
Fax: (714) 545-8883  
Attention: Michael Streams

**ARTICLE XVII**  
**ASSIGNMENT; COOPERATION WITH FINANCING**

17.1 Assignment; Binding Effect. The Parties shall not, without the prior written consent of the other, which consent will not be unreasonably withheld or delayed, assign, pledge or transfer all or any part of, or any right or obligation under, this Agreement or any

Easement Agreement, whether voluntarily or by operation of law, and any such assignment or transfer without such consent will be null and void. For purposes of this Section 17.1, consent will not be deemed unreasonably withheld or delayed if the assignee does not have a demonstrated creditworthiness equal to or greater than the assigning Party. Notwithstanding the foregoing, (a) changes in control of Provider shall not be deemed an assignment of this Agreement or any Easement Agreement, (b) Provider shall, without the prior written consent of Host, be entitled to assign its rights and interests in this Agreement and in any Easement Agreement to any Capital Provider in connection with any equity or debt funding of the Systems, Provider or Provider's Affiliates (including, without limitation, Provider's entry into a sale-leaseback or lease-leaseback transaction related to such financing), (c) Provider shall, without the prior written consent of Host, be entitled to assign its rights and interests in the Environmental Financial Attributes and Renewable Energy Credits that it owns pursuant to Section 4.1 and Section 4.3, and (d) Provider shall, without the prior written consent of Host, be entitled to assign its rights and interests in this Agreement and in any Easement Agreement to Provider's Affiliates or Capital Provider.

17.2 Cooperation with Project Funding. Host acknowledges that Provider may finance or fund the development of each System and Host agrees that it shall cooperate with Provider and its funding sources in connection with such financing or funding in accordance with the terms hereunder, including but not limited to (a) the furnishing of financial statements and other information relevant to Host's creditworthiness, as reasonably requested by Provider, (b) providing its consent to any assignment, lien or license of this Agreement, the Easement Agreement or the System(s) for the benefit of any Capital Provider, which assignment shall contain, but not be limited to, some or all of the terms described in EXHIBIT G, (c) providing such opinions of counsel and other matters as Provider and its financing parties may reasonably request, (d) providing consents and estoppels pursuant to Section 17.3, (e) removing any liens pursuant to Section 6.1, (f) executing necessary documents including providing certificates of incumbency and customary representation and warranties, and (g) obtaining SNDAs pursuant to Section 6.1; provided that Provider shall be responsible for and shall pay all costs and expenses in connection with Provider's financing.

17.3 Further Assurances; Estoppel. The Parties shall do such further acts, perform such further actions, execute and deliver such further or additional documents and instruments as may be reasonably required or appropriate to consummate, evidence, or confirm the agreements and understandings contained herein and to carry out the intent and purposes of this Agreement, including, without limitation, the obligations of Host to consent to Provider's assignment of this Agreement to financing parties and to provide notices and additional cure periods to the financing parties with respect to Provider Events of Default. Either Party hereto, without charge, at any time and from time to time, within five (5) Business Days after receipt of a written request by the other Party hereto, shall deliver a written instrument, duly executed, certifying to such requesting Party, or any other Person, firm or corporation specified by such requesting Party (such requesting Party includes, but is not limited to, a Provider financing party with respect to Provider Events of Default):

(a) That this Agreement is unmodified and in full force and effect, or if there has been any modification, that the same is in full force and effect as so modified, and identifying any such modification;

(b) Whether or not to the knowledge of any such Party there are then existing any offsets or defenses in favor of such party against enforcement of any of the terms, covenants and conditions of this Agreement and, if so, specifying the same and also whether or not to the knowledge of such party the other party has observed and performed all of the terms, covenants and conditions on its part to be observed and performed, and if not, specifying the same; and

(c) Such other information as may be reasonably requested by a Party hereto.

Any written instrument given hereunder may be relied upon by the recipient of such instrument, except to the extent the recipient has actual knowledge of facts contained in the certificate.

## ARTICLE XVIII MISCELLANEOUS

18.1 Governing Law. This Agreement will be governed by the laws of the State of California without giving effect to principles of conflicts of laws.

18.2 Entire Agreement; Amendments. This Agreement (including the exhibits, any written schedules, supplements or amendments) constitutes the entire agreement between the Parties, and shall supersede any prior oral or written agreements between the Parties, relating to the subject matter hereof. Any amendment, modification or change to this Agreement will be void unless in writing and signed by both Parties.

18.3 Non-Waiver. No failure or delay by either Party in exercising any right, power, privilege, or remedy hereunder will operate as a waiver thereof. Any waiver must be in a writing signed by the Party making such waiver.

