



Council Agenda Report

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

Prepared by: Andrew Sheldon, Acting Environmental Sustainability Director

Approved by: Reva Feldman, City Manager

Date prepared: August 7, 2019 Meeting date: August 26, 2019

Subject: Professional Services Agreement for the Nearshore Ocean Health Assessment Project

RECOMMENDED ACTION: Authorize the City Manager to execute a professional services agreement with University of California, Santa Barbara (UCSB) to provide research work for the Nearshore Ocean Health Assessment Project.

FISCAL IMPACT: Funding for this agreement was included in the Adopted Budget for Fiscal Year 2019-2020 in Account No. 101-3003-5100 (Clean Water Professional Services). The source of funds for the project is the Water Quality Settlement Designated Reserve of the General Fund.

DISCUSSION: On August 13, 2012, City Council established a Water Quality Settlement Designated Reserve to pay for a supplemental environmental project as required by the Settlement Agreement with the Natural Resources Defense Council (NRDC) and Santa Monica Baykeeper (currently Los Angeles Waterkeeper). Since 2012, the City has been participating in various environmental monitoring groups and related activities.

To date, work has focused on discovering the potential for the local application of emerging technologies for measuring human pathogens and fecal indicators, assessing health risks from water contact at local beaches, and providing the public with accurate and timely information on recreational water quality. The final phase of the supplemental project involves contracting with an education research organization to conduct assessments of water quality and health risks at local beaches using new research tools. This phase of the project is called the Ocean Health Near Shore Water Quality Assessment Research Project (Ocean Health Assessment).

On February 1, 2019, the City issued a Request for Proposals (RFP) for an educational research organization to perform the Ocean Health Assessment Project. The City

received proposals from two (2) institutions: University of California, Los Angeles (UCLA); and University of California, Santa Barbara (UCSB).

Staff reviewed the proposals from the two institutions and invited both to participate in qualification interviews. Each institution's interview presentation and RFP package were evaluated, and weighted scores based on the criteria listed in the RFP were applied. The evaluation produced a unanimous decision with UCSB as the top ranked institution.

Based on the quality of the RFP package and the interview presentations, staff suggests entering into an Agreement for Research Services with UCSB.

ATTACHMENTS: Professional Services Agreement for UCSB

RESEARCH AGREEMENT

Between

**THE REGENTS OF THE UNIVERSITY OF CALIFORNIA
UNIVERSITY OF CALIFORNIA, SANTA BARBARA**

And

CITY OF MALIBU

This Research Agreement (Agreement) is entered into by and between THE REGENTS OF THE UNIVERSITY OF CALIFORNIA, a California Constitutional corporation, on behalf of its Santa Barbara campus (University), and, the City of Malibu, having a principal place of business at 23825 Stuart Ranch Road, Malibu, California 90265, (Sponsor).

The parties agree as follows:

1. Statement of Work

University, through its Principal Investigator(s), shall use reasonable efforts to perform the research activities set forth in the Statement of Work attached as Exhibit A, which is incorporated in full by reference. "Reasonable efforts" shall mean efforts that a reasonable person in the position of the Principal Investigator would use, consistent with standard practices in the Principal Investigator's field of academic research. Sponsor acknowledges and agrees that University cannot guarantee the results of any of its research activities, and that minor deviations from the Statement of Work may occur to further the scientific goals of the Statement of Work.

2. Reporting:

The University shall provide Sponsor with a final technical report within ninety (90) days after the end date of this Agreement as stated in Article 3.

Deliverables under this agreement are described in and will be submitted to Sponsor in accordance with Exhibit A hereof, which is hereby incorporated in full by reference.

3. Performance Period and Term of the Agreement

The Period of Performance and the Term of this Agreement shall be from July 1, 2019 through December 31, 2021. The terms of this Agreement may be extended at no additional cost to Sponsor by amendment to this Agreement or through written approval from Sponsor's Authorized Representative.

4. Cost to Sponsor

The cost to Sponsor for University's performance hereunder shall not exceed \$199,988. This Agreement shall be performed on a "cost reimbursement" basis, meaning that reasonable and allowable costs incurred by University in the performance of the Statement of Work will be reimbursed to University in accordance

with the terms of this Agreement. When expenditures reach this amount, Sponsor will not be required to fund and University will not be required to perform additional work hereunder unless by mutual agreement of the parties.

Funds provided by Sponsor which are not used in a particular budget period may be used in subsequent budget periods. Additionally, the Principal Investigator may transfer funds within the budget as needed without Sponsor's approval, as long as such transfers do not effect a change in the research described in the Statement of Work.

