



Supplemental Council Agenda Report

Special Meeting
08-14-17

**Item
3.B.8.**

To: Mayor Peak and the Honorable Members of the City Council

Prepared by: Kristin Riesgo, Recreation Manager

Reviewed by: Jesse Bobbett, Community Services Director

Approved by: Reva Feldman, City Manager

Date prepared: August 14, 2017 Meeting date: August 14, 2017

Subject: Concert on the Bluffs Agreement and Insurance

RECOMMENDED ACTION: Authorize the City Manager to enter into a substantially similar agreement with Pepperdine University and provide Certificates of Insurance to Pepperdine and HRL Laboratories to utilize their parking lots as off-site parking for the Concert on the Bluffs.

DISCUSSION: On July 24, 2017, the original agenda report was distributed without the agreement with Pepperdine University. Two versions of the agreement are attached to this supplemental report for Council consideration; 1) the version signed by Pepperdine University; and 2) the version approved by the City Attorney's office.

ATTACHMENTS: Pepperdine University Agreement – signed by Pepperdine
Pepperdine University Agreement- approved by City Attorney

PEPPERDINE SIGNED VERSION

PEPPERDINE UNIVERSITY AGREEMENT

To establish community partnership through sponsorship of local government events.

This Agreement is made and entered into on the date hereinafter set forth by and between Pepperdine University, represented by the Office of Special Programs and the Institute for Entertainment, Media, and Culture (PEPPERDINE), and the City of Malibu (MALIBU).

This agreement is made and entered into by and between MALIBU and PEPPERDINE. It is the parties' intent that this agreement is a cooperative agreement for the benefit of the public and that entering into this agreement does not trigger any compliance or reporting obligation on the part of the University. This agreement does not in any way enlarge the University's obligations under federal or state law regulation.

WITNESSETH

WHEREAS, PEPPERDINE is a university committed to the highest standards of academic excellence and Christian values, where students are strengthened for lives of purpose, service, and leadership, and PEPPERDINE wishes to extend this mission in the sponsorship of MALIBU'S Concert in the Bluffs and provision of parking spaces for said event, thus contributing to the public good;

WHEREAS, PEPPERDINE in an effort to initiate outreach opportunities to build partnerships with the local community through University Advancement initiatives;

NOW THEREFORE, in consideration of the mutual covenants and agreements stated herein, the parties hereto do mutually agree as follows for the public's benefit:

1. PUBLIC PURPOSE AND OBJECTIVES. The public purpose of this Agreement is to build community relations with the City of Malibu. It is in the public interest that PEPPERDINE and MALIBU act in a concerted manner to accomplish this goal to create more defined opportunities for mutual support.
2. SCOPE OF RESPONSIBILITIES. PEPPERDINE and MALIBU intend to assume the following responsibilities to achieve the common goal for the public's benefit. PEPPERDINE agrees to:
 - a. Serve as a sponsor of the event by providing in-kind support to MALIBU in the form of free event parking and other services agreed upon in writing prior to the event commencement.
 - b. Make the Firestone Fieldhouse Lot (Lot J) and the Theme Tower Lot (Lot A) available on August 20th, 2017 from 2:00 p.m. to 8:30 p.m. for event parking in furtherance of this project that are best situated in a university facility.

MALIBU agrees to:

- a. Ensure that all vehicles arrive after 2:00 p.m. on August 20th, 2017, and depart by no later than 8:30 p.m. on August 20th, 2017.
 - b. Restrict vehicle parking to the Firestone Fieldhouse Lot (Lot J) and the Theme Tower Lot (Lot A), following the official signage posted by Pepperdine's Department of Public Safety.
3. USE OF NAME. PEPPERDINE and MALIBU agree that both parties may use the other's name in association and connection with this cooperative public benefit project, including in recruitment of participants and publishing of findings. Otherwise, both parties agree that they shall make no use of each other's names, including departments of each others, unless prior written authorization is received from the other specifically describing the proposed use of such names.