18.4 Severability. If any part, term, or provision of this Agreement is determined by an arbitrator or court of competent jurisdiction to be invalid, illegal, or unenforceable, such determination shall not affect or impair the validity, legality, or enforceability of any other part, term, or provision of this Agreement, and shall not render this Agreement unenforceable or invalid as a whole. Rather the part of this Agreement that is found invalid or unenforceable will be amended, changed, or interpreted to achieve as nearly as possible the same objectives and economic effect as the original provision, or replaced to the extent possible, with a legal, enforceable, and valid provision that is as similar in tenor to the stricken provision, within the limits of Applicable Law or applicable court decisions, and the remainder of this Agreement will remain in full force.

18.5 No Third Party Beneficiaries. Notwithstanding the protections for financing parties set forth in Section 17.2, nothing in this Agreement will provide any benefit to any third party or entitle any third party to any claim, cause of action, remedy or right of any kind.

18.6 No Recourse to Affiliates. This Agreement is solely and exclusively between the Parties, and any obligations created herein on the part of either Party shall be the obligations solely of such Party. No Party shall have recourse to any parent, subsidiary, partner, member, Affiliate, lender, director, officer or employee of the other Party for performance or non-performance of any obligation hereunder, unless such obligations were assumed in writing by the Person against whom recourse is sought.

18.7 Relationships of Parties. This Agreement shall not be interpreted to create an association, joint venture, or partnership between the Parties nor to impose any partnership obligation or liability upon either Party.

18.8 Attorneys' Fees. If any action, arbitration, judicial reference or other proceeding is instituted between the Parties in connection with this Agreement, the losing Party shall pay to the prevailing Party a reasonable sum for attorneys' and experts' fees and costs incurred in bringing or defending such action or proceeding (at trial and on appeal) and/or enforcing any judgment granted therein. The prevailing Party shall be determined by the trier of fact based upon an assessment of which Party's major arguments or positions taken in the proceedings could fairly be said to have prevailed over the other Party's major arguments or positions on major disputed issues.

18.9 Counterparts. This Agreement may be executed in several counterparts, each of which is an original and all of which together constitute one and the same instrument. A signature on a copy of this Agreement received by either Party by facsimile is binding upon the other Party as an original. Both Parties agree that a photocopy of such facsimile may also be treated by the Parties as a duplicate original.

18.10 Construction of Agreement. This Agreement and any ambiguities or uncertainties contained herein shall be equally and fairly interpreted for the benefit of and against all Parties to this Agreement and shall further be construed and interpreted without reference to the identity of the Party or Parties preparing this document, it being expressly understood and agreed that the Parties hereto participated equally in the negotiation and preparation of this Agreement or have had equal opportunity to do so. Accordingly, the Parties hereby waive the legal presumption that the language of the contract should be interpreted most strongly against the Party who caused the uncertainty to exist. The captions used herein are for convenience only and are not a part of this Agreement and do not in any way limit or amplify the terms and provisions hereof.

18.11 Service Contract. The Parties intend this Agreement to be treated as a "service contract" within the meaning of Section 7701(e) of the United States Internal Revenue Code. Host will not take the position on any tax return or in any other filings suggesting that it is anything other than a purchaser of electricity from the Systems.

18.12 Forward Contract. The Parties acknowledge and agree that this Agreement and the transactions consummated under this Agreement constitute a “forward contract” within the meaning of the United States Bankruptcy Code and that each of Provider and Host is a “forward contract merchant” within the meaning of the United States Bankruptcy Code.

18.13 Waiver of Immunities. Each Party irrevocably waives, to the fullest extent permitted by Applicable Law, with respect to itself and its revenues and assets (irrespective of their use or intended use), all immunity on the grounds of sovereignty or other similar grounds from (i) suit, (ii) jurisdiction of any court, (iii) relief by way of injunction, order for specific performance or for recovery of property, (iv) attachment of its assets (whether before or after judgment) and (v) execution or enforcement of any judgment to which it or its revenues or assets might otherwise be entitled in any proceedings in the courts of any jurisdiction and irrevocably agrees, to the extent permitted by Applicable Law, that it will not claim any such immunity in any proceedings.

18.14 Budget and Appropriations. The Host covenants to take such action as may be necessary to include all payments due under Section 10.1 of this Agreement (the "Payments") (to the extent the amounts of such Payments are known to the Host at the time its annual budget is proposed) in its annual budget and to make the necessary annual appropriations for such Payments. To the extent the amount of such Payments becomes known after the adoption of the annual budget, such amounts shall be included and maintained in such budget as amended. The covenants of the Host shall be deemed to be a duty imposed by law and it shall be the ministerial duty of the Host to take such actions as are required by law to enable the Host to perform this Agreement. The obligation of the Host to make Payments hereunder shall constitute a current operating expense of the Host and shall not in any way be construed to be a debt of the Host, or the State, or any political subdivision thereof, nor shall anything contained herein constitute a pledge of general revenues, funds or moneys of the Host beyond the fiscal year for which the Host has appropriated funds to make Payments hereunder or an obligation of the Host for which the Host is obligated to levy or pledge any form of taxation or for which the Host has levied or pledged any form of taxation."]