5. Payment

Payment to the Universtiy shall be made on a cost reimbursement basis through regular invoicing by the University to the Sponsor. Sponsor shall pay all invoices within thirty (30) days. In the event of a disputed invoice, Sponsor shall pay all undisputed charges within thirty (30) and shall report in writing to University, any disputed costs. Sponsor shall review disputed charges and submit a written justification detailing the basis for the charges within thrity (30) days of receipt of Sponsor's written report. Sponosr shall either make payment of the previously disputed charges or Sponsor and Universtiy shall use reasonable efforts to resolve the dispute.

Payment will be made via wire transfer;

Bank:	Bank of America, New York Global Client Services Concord Concord, California 94520
Routing:	026009593
Swift Code:	BOFAUS3N
Payee:	Regents of the University of California, Santa Barbara
Account #:	0780500030
Reference #:	Holden-OceanHealth

6. Principal Investigator

University's performance hereunder will be under the direction of Patricia Holden, who will serve as principal investigator(s) (Principal Investigator). In the event that Principal Investigator becomes unable or unwilling to continue work under this Agreement and an alternate principal investigator is not agreeable to Sponsor, Sponsor will have the option to terminate this Agreement in accordance with Article 15. The Sponsor understands and agrees that Principal Investigator is the scientific contact for University but is not authorized to amend, modify or terminate the terms and conditions of this Agreement. Requests to amend, modify or terminate the terms of this Agreement must be directed to the point of contact listed in Article 14 below and must comply with the notice requirements of this Agreement.

7. Rights in Data.

University will have the unrestricted right to publish, disclose, disseminate and use, in whole and in part, any data or information developed by University under this Agreement or received in the performance of this Agreement except as set forth in Articles 10 (Confidentiality) and 11 (Publication). Except as set forth in Article 9 (Copyright), Sponsor will have the right to publish and use any technical reports and information specified to be delivered hereunder. It is agreed, however, that under no circumstances will Sponsor state or imply in any publication or other published announcement that University has tested, endorsed or approved any product, service or company. Sponsor understands and agrees that such data is provided "as is" and

thus, Sponsor uses such data at its own risk. University extends no warranties of any kind, either express or implied, including, but not limited to, warranties of merchantability and fitness for a particular purpose.

8. Supplies and Equipment

In the event that University purchases supplies or equipment hereunder, title to such supplies and equipment will vest in University.

9. Copyright

Copyright in original works of authorship, including computer software, first created and fixed in a tangible medium of expression by University in the performance of this Agreement will vest in University. At Sponsor's request and to the extent that University has the legal right to do so, University will grant to Sponsor a license to such works on reasonable terms and conditions, including reasonable royalties, as the parties mutually agree in a separate writing.

10. Confidentiality

During the course of this Agreement, Sponsor may provide University with certain proprietary business or technical information or materials (Confidential Information). Except as required by law, and as long as all written disclosures of Confidential Information are clearly marked "Confidential" and all oral disclosures of Confidential Information are both identified as confidential at the time of disclosure and are thereafter reduced to a writing that is clearly marked "Confidential" within fourteen (14) days of such oral disclosure, University will hold Confidential Information in confidence and agrees to prevent its disclosure to third parties using the same degree of care that University uses with its own information of like kind. Confidential Information shall be provided only to University's Principal Investigator and only on a "need to know" basis. This obligation shall continue in effect for three (3) years after expiration or termination of the Agreement.

Information and materials disclosed by Sponsor shall not be considered confidential which: (1) are now public knowledge or subsequently becomes such through no breach of this Agreement; (2) are rightfully in University's possession prior to Sponsor's disclosure as shown by written records; (3) are rightfully disclosed to University by a third party; or, (4) are independently developed by or for University without reliance upon confidential information received by Sponsor.

Because University is a public, non-profit educational institution and does not have identified resources to sustain liability for disclosure of information, Sponsor agrees that no financial liability shall attach to University in the event such disclosure occurs.

11. Publication

University shall have the right, at its discretion, to release any information or to publish any material resulting from its performance hereunder. If requested, University will furnish Sponsor with a copy of any proposed written or oral publication (including manuscripts, abstracts, and oral presentations) at least thirty (30) days prior to submission for publication (Review Period). Upon written notification by Sponsor within the Review Period, University agrees to delete any of Sponsor's Confidential Information that appears in the publication. If it is determined that a patent application should be filed, University will delay publishing such proposed publication for a maximum of an additional thirty (30) days in order to protect the potential patentability of any invention described therein.