PEPPERDINE SIGNED VERSION

4. INDEMNIFICATION. To the fullest extent permitted by law, MALIBU shall defend, indemnify, protect, save and hold harmless PEPPERDINE, from claims, liability, loss, cost or expense occurring after the effective date of this Agreement. The indemnity obligations of MALIBU include, without limitation, MALIBU'S obligation to indemnify PEPPERDINE for all attorneys' fees and costs incurred in connection with the enforcement of the provisions contained in this Paragraph. PEPPERDINE may, at their option, require MALIBU to assume the defense in any action covered by this Paragraph.
5. BREACH AND ENFORCEMENT COST. In the event of a dispute relating to this Agreement or its performance, the prevailing party shall be entitled, in addition to such other relief as may be granted, to recover its costs, expert witness fees and reasonable attorneys' fees, including fees and costs of corporate staff counsel. In the event one party violates any of its agreements herein contained, the other party may terminate this Agreement.
6. LIABILITY INSURANCE. In addition to MALIBU'S obligations under "Indemnification" paragraph hereof, and without limiting or superseding such obligations, OPERATOR covenants and agrees to obtain and to maintain during the term of this Agreement, at OPERATOR'S sole expense, all of the following insurance, which shall be primary to and not contributory with any insurance or self-insurance maintained by PEPPERDINE, and shall be endorsed to include PEPPERDINE as an additional insured:
 - a. Commercial General Liability Insurance which includes usual and customary coverages for bodily injury (including mental injury/emotional distress), property damage, personal injury, independent contractors, and contractual liability, with a minimum combined single limit of not less than \$1,000,000.00 each occurrence for bodily injury and property damage. Such insurance shall provide for the waiver of subrogation against PEPPERDINE and any of its affiliated persons or entities. (For the purposes of all parts of this Agreement, "person" refers to natural persons and legal entities of whatever form.) Such Insurance shall include coverage for participants, producers, agents, and actors involved in OPERATOR'S production, and shall not contain any limitations/exclusions specifically with respect to coverage for participants, producers, agents, and actors or for sexual abuse, harassment or molestation (except for sublimits of liability that do not reduce the amount of coverage for sexual abuse, harassment or molestation only below \$1,000,000.00). The Certificate of Insurance and original additional insured endorsement must specifically refer to this Agreement.
 - i. Business Auto Liability Insurance with a combined single limit of not less than \$1,000,000.00 each occurrence for bodily injury and property damage, including all owned, non-owned and hired autos.
 - ii. Worker's Compensation (California Statutory limit) and Employer's Liability Insurance for not less than \$1,000,000.00 each accident/occurrence.
 - b. Said insurance shall be issued by a company currently admitted to do business in such class of insurance in the State of California and having a BEST'S rating of A- or better. Certificates of Insurance for all policies, in a form satisfactory to PEPPERDINE, shall be furnished to PEPPERDINE prior to the effective date of this contract. All Certificates of Insurance and original additional insured endorsements shall provide that they may not be canceled nor the coverage thereunder otherwise reduced without 30 days' advance written notice to PEPPERDINE. All Certificates of Insurance shall be signed by an authorized agent or representative of the insurance carrier. No defect in any certificate of

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insurance shall be deemed a waiver by the University for any of the requirements of this agreement. MALIBU shall provide information to the University regarding any sexual abuse, harassment or molestation claim made against MALIBU in the last ten years.

- c. FAILURE TO OBTAIN SUCH POLICIES OR TO SUBMIT THE REQUIRED CERTIFICATES OF INSURANCE AT LEAST 2 DAYS BEFORE ENTERING PEPPERDINE'S PREMISES SHALL, AT PEPPERDINE'S ELECTION, CONSTITUTE A MATERIAL BREACH OF THIS AGREEMENT AND ENTITLE PEPPERDINE TO CANCEL THE AGREEMENT WITHOUT FURTHER NOTICE TO MALIBU.
7. DESTRUCTION OF PREMISES. In the event that the facilities used hereunder are unavailable due to destruction, partial or total, acts of nature, strikes, action by governmental agencies, or for any other reason beyond the exclusive reasonable control of PEPPERDINE, PEPPERDINE shall have the right to locate mutually agreeable alternative locations.
 8. MISCELLANEOUS.
 - a. **Non-Assignability.** This Agreement shall not be assigned by PEPPERDINE or MALIBU and any attempt to do so shall be void and have no effect.
 - b. **Integration.** This Agreement contains the entire Agreement between the parties. All bids, proposals, negotiations and agreements prior to the date of this Agreement not included herein are hereby voided. Subsequent modifications or amendments, if any, must be in writing, executed by both parties.
 - c. **Waiver and Severability.** Every provision of this Agreement is intended to be severable such that, if any term or provision hereof is illegal or invalid for any reason whatsoever, such provision shall be severed from the Agreement and shall not affect the validity of the remainder of the Agreement. A waiver of any Breach or default under this Agreement shall not constitute a continuing or further waiver of the same or any other breach or default hereunder.
 - d. **Jurisdiction.** This Agreement shall be governed by California law.
 - e. PEPPERDINE, in participating in this cooperative public benefit project under this Agreement, is an independent agent and shall not act as, or be an agent or employee of MALIBU.
 - f. The parties agree that either party can terminate this agreement for any reason with 30 days notice.
 - g. The parties agree that if a dispute arises related to this agreement, the parties will participate in mediation, and if needed, binding arbitration administered by the AAA to resolve all issues, without the right to appeal.