18.15 Exhibits and Schedules. Any and all exhibits and schedules referenced herein and/or attached hereto are hereby incorporated into this Agreement by reference.

- Exhibit A – Description of Property
- Exhibit B – Description of the Systems
- Exhibit C – Energy Payment Rate
- Exhibit D – Estimated Annual Production
- Exhibit E – Guaranteed Minimum Output / Performance Guarantee
- Exhibit F – Termination Values
- Exhibit G – Form of Assignment and Assumption Agreement

**[Remainder of page intentionally blank]**

IN WITNESS WHEREOF, the parties hereto have each caused this Agreement to be duly executed by their duly authorized officers, all as of the day and year first above written.

HOST

CITY OF MALIBU

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

PROVIDER

PFMG Solar, LLC, a Delaware limited liability company

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**EXHIBIT A**  
**DESCRIPTION OF PROPERTY**

PROPERTY NAME	LOCATION ADDRESS
City of Malibu City Hall	23825 Stuart Ranch Rd, Malibu, CA 90265

**EXHIBIT B**  
**DESCRIPTION OF THE SYSTEMS**

PROPERTY NAME	MOUNTING TYPE	APPROXIMATE SYSTEM SIZE (KW-DC)
City of Malibu City Hall	Parking Canopy	224.4

## CONSTRUCTION CONDITIONS

In connection with Provider's obligation to construct and install the Systems, Provider agrees to construct and install the Systems subject to the following conditions as set forth in the Design Ledger:

<b>Design Ledger</b>	
<b>ALL SITES</b>	<ol style="list-style-type: none"><li>1. All carports shall be MbarC 4STEL design with rectangular tube steel. Welded connections.</li><li>2. LED lighting will be provided under canopies where existing lighting is removed using only functional existing circuits</li><li>3. Bollards that support previous existing lighting will be removed to 12 inches below grade. Any light poles and fixtures removed will be returned to a single Host location.</li><li>4. All columns and beams will be painted a single color.</li><li>5. All trees in the immediate vicinity of the arrays will be removed by Provider.</li><li>6. Parking lot arrays will be divided into 4,000sf sections with a 1' gap for earthquake safety.</li><li>7. ADA parking stalls will be modified if required to comply with applicable code.</li><li>8. Underground boring will be used wherever practical to minimize surface disruption.</li><li>9. Concrete bollards will not be provided around the base of array columns.</li><li>10. 10' Minimum clear height on all arrays. Provider shall make all efforts to maintain 10 ft. clearance, as long a required clearance does not conflict with DSA-approved PC structural design or require re-grading.</li><li>11. Paving striping and patch back shall be limited to areas under new arrays where changes or construction damage has occurred. Asphalt/Concrete patching shall be required for all required trenching, bore pots and potholing.</li><li>12. Any required concrete saw cutting shall have no overcuts.</li><li>13. Existing irrigation required for removal or relocation shall be previously tested by Host to insure functionality. If possible, Host shall provide as-built irrigation plans and/or assist Provider in locating of existing valves, time clocks, stations and main lines. Provider shall repair, reconnect, and/or modify existing lines as needed to accommodate new column locations.</li><li>14. Any and all required plant removal in existing planter areas shall be replaced with drought resistant plants from a list provided by Provider. Areas where irrigation is not present shall be excluded from any plant replacement.</li></ol>

**EXHIBIT C**  
**ENERGY PAYMENT RATE**

“Energy Payment Rate” means the electricity rates per kilowatt hour, as set forth in the table below.

Year	City of Malibu City Hall
1	\$0.1275
2	\$0.1325
3	\$0.1376
4	\$0.1430
5	\$0.1486
6	\$0.1544
7	\$0.1604
8	\$0.1667
9	\$0.1732
10	\$0.1799
11	\$0.1869
12	\$0.1942
13	\$0.2018
14	\$0.2097
15	\$0.2178
16	\$0.2178
17	\$0.2178
18	\$0.2178
19	\$0.2178
20	\$0.2178
21	\$0.2178
22	\$0.2178
23	\$0.2178
24	\$0.2178
25	\$0.2178

**EXHIBIT D**  
**ESTIMATED ANNUAL PRODUCTION**

The Estimated Annual Production (expressed in kilowatt hours) for each of the Project Portfolio is set forth in the tables below; provided that Estimated Annual Production amounts may be revised upon completion of the Project Portfolio to reflect the actual sizing and design of the Systems.

Annual Degradation Factor shall mean 0.70% per Contract Year.