12. Applicable Law

This Agreement will be governed by the laws of the State of California, United States of America, without regard to the conflict of laws provisions thereof.

13. Notice

Whenever any notice is to be given hereunder, it will be in writing and sent to the Authorized Representative for the receiving party indicated below, at following address:

University: Hilda Vasquez
Office of Research, 3227 Cheadle Hall
University of California
Santa Barbara, CA 93106-2050
Phone: (805) 893-7360
Email: vasquez@research.ucsb.edu

Sponsor: Reva Feldman
City of Malibu
23825 Stuart Ranch Road
Malibu, California 90265
Phone: (310) 456-2489
Email: rfeldman@malibucity.org

14. Termination

Either University or Sponsor may terminate this Agreement by giving sixty (60) days written notice to the other. Sponsor will pay University actual direct and indirect costs and noncancellable commitments incurred prior to the date of termination and fair close-out related costs. If the total of such costs is less than the total funds advanced, the balance will be returned to Sponsor.

15. Publicity

Neither party will use the name, trade name, trademark or other designation of the other party in connection with any products, promotion, or advertising, without the prior written permission of the other party. However, nothing in this Article is intended to restrict either party from disclosing the existence of and nature of this agreement (including the name of the other party) or from including the existence of and nature of this agreement in the routine reporting of its activities.

16. Indemnification

Sponsor shall defend, indemnify, and hold University, its officers, employees, and agents harmless from and against any and all liability, loss, expense (including reasonable attorney's fees), or claims for injury or damages arising out of its performance of this Agreement but only in proportion to and to the extent such liability, loss, expense, attorney's fees, or claims for injury or damages are caused by or result from the negligent or intentional acts or omissions of Sponsor, its officers, agents, or employees.

University shall defend, indemnify, and hold Sponsor, its officers, employees, and agents harmless from and

against any and all liability, loss, expense (including reasonable attorney's fees), or claims for injury or damages arising out of its performance of this Agreement but only in proportion to and to the extent such liability, loss, expense, attorney's fees, or claims for injury or damages are caused by or result from the negligent or intentional acts or omissions of University, its officers, agents, or employees.

This section shall survive the termination or expiration of this Agreement.

17. Excusable Delays

University will be excused from performance hereunder if a delay is caused by inclement weather, fire, flood, strike, or other labor dispute, acts of God, acts of governmental officials or agencies, terrorism, or any other cause beyond the control of University. The excusable delay is allowed for the period of time affected by the delay. If a delay occurs, the parties will revise the performance period or other provisions hereunder as appropriate.

18. Assignment

Neither party will assign its rights or duties under this Agreement to another without the prior express written consent of the other party; provided, however, that Sponsor may assign this Agreement to a successor in ownership of all or substantially all its business assets in the field to which this Agreement relates if such successor will expressly assume in writing the obligation to perform in accordance with the terms and conditions of this Agreement. Any other purported assignment will be void.

19. Amendments.

No agreements, modifications, or waivers to this Agreement shall be valid unless in writing and signed by the Authorized Representatives of the parties.

20. Miscellaneous.

20.1 Not a Partnership or Joint Venture. It is understood and agreed by the parties that the University is performing this contract as an independent contractor. The parties, by this Agreement, do not intend to create a partnership, principal/agent, master/servant, or joint venture relationship and nothing in this Agreement shall be construed as creating such a relationship between the parties.

20.2 Severability. If any term or provision of this Agreement shall be held to be invalid or illegal, such term or provision shall not affect the validity or enforceability of the remaining terms and provisions of this Agreement.

20.3 Recitals & Headings. The recitals herein constitute an integral part of the Agreement reached and are to be considered as such. However, the captions and headings contained in this Agreement have been inserted for reference and convenience only and in no way define, limit, or describe the text of this Agreement or the intent of any provision.

20.4 No Waiver. Any failure or delay in enforcing an obligation or exercising a right or remedy under this Agreement shall not amount to a waiver of that obligation, right or remedy, unless the terms of this Agreement sets forth a specific time limit for the exercise thereof.

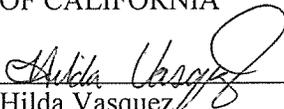
21. Entire Agreement

This Agreement and Exhibits constitute the entire agreement and understanding between the parties and supersedes all previous agreements and understandings on the subject matter of this Agreement, if any.