PEPPERDINE SIGNED VERSION

THIS AGREEMENT may be signed in counterpart and a copy or facsimile copy of the signed Agreement may be used as an original for all purposes. This Agreement contains three (3) pages and is dated as of the date signed by representatives of PEPPERDINE and MALIBU below.

Date: _____

CITY OF MALIBU

Print or Type Name

Print or Type Position/Title

Signature

Date: _____

PEPPERDINE UNIVERSITY:

Kanet W. Thomas
Director of Special Programs

Kanet W. Thomas

Signature

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4. **INDEMNIFICATION.** To the fullest extent permitted by law, MALIBU shall defend, indemnify, protect, save and hold harmless PEPPERDINE, from claims, liability, loss, cost or expense occurring

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after the effective date of this Agreement arising from PEPPERDINE's provision of the benefits listed in Paragraph 2 above. The indemnity obligations of MALIBU include, without limitation, MALIBU'S obligation to indemnify PEPPERDINE for all attorneys' fees and costs incurred in connection with the enforcement of the provisions contained in this Paragraph. PEPPERDINE may, at their option, require MALIBU to assume the defense in any action covered by this Paragraph.

5. **BREACH AND ENFORCEMENT COST.** In the event of a dispute relating to this Agreement or its performance, the prevailing party shall be entitled, in addition to such other relief as may be granted, to recover its costs, expert witness fees and reasonable attorneys' fees, including fees and costs of corporate staff counsel. In the event one party violates any of its agreements herein contained, the other party may terminate this Agreement.
6. **LIABILITY INSURANCE.** In addition to MALIBU'S obligations under "Indemnification" paragraph hereof, and without limiting or superseding such obligations, OPERATOR covenants and agrees to obtain and to maintain during the term of this Agreement, at OPERATOR'S sole expense, all of the following insurance, which shall be primary to and not contributory with any insurance or self-insurance maintained by PEPPERDINE, and shall be endorsed to include PEPPERDINE as an additional insured:
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 - i. Business Auto Liability Insurance with a combined single limit of not less than \$1,000,000.00 each occurrence for bodily injury and property damage, including all owned, non-owned and hired autos.
 - ii. Worker's Compensation (California Statutory limit) and Employer's Liability Insurance for not less than \$1,000,000.00 each accident/occurrence.
 - b. Said insurance shall be issued by California Joint Powers Insurance Authority. Certificates of Insurance for all policies, in a form satisfactory to PEPPERDINE, shall be furnished to PEPPERDINE prior to the effective date of this contract. All Certificates of Insurance and original additional insured endorsements shall provide that they may not be canceled nor the coverage thereunder otherwise reduced without 30 days' advance written notice to PEPPERDINE. All Certificates of Insurance shall be signed by an authorized agent or representative of the insurance carrier. No defect in any certificate of insurance shall be deemed a waiver by the University for any of the requirements of this agreement. MALIBU shall provide information to the University regarding any sexual abuse, harassment or molestation claim made against MALIBU in the last ten years.
 - c. **FAILURE TO OBTAIN SUCH POLICIES OR TO SUBMIT THE REQUIRED CERTIFICATES OF INSURANCE AT LEAST 2 DAYS BEFORE ENTERING PEPPERDINE'S PREMISES SHALL, AT PEPPERDINE'S ELECTION, CONSTITUTE A MATERIAL BREACH OF THIS AGREEMENT AND ENTITLE PEPPERDINE TO CANCEL THE AGREEMENT WITHOUT FURTHER NOTICE TO MALIBU.**
7. **DESTRUCTION OF PREMISES.** In the event that the facilities used hereunder are unavailable due to destruction, partial or total, acts of nature, strikes, action by governmental agencies, or for any

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other reason beyond the exclusive reasonable control of PEPPERDINE, PEPPERDINE shall have the right to locate mutually agreeable alternative locations.

8. MISCELLANEOUS.

- a. **Non-Assignability.** This Agreement shall not be assigned by PEPPERDINE or MALIBU and any attempt to do so shall be void and have no effect.
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CITY OF MALIBU

Print or Type Name

Print or Type Position/Title

Signature

Date: _____

PEPPERDINE UNIVERSITY:

Kanet W. Thomas
Director of Special Programs

Signature