Year	City of Malibu City Hall
1	384,435
2	381,744
3	379,072
4	376,419
5	373,784
6	371,167
7	368,569
8	365,989
9	363,427
10	360,883
11	358,357
12	355,849
13	353,358
14	350,884
15	348,428
16	345,989
17	343,567
18	341,162
19	338,774
20	336,402
21	334,048
22	331,709
23	329,387
24	327,082
25	324,792

## EXHIBIT E

### GUARANTEED MINIMUM PRODUCTION

#### I. Definitions

- A. “3-Year Average Annual Difference” means the average of the three most recent Annual Differences as calculated on the last day of each Contract Year; provided that if such calculation yields a negative number, the 3-Year Average Annual Difference shall be deemed to be zero (0).
- B. “3-Year Average Price Difference” means the average of the three most recent “Price Differences”; provided that if such calculation yields a negative number, the 3-Year Average Price Difference shall be deemed to be zero (0); where “Price Difference” means, for each Contract Year, the difference between the applicable rate charged by the local electric utility less the Energy Payment Rate, in each case for such Contract Year.
- C. “Actual kWh” means the actual electricity produced by the Project Portfolio over the Contract Year as measured by the Metering Device plus the amount of electricity in kWh that could not be delivered due to reasons attributable to the County’s nonperformance under this Agreement or as a result of Force Majeure.
- D. “Annual Difference” shall have the meaning ascribed to such term in Section II. B of this

EXHIBIT E.

- E. “Calculated kWh” means the amount of kWh expected to be produced in consideration of the final system design of each System (but before considering the Annual Degradation Factor) as calculated using PVSYST energy simulation software (or other software as commonly used to calculate solar production) using actual (1) solar insolation, (2) ambient air temperature, and (3) wind speed, as measured by the Metering Device (the “Actual Weather Data”). Calculated kWh shall also be subject to adjustment for insolation as provided in Section 3.7(b).
  
- F. “Energy Shortfall Credit” shall have the meaning ascribed to such term in Section II A of this

EXHIBIT E.”

- G. “Guaranteed Energy Price per kWh” means the amount per kWh as set forth in EXHIBIT C.
- H. “Guaranteed Minimum Production” shall have the meaning ascribed to such term in Section II. C of this

EXHIBIT E.

- I. “kWh” means electric energy expressed in kilowatt-hours and measured by multiplying the amount of electric power delivered (measured in kilowatts) by the amount of time over which the electricity was consumed (measured in hours). One kilowatt-hour equals one thousand watt-hours.
- J. “NREL” means the United States Department of Energy’s National Renewable Energy Laboratory.

II. Production Guarantee.

- A. Energy Shortfall Credit. The Host’s sole remedy for Provider’s failure to cause the Project Portfolio to satisfy the Guaranteed Minimum Production shall be a credit against payments due by Host pursuant to Section 10.1 of the PPA in an amount equal to the product of the 3-Year Average Annual Difference multiplied by the 3-Year Average Price Difference (the “Energy Shortfall Credit”).
- B. Calculation of Annual Difference. The “Annual Difference” shall be calculated for each Contract Year and is the difference between Guaranteed Minimum Production for the Project Portfolio during such Contract Year less the Actual kWh delivered by the Project Portfolio during such Contract Year.
- C. Guaranteed Minimum Production. For any Contract Year, the applicable “Guaranteed Minimum Production” for the Project Portfolio shall be the product of Calculated kWh multiplied by the difference of one (1) minus the Annual Degradation Factor (0.70%) raised to the power of the number of years passed since the first Contract Year which is then multiplied by 90%, expressed in formula as follows:

$$\text{Calculated kWh} \times (1 - \text{Da})^{(\text{GY} - 1)} \times 90\%$$

Where Da is the Annual Degradation Factor, and GY is the ordinal rank of the applicable Contract Year whereby the first Contract Year is 1, the second Contract Year is 2, etc.

The process for obtaining Actual kWh and data for determining Calculated kWh for each Contract Year shall be as follows:

1. Initial Data Collection. During each Contract Year, Provider will collect Actual kWh and Actual Weather Data using the Metering Device. PVSYST (or other software commonly used to calculate solar production) will utilize actual weather data to arrive at Calculated kWh.
2. Contingency for Equipment Failure. In the event of hardware, communication, or other failure with the Metering Device, Provider will make commercially reasonable efforts to resolve the issue in a timely manner. In the event that data is lost, the following procedure will be used to account for such data when determining the Actual kWh:

a) With respect to lost meteorological data, Provider will substitute meteorological data from a nearby meteorological station that the Parties select for such purpose.

b) With respect to lost electrical data, Provider will read the cumulative electrical data directly from the local utility's electrical meter and calculate the electricity generated during any missing interval. In the event that it is not possible to read the local utility's electrical meter due to a meter failure or other issue, Provider will reasonably estimate the electrical production during the missing interval by using the actual meteorological data provided by the Metering Device.

**EXHIBIT F**  
**TERMINATION VALUES**

The Termination Values for the Project Portfolio is set forth in the tables below; provided that such Termination Values shall be revised upon completion of the Systems to reflect the actual sizing of Project Portfolio.