THE CITY OF MALIBU

THE REGENTS OF THE UNIVERSITY
OF CALIFORNIA

By: _____
Name: Reva Feldman
Title: City Manager
Date:

By: 
Name: Hilda Vasquez
Title: Sponsored Projects Officer
Date: 06/21/2019

ATTEST:

HEATHER GLASER, City Clerk
(seal)

APPROVED AS TO FORM:

THIS DOCUMENT HAS BEEN REVIEWED
BY THE CITY ATTORNEY'S OFFICE

CHRISTI HOGIN, City Attorney

EXHIBIT A
Statement of Work

and

Deliverables

University shall provide Sponsor with a final technical report within ninety (90) days after the end date of this Agreement.

City of Malibu Ocean Health Near Shore Water Quality Assessment Research Project

Statement of Work

May 6, 2019

Team: Patricia A. Holden (UCSB); Brandon Steets (Geosyntec); Rachel Noble (UNC Chapel Hill)

This Statement of Work (SOW) summarizes the research Work to be performed for the City of Malibu (City) by the Team as per agreement with UCSB. The objective of this project is to increase the current state of knowledge regarding potential anthropogenic impacts to Malibu area water quality by performing a survey of human-related pathogen occurrence in nearshore waters, and to provide a comparative analysis of local water quality based on published studies and/or, depending on funding and time resources, comparison to other regional sites by sampling and analysis.

RESEARCH QUESTIONS

For near shore waters sampled at select Malibu beaches, and for other regional beach areas deemed comparable as feasible according to available resources (time and funding), in the context of a spatially and temporally defined study design the research Work aims to answer the following questions:

1. What are the patterns in Malibu's microbiological water quality as related to human health? *Using field sampling and analysis of sampled waters for select pathogens, host-associated DNA-based fecal markers, and bacterial community sequencing with bioinformatics analysis to reveal pathogen sequences, an objective is to understand the presence and distribution of evidence for human health-relevant contamination of near shore waters, and the potential implications to the recreating public.*
2. How do Malibu's near shore human health-associated microbiological water quality patterns compare to those of other near shore waters for physically similar, select regional beach areas? *An objective would be to compare pathogen levels with other studies such as the wet weather Surfer Health Study and Southern California Coastal Water Research Project (SCCWRP) dry weather epidemiological study results, to contextualize the results of this research. Further, if the study design and research resources support, de novo sampling of near shore waters for comparable beaches may occur.*

TASKS AND DELIVERABLES

Task 1: Gather and analyze reports and data relevant to developing an informed detailed study design including hypothesis formulation and sampling locations.

Task 2: Draft the study design for Year 1 (Y1) sampling to include approximately 70 samples for bacterial analyses (fecal indicator bacteria (FIB), anticipated quantitative polymerase chain reaction or qPCR of HF183 human waste markers, bacterial communities and associated pathogens) and with a subset for norovirus and a subset for PMA-treated samples to

T3: Y1 Wet weather sampling & analysis			X	X						
T4: Y1 Dry weather sampling & analysis					X	X				
T5: Data analysis & Y2 hypothesis formulation and draft plan						X				
D2: Report of Y1 results and final Y2 study plan						X				
T6: Y2 Wet weather sampling & analysis							X			
T7: Y2 Dry weather sampling & analysis								X		
T8: Y2 Data analysis & draft final overall report								X	X	
D3: Present draft final report									X	
T9 & D4: Finalize and deliver final report									X	X

* Quarterly reports provided to the City; meetings and presentations to the City include for kickoff and study plan design (P1) and final study design presentation (P2), plus one or two as-needed meetings or consultations, then presenting a draft (D3, P9) and final (D4, P10) report by the overall project end date. Monthly conference calls provide project updates. A final presentation (D4) is to the City Council. **Y1 refers to the first field sampling year; Y2 refers to the second field sampling year.

BUDGET

Personnel expenses and subcontracts are included to perform this Work, as are project-related travel, supplies, and other direct costs (see Table 2). The Subcontract to University of North Carolina, Chapel Hill (UNC) to Professor Rachel Noble is for analyzing a minimum of 17 total samples for norovirus throughout the project. Supplies to UCSB were budgeted for analyzing up to 100 field samples overall (approximately 70 samples in Y1 and 30 samples in Y2). The supplies costs allow for performing the research appropriately including analyzing for FIB, handling samples aseptically, filtering samples properly to collect cells for analysis, pre-treating samples where needed to comply with sample analysis protocols; also budgeted are DNA extraction kits, supplies for DNA quantification, and commercially prepared primers and probes for quantitative polymerase chain reaction (qPCR). The Research Questions and Objectives in this Statement of Work will dictate the exact qPCR analyses to be used within the overall number of samples to be analyzed. Final details will be provided within D1. Other direct costs include recharges from CNSI at UCSB for sequencing bacterial community DNA. Funds are budgeted for shipping filters via express service to UNC. Computing (data storage, hardware and software support) is budgeted to provide support commensurate with the complexity and scale of this project. Due to the low funds available for the research (\$200K overall) and the potential for this project to increase in scope in future, UCSB agreed to waive Indirect Costs (IDC).