<b>Year</b>	<b>Termination Value</b>
1	\$1,818,016
2	\$1,637,729
3	\$1,447,291
4	\$1,246,307
5	\$1,034,370
6	\$1,024,889
7	\$1,014,286
8	\$1,002,513
9	\$989,518
10	\$975,246
11	\$959,642
12	\$942,649
13	\$924,205
14	\$904,251
15	\$882,721
16	\$859,550
17	\$834,668
18	\$808,005
19	\$779,487
20	\$749,038
21	\$716,580
22	\$682,031
23	\$645,306
24	\$606,319
25	\$589,870

**EXHIBIT G**  
**FORM OF ASSIGNMENT AND ASSUMPTION AGREEMENT**  
**(Solar Power Purchase Agreement)**

THIS ASSIGNMENT AND ASSUMPTION AGREEMENT (this “Assignment”), dated as of \_\_\_\_\_, 2016 (the “Effective Date”), is entered into by and among PFMG Solar, LLC, a Delaware limited liability company (“Assignor”), \_\_\_\_\_ (“Assignee”), and \_\_\_\_\_ (“Consenting Party”) (each, a “Party,” and collectively, the “Parties”).

WHEREAS, Assignor and Consenting Party are parties to that certain Solar Energy Power Purchase Agreement dated as of \_\_\_\_\_ (the “PPA”) relating to the engineering, construction and operation of certain solar photovoltaic power plants totaling approximately \_\_\_\_\_ on [parking canopies and/or elevated structures] at [LIST SITES] sites located in \_\_\_\_\_ California (the “Sites”) (unless otherwise defined herein, capitalized terms shall have the meaning given to them in the PPA);

WHEREAS, Assignor desires to fully assign and delegate to Assignee all of its rights, title, benefit, privileges, interest, liabilities and obligations in, to and under the PPA to Assignee, and Assignee desires to accept such assignment and delegation and assume all such rights, title, benefit, privileges, interest, liabilities and obligations, in accordance with the terms and conditions hereinafter set forth;

WHEREAS, the Assignee and Consenting Party desire and agree to make certain modifications to the PPA in conjunction with the Assignment; and

WHEREAS, Consenting Party desires to consent to this Assignment.

NOW, THEREFORE, in consideration of the mutual covenants and provisions herein contained, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto, intending to be legally bound, hereby covenant and agree as follows:

1. Modification of PPA. The PPA is amended as follows:
  - a. Notices: In Section 16.1:
    - i. revise Provider’s notice party information to be:  
“If to Provider:

with a copy to:

2. Assignment of PPA. Assignor does hereby finally and irrevocably grant, assign, transfer, set over, convey and deliver to Assignee (i) all of Assignor's right, title and interest under the PPA, as modified pursuant to Section 1 above; and (ii) the right to enforce, whether at law or in equity or by any other means, all provisions of the PPA, as modified pursuant to Section 1 above.

3. Acceptance of Assignment and Assumption of Obligations and Liabilities. Assignee hereby accepts the transfers and assignments set forth in Section 2 and assumes the obligations of Assignor under the PPA, as modified pursuant to Section 1 above, arising or occurring on or after the Effective Date.

4. Consent to Assignment. Consenting Party hereby consents to the transfers and assignments to Assignee set forth in Section 2 and hereby releases Assignor from any and all liability under the PPA which arise on and after the Effective Date.

5. Other Agreements. Assignor, Assignee, and Consenting Party agree to fully cooperate and promptly execute any and all other agreements and documents related to the assignment and assumption of the PPA herein.

6. Benefits. This Assignment shall inure to the benefit of and be binding upon the Parties and their respective successors and assigns. Nothing express or implied in this Assignment is intended to confer upon any person, other than the Parties and their respective successors and assigns, any rights, remedies, obligations or liabilities under or by reason of this Assignment.

7. Additional Termination Right. Notwithstanding anything to the contrary set forth in this Assignment or in the PPA, the Parties agree that within sixty (60) days of the Effective Date if Assignee determines in its sole reasonable discretion, after performing reasonable real estate and title due diligence review of the Consenting Party's premises and sites that are the subject of the PPA, that there are any encumbrances or other matters of record affecting such premises and sites, including but not limited to any lack of third party consents, that may affect Assignee's ability to perform its obligations under the PPA, then Assignee may terminate all of this Assignment and/or the PPA by written notice to Assignor and Consenting Party, and in such event this Assignment and/or the PPA shall immediately terminate and be void and of no force or effect, and no Party shall have any further rights or obligations hereunder.

8. Captions. The captions of this Assignment are made for convenience only and shall not control or affect the meaning or construction of any provision of this Assignment.

9. Counterparts. This Assignment may be executed in counterpart, each of which shall be deemed to be an original, but all of which together shall constitute one and the same instrument.

10. Governing Law. This Assignment shall be interpreted, and the rights and liabilities of the parties hereto shall for all purposes be governed by and construed and enforced

in accordance with, the laws of the State of California applicable to agreements executed, delivered and performed within said state.

[Signatures appear on the following page]

IN WITNESS WHEREOF, the Parties have executed and delivered this Assignment under proper authority as of the date first above written.

PFMG SOLAR, LLC

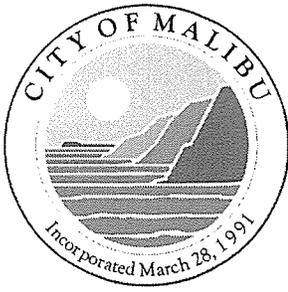
By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: Authorized Signatory

\_\_\_\_\_, LLC

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

CITY OF MALIBU

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_



# Council Agenda Report

To: Mayor La Monte and the Honorable Members of the City Council

Prepared by: Mary Linden, Executive Assistant

Approved by: Reva Feldman, City Manager 

Date prepared: August 1, 2016 Meeting date: August 22, 2016

Subject: Ban on All Expanded Polystyrene Products (Mayor Pro Tem Peak)

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**RECOMMENDED ACTION:** At the request of Mayor Pro Tem Peak, consider directing staff to bring back an ordinance to amend Malibu Municipal Code (MMC) Chapter 9.24 to: 1) Remove the exemption for polystyrene coolers and ice chests; 2) Expand the ban to all expanded polystyrene products, including food storage and serving products, packaging and shipping materials; and 3) Make the ban applicable to all businesses, organizations and individuals in the City of Malibu.

**FISCAL IMPACT:** None.

**DISCUSSION:** On September 12, 2005, the City Council adopted Ordinance No. 286 (attached) amending MMC Chapter 9.24 banning expanded polystyrene food packaging in the City. Exempt from the ban were coolers and ice chests made of expanded polystyrene. The ban applied to all food vendors, including restaurants, food retailers, such as grocery and convenience stores, and event organizers and food vendors for events held in the City.

Mayor Pro Tem Peak is requesting the Council further amend MMC Chapter 9.24 to remove the exemption for polystyrene coolers and ice chests, and to expand the ban to include all products made from expanded polystyrene. This would add packaging and shipping materials to the list of products banned in the City and make the ordinance applicable to all businesses, organizations and individuals.

**ATTACHMENTS:**

1. Ordinance No. 286
2. Los Angeles Times editorial, July 15, 2016: *Polystyrene is killing our coasts. California needs to turn off the trash tap on foam takeout containers*

ORDINANCE NO. 286

AN ORDINANCE OF THE CITY OF MALIBU AMENDING  
CHAPTER 9.24 OF THE MALIBU MUNICIPAL CODE BANNING  
EXPANDED POLYSTYRENE FOOD PACKAGING AND  
REPEALING ORDINANCE NO. 276

The City Council of the City of Malibu does ordain as follows:

Section 1. Title 9, Chapter 9.24 of the Malibu Municipal Code is hereby amended to read as follows:

“Chapter 9.24 Ban on Expanded Polystyrene Food Packaging”

Section 9.24.010 Definitions

For purposes of this chapter, the following terms shall have the following meanings:

“Customer” means any person obtaining food or beverages from a restaurant or retail food vendor.

“Expanded Polystyrene” means and includes blown polystyrene and expanded and extruded foams (sometimes incorrectly called Styrofoam<sup>®</sup>, a Dow Chemical Co. trademarked form of polystyrene foam insulation) which are thermoplastic petrochemical materials utilizing a styrene monomer and processed by any number of techniques including, but not limited to, fusion of polymer spheres (expandable bead polystyrene), injection molding, foam molding, and extrusion-blow molding (extruded foam polystyrene). Expanded Polystyrene is generally used to make cups, bowls, plates, trays, clamshell containers, meat trays and egg cartons. For the purposes of this chapter, the term “polystyrene” shall not include clear polystyrene known as “oriented polystyrene.”

“Food Packager” means any person, located within the City of Malibu, who places meat, eggs, baked products, or other food in packaging materials for the purpose of retail sale of those products.

“Food Packaging” means all bags, sacks, wrapping, containers, bowls, plates, trays, cartons, cups, straws and lids which are made from Expanded Polystyrene, on or in which any foods or beverages are placed or packaged on a restaurant’s or retail food vendor’s premises.

“Food Vendor” means any restaurant or retail food vendor.

“Non-Profit Food Provider” means a recognized tax exempt organization which provides food as a part of its services.

“Person” means any natural person, firm, corporation, partnership, or other organization or group however organized.