Table 2

AGENCY: City of Malibu	PI: Patrica Holden
TITLE: City of Malibu Ocean Health Near Shore Water Quality Assessment Research Project	Earth Research Institute, UCSB
PERIOD OF PERFORMANCE: 7/1/2019 - 12/31/2021	TOTAL: \$199,988

			07/01/19 12/31/19 Period 1	01/01/20 12/31/20 Period 2	01/01/21 12/31/21 Period 3	TOTAL
SALARIES:						
	# months	% Time				
1. Patricia Holden, Professor						
			\$3,769			
				\$3,882		
					\$3,998	\$11,649
2. Laurie Van De Werfhorst; Staff Research Associate						
				\$17,226		
					\$17,742	\$34,968
3. Dong Li; Associate Specialist						
				\$10,847		\$10,847
Total Salaries:			\$3,769	\$31,955	\$21,740	\$57,464
BENEFITS:						
1. Patricia Holden, Professor						
\$3,769 CBR Rate=	10.00%	CBR	\$377			
\$3,882 CBR Rate=	10.10%	CBR		\$392		
\$3,998 CBR Rate=	10.10%	CBR			\$404	\$1,173
2. Laurie Van De Werfhorst; Staff Research Associate						
\$17,226 CBR Rate=	55.69%	CBR+VLA+UCRP		\$9,593		
\$17,742 CBR Rate=	56.94%	CBR+VLA+UCRP			\$10,102	\$19,695
3. Dong Li; Associate Specialist						
\$10,847 CBR Rate=	52.29%	CBR+VLA+UCRP		\$5,672		\$5,672
Total Benefits:			\$377	\$15,657	\$10,506	\$26,540
TOTAL SALARIES & BENEFITS:			\$4,146	\$47,612	\$32,246	\$84,004
SUBCONTRACTS & MCAs						
<u>Subcontracts</u>						
1. UNC Chapel Hill			\$1,000	\$8,000	\$8,000	\$17,000
Total Subagreements:			\$1,000	\$8,000	\$8,000	\$17,000
TRAVEL						
1. Car Rental: \$50/day for 2 days			\$100	\$100	\$100	\$300
			\$100	\$100	\$100	\$300
SUPPLIES						
1. Microbiological reagents and consummables, chemicals:				\$3,100	\$1,500	\$4,600
2. DNA extraction, primers, probes:				\$9,400	\$4,700	\$14,100
Total Supplies:			\$0	\$12,500	\$6,200	\$18,700
OTHER DIRECT COSTS						
1. DNA sequencing (CNSI):			\$0	\$3,200	\$1,600	\$4,800
2. Shipping			\$0	\$450	\$450	\$900

Table 2

AGENCY: City of Malibu				PI: Patrica Holden			
TITLE: City of Malibu Ocean Health Near Shore Water Quality Assessment Research Project				Earth Research Institute, UCSB			
PERIOD OF PERFORMANCE: 7/1/2019 - 12/31/2021				TOTAL: \$199,988			
				07/01/19	01/01/20	01/01/21	
				12/31/19	12/31/20	12/31/21	
				Period 1	Period 2	Period 3	TOTAL
3. Contracting Services: Geosyntec				\$20,575	\$27,100	\$21,825	\$69,500
4. ERI Computing Staff Recharge (Increasing 3.5% yearly)			****	\$1,540	\$1,594	\$1,650	\$4,784
\$388.77	\$129.59 per hour	3 hrs of CRM					
\$343.95	\$114.65 per hour	3 hrs of CNTIII					
\$391.90	\$78.38 per hour	5 hrs of CNT II					
\$274.40	\$39.20 per hour	7 hrs of CNT I					
\$61.82	\$30.91 per hour	2 CRS					
\$26.64	\$13.32 per hour	2 hrs of Student Assistant					
Total Other Direct Costs:				\$22,115	\$32,344	\$25,525	\$79,984
				TOTAL DIRECT COSTS:	\$27,361	\$100,556	\$72,071
							\$199,988
TOTAL REQUEST:				\$27,361	\$100,556	\$72,071	\$199,988

**** ERI has on staff individuals who provide computer coding and troubleshooting on a University approved recharge basis. Based on prior projects, we anticipate these services will be required to successfully complete the research effort.