“Prepared Food” means food or beverages which are served on the Food Vendor's premises and are prepared on the Food Vendor's premises or within the City of Malibu by packaging, cooking, chopping, slicing, mixing, brewing, freezing or squeezing. Prepared Food does not include any uncooked meat or eggs. Prepared Food may be eaten either on or off the premises.

“Restaurant” means any establishment located within the City of Malibu, selling Prepared Food to be eaten by customers. Restaurant includes a sidewalk food vendor.

“Retail Food Vendor”, “Vendor” means any store, shop, sales outlet or other establishment, including a grocery store or a delicatessen, located within the City of Malibu, which provides Prepared Food.

#### 9.24.020 Food Packaging Prohibitions.

- A. No Restaurant, Food Packager, Retail Food Vendor, Vendor or Non-Profit Food Provider shall provide Prepared Food to its customers in any Food Packaging that utilizes Expanded Polystyrene.
- B. The City of Malibu shall prohibit the use of Expanded Polystyrene Food Packaging at all City facilities. The City of Malibu shall not purchase or acquire Expanded Polystyrene Food Packaging.
- C. The use or distribution of Expanded Polystyrene Food Packaging at special events sponsored or co-sponsored by the City of Malibu shall be prohibited. This prohibition shall apply to the event organizers, agents of the event organizers, event Food Vendors and any other party (including non-profit organizations) who enter into an agreement with one or more of the co-sponsors of the event to sell Prepared Food at the event or otherwise provide an event-related service.
- D. All facility rental agreements for any City-owned property or facility shall include a provision requiring contracting parties to assume responsibility for preventing the utilization and/or distribution of Expanded Polystyrene Food Packaging at the associated function. The facility rental agreement shall indicate that the violating contractor's security deposit will be forfeited if the Parks and Recreation Director, or his/her designee, determines that Expanded Polystyrene Food Packaging was utilized in violation of the rental agreement.

#### 9.24.030 Exceptions.

- A. Food items packaged outside the boundaries of the City of Malibu are exempt from the provisions of this chapter.
- B. The City Council, or its appointee, may exempt a Food Vendor, Food Packager or Non-Profit Food Provider from the requirements of this Code for a one year period, upon showing by the applicant that the conditions of this Code would cause undue hardship. The phrase undue hardship, shall be construed to include, but not be limited to:

1. Situations where there are no acceptable alternatives to Expanded Polystyrene Food Packaging for reasons which are unique to the Vendor, Packager or Non-Profit Provider;
  2. Situations where compliance with the requirements of this Code would deprive a person of a legally protected right.
- C. Coolers and ice chests made of Expanded Polystyrene are exempt from the provisions of this chapter.
- D. Food Packaging required to be purchased under a contract entered into one year prior to the effective date of this chapter is exempt from the provisions of this chapter. This exemption will apply up to one year from the effective date of this chapter.

9.24.040 Enforcement and Notice of Violations.

- A. The City Manager or his/her designee shall have primary responsibility for enforcement of this chapter. The City Manager or his/her designee is authorized to promulgate regulations and to take any and all other actions reasonable and necessary to enforce this chapter, including, but not limited to, inspecting any Vendor's premises to verify compliance.
- B. Anyone violating or failing to comply with any of the requirements of this chapter shall be guilty of an infraction punishable pursuant to Malibu Municipal Code Chapter 1.16.010.B.
- C. The City Attorney may seek legal, injunctive, or other equitable relief to enforce this chapter.
- D. The remedies and penalties provided in this section are cumulative and not exclusive of one another.

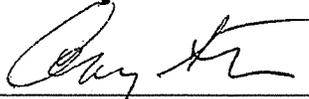
9.24.050 Severability.

If any part or provision of this Code or the application thereof to any person or circumstances is held invalid, the remainder of the Code, including the application of such part or provision to other persons or circumstances, shall not be affected thereby and shall continue in full force and effect. To this end, provisions of this Code are severable.

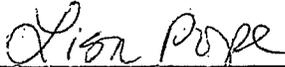
Section 2. The City Council hereby repeals Ordinance No. 276.

Section 3. The City Clerk shall certify the adoption of this ordinance.

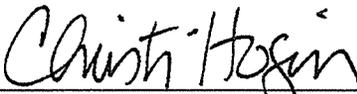
PASSED, APPROVED AND ADOPTED this 12<sup>th</sup> day of September, 2005.

  
\_\_\_\_\_  
ANDY STERN, Mayor

ATTEST:

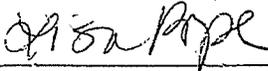
  
\_\_\_\_\_  
LISA POPE, City Clerk

APPROVED AS TO FORM:

  
\_\_\_\_\_  
CHRISTI HUGIN, City Attorney

I CERTIFY THAT THE FOREGOING ORDINANCE NO. 286 was passed and adopted at the regular City Council meeting of September 12, 2005, by the following vote:

AYES:	4	Councilmembers:	Barovsky, Conley Ulich, Kearsley, Stern
NOES:	1	Councilmember:	Jennings
ABSTAIN:	0		
ABSENT:	0		

  
\_\_\_\_\_  
LISA POPE, City Clerk  
(seal)

Opinion / Editorial

# Editorial Polystyrene is killing our coasts. California needs to turn off the trash tap on foam takeout containers



Consumers in San Francisco will no longer be able to purchase foam cups and other polystyrene products. (Jeff Chiu / Associated Press)

By **The Times Editorial Board**

JULY 15, 2016, 5:00 AM

**S**an Francisco county supervisors recently adopted the nation's strictest ban on polystyrene foam, prohibiting its use in takeout containers and shipping materials and barring the sale of foam retail products. No more packing peanuts or cheap picnic coolers for sale in the City by the Bay.

The new law is entirely in step with San Francisco's uber-progressive and sometimes unusual policies, but it's extreme. By contrast, the other 90 or so California cities and counties that have adopted polystyrene bans in the last decade have appropriately focused on the most troublesome form of the plastic foam: single-use takeout food and beverage containers. After cigarette butts and scrap pieces of hard plastic, soft polystyrene foam — known popularly, if incorrectly, as Styrofoam — is the third most-common source of trash washing up on local beaches, according to Heal the Bay. Not surprising, given that Americans discard 2.5 billion foam cups every year and rarely recycle their used polystyrene takeout containers.

But it's the stuff that doesn't wash up on the beach, and remains in the water, that causes the biggest environmental concern. Polystyrene foam doesn't biodegrade like organic material. Instead, it breaks down into small pellets that are hard to clean up — and are nicely bite-sized for fish and fowl. That's not just icky; it's potentially poisonous for marine creatures and the humans who eat them. Polystyrene absorbs toxins in the water, such as DDT, a carcinogenic pesticide still in use outside the United States, and PCBs, which are also suspected carcinogens.

Polystyrene pollution is a real problem that is getting worse, despite intense recycling and trash-reduction efforts. The Great Pacific Garbage Patch keeps growing, fed by a steady stream of disposable-plastic waste. One report by the World Economic Forum warns that if plastics continue to be dumped into the ocean at their current rate, there will be more plastic than fish in the oceans by 2050.

It's time for the state to turn off the trash tap. That effort has been underway at the local level for the last decade; Santa Monica, Hermosa Beach, Manhattan Beach and other coastal cities have passed laws prohibiting food service businesses from using to-go containers made of polystyrene foam. The Pasadena City Council on Tuesday voted to do the same, and Culver City, which sits along the storm drain-fed Ballona Creek, is considering a ban of its own. The city and county of Los Angeles and Los Angeles Unified School District have prohibited the use of polystyrene in their facilities and schools. And more cities and counties may be inspired by San Francisco's bold action to adopt their own version of a ban.

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## **In some ways, polystyrene foam is worse than single-use plastic bags.**

San Francisco's rule may not be the best model, at least at the moment, because of its scope. Foam packing material is not as likely to be tossed in the street, and in some cases, there is no reasonable substitute. In addition, polystyrene is 98% air and so lightweight that replacing it with cardboard or other packing material could raise shipping weights. If more fuel is required to transport the same goods, that would increase greenhouse gas emissions. Simply swapping one environmental ill for another is no solution.

Regardless, the spread of local restrictions on polystyrene use is fast becoming a nightmare for businesses, such as food trucks or chain restaurants, that operate in more than one California city. And that's a good thing, because it may take a critical mass of cities adopting different versions of plastic foam bans to generate a comprehensive statewide ban. It wasn't until local governments created a messy patchwork of plastic-bag ordinances that the Legislature found the courage to take on the powerful plastic bag lobby and ban single-use plastic bags throughout California.

At the moment the top priority for environmentalists is getting voters to support a ballot measure to ratify the ban on single-use plastic bags. (The anti-trash measure that lawmakers adopted nearly two years ago was put on hold until a ballot challenge by plastic bag makers is voted on in November.) After that, they should prepare

for the next big trash fight.

It won't be easy. The polystyrene lobby and business groups will fight hard to try to stop such a ban, as they did unsuccessfully in San Francisco. They will argue that the bigger problem is litter and that the real solution is doing a better job of recycling foam, or maybe even finding a way to turn plastic trash into energy. If the industry can get those things going soon, more power to them. For now, however, we need to stop the flow of polystyrene foam trash into the ocean.

In some ways, polystyrene foam is worse than single-use plastic bags. Both are recyclable, but about three times as many single-use plastic bags are diverted from the landfill in California than the approximately 1% of plastic foam that is recycled. Many cities do not accept polystyrene when collecting recyclables at the curb. (Los Angeles does, so long as it is clean.)

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## **For The Record**

JUL. 15, 2016, 12:48 PM

An earlier version of this editorial gave an incorrect recycling rate for single-use plastic bags.

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