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

Prepared by: Robert DuBoux, Public Works Director/City Engineer
Susan Duenas, Public Safety Manager

Approved by: Reva Feldman, City Manager

Date prepared: November 26, 2019          Meeting date: December 9, 2019

Subject: Professional Services Agreement with Mission Critical Partners

**RECOMMENDED ACTION:** Authorize the City Manager to negotiate and execute an agreement with Mission Critical Partners for the preparation of an Outdoor Warning Siren System Planning Study in an amount not to exceed $59,623.

**FISCAL IMPACT:** Funding in the amount of for this agreement was included in the Adopted Budget for Fiscal Year 2019-2020 in Account No. 100-7031-5100 (Public Safety Professional Services).

**WORK PLAN:** This item was included as item 1f in the Adopted Work Plan for Fiscal Year 2019-2020.

**DISCUSSION:** On August 8, 2019, the City issued a Request for Proposals from qualified firms to prepare an Outdoor Warning Siren System Planning. On September 13, 2019, the City received seven proposals. Staff reviewed the proposals and concluded that the following firms met the minimum qualifications:

- Acoustic Analytics
- Mission Critical Partners
- ATI Systems
- West Shore Services, Inc.
- American Signal Corporation

These firms were selected for interviews to determine the most qualified consultant to prepare a study evaluating outdoor warning siren systems for the City. At the conclusion of the interviews, staff has determined that Mission Critical Partners as the most qualified firm to meet the needs of this project. Mission Critical Partners has provided similar

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plans for other government agencies including San Jose, San Francisco, Sacramento, and the Federal Emergency Management Agency.

Staff recommends the City Council authorize the City Manager to execute an agreement with Mission Critical Partners to prepare an Outdoor Warning Siren System Planning Study.

**ATTACHMENTS:** Professional Services Agreement with Mission Critical Partners
This Agreement is made and entered into as of December 9, 2019 by and between the City of Malibu (hereinafter referred to as the "City"), and Mission Critical Partners (hereinafter referred to as "Consultant").

The City and the Consultant agree as follows:

RE bâtALS

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 Outdoor Warning Siren System Planning Study.

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 December 9, 2019, and will remain in effect for a period of 2 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 Exhibit A, Scope of Work. The cost of services shall be for a total amount not to exceed $59,623. 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 10th 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, including, without limitation, Malibu Municipal Code Chapter 5.36 Minimum Wage.

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:

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: John Spearly
Vice President and Director of Administrative Services
Mission Critical Partners
690 Gray’s Woods Blvd
Port Matilda CA 16870
TEL (888) 862-7911
FAX (814) 217-6807

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 18700.3(a) 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.
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 18700.3(a) and is otherwise not serving in staff capacity in accordance with the City’s Conflict of Interest Code.

This Agreement is executed on ________________, 2019, at Malibu, California, and effective as of December 9, 2019.

CITY OF MALIBU:

__________________________________________
REVA FELDMAN, City Manager

ATTEST:

______________________________
HEATHER GLASER, City Clerk
(seal)

CONSULTANT:

__________________________________________
By: John L. Spearly
VP & Director of Administrative Services

APPROVED AS TO FORM:

______________________________
CHRISTI HOGIN, City Attorney

THIS DOCUMENT HAS BEEN REVIEWED
BY THE CITY ATTORNEY’S OFFICE
EXHIBIT A – SCOPE OF WORK

INTRODUCTION
Appropriate Warning Siren site selection will be of significant importance to this project. The City of Malibu is twenty-one (21) miles long, and while the immediate coastal area is typically flat, much of the jurisdiction has deep canyons and steep hills. These geographical elements pose a challenge to the effective use of an Outdoor Warning Siren System. A thorough sound study is necessary to ensure the sirens are distributed optimally throughout the City.

TASK 1. SOUND STUDY
The Consultant shall prepare a sound study and it shall result in the following:

- a. Recommendations for most efficient siren distribution across the City, including:
  - i. A list of ranked alternatives for siren sites, giving secondary site options where available
  - ii. A sound coverage area for each proposed siren site, taking into account environmental data
  - iii. Identification of any areas of the City in which sirens will be ineffective due to geography or other characteristics

The study must include a thorough consideration of various environmental factors, including but not limited to: ambient temperature, ambient humidity, wind speed, wind direction, building height, and terrain. Environmental factors that will be present during Red Flag weather are of particular importance including the understanding of the effects of the Santa Ana winds.

The City has preliminarily identified six (6) potential sites for siren installation. The Consultant should consider these preliminary sites as well as other potential sites necessary for an effective and comprehensive outdoor warning siren system.

- a. Trancas Park, 34.038916, -118.845391
  
  This 35-acre park has been identified as a possible siren site based on its status as a City-owned property, proximity to residential areas, and relatively flat geography. While the northern end of the park is occupied by playground equipment, the southern end is primarily an open field. In particular, the southwest corner may be viable due to its lack of impacts on residents’ ocean views and ESHA. A sound study will be necessary to determine a siren’s exact range in this location.

- b. Heathercliff Road and Pacific Coast Highway, 34.022118, -118.806681 (Vacant Lot)
  
  This 18 acre undeveloped lot has been identified as a possible siren site based on its status as a City-owned property, proximity to residential and commercial areas, relatively flat geography, and lack of impact on current land uses. A sound study will be necessary to determine a siren’s exact range in this location.

- c. Bluffs Park, 34.033339, -118.702064
  
  This 10 acre park has been identified as a possible siren site based on its status as a City-owned property, proximity to residential areas, and its current use as an alternate location for the City’s Emergency Operations Center. A sound study will be
necessary to determine a siren’s exact range in this location, especially because the relevant residential neighborhoods are at a lower elevation than the park itself.

d. 23575 Civic Center Way, 34.036233, -118.691314 (Vacant Lot)
This 9 acre undeveloped lot has been identified as a possible siren site based on its status as a City-owned property, proximity to residential and commercial areas, relatively flat geography, and lack of impact on current land uses. A sound study will be necessary to determine a siren’s exact range in this location.

e. Las Flores Park, 34.040054, -118.637656
This 6.7 acre park has been identified as a possible siren site based on its status as a City-owned property, proximity to residential areas, and relatively flat geography. Additionally, it is located in a fire-prone region of the City that was devastated by wildfire in 1993. A sound study will be necessary to determine a siren’s exact range in this location.

f. Malibu City Hall, 34.039369, -118.692974
City Hall has been identified as a possible siren site based on its status as a City-owned property, proximity to residential areas, and status as a government building. A sound study will be necessary to determine a siren’s exact range in this location.

The City also supports the placement of sirens in the public-right-of-way where the Consultant determines that it is practical and effective to do so. The Consultant must also identify any areas that would be best served by locating a siren on property not owned by the City.

**TASK 2. Site Design Analysis**
Consultant shall prepare a design analysis for each site selected. This site design analysis shall include the following:

a. Recommendations for siren properties and technical features, including:
   i. A list of ranked alternatives for various siren features, including but not limited to: omni-directional and rotating sirens; high-, low-, and multi-pitch sirens; Common Alert Protocol (CAP)-enabled sirens; interoperability, backward compatibility; radio frequency redundancy; power source redundancy; and mounting height
   ii. Equipment and construction specifications for each proposed siren site

**TASK 3. Interconnecting Network**
It is critical the Outdoor Warning Siren System being presented has a reliable network. The Consultant shall analyses include options available to the City regarding an interconnecting radio backhaul network. Elements of this system shall include the following:

a. Encryption
b. Data capability
c. Technology
d. Frequency band
e. Antennas and installation standards
f. Resiliency and redundancy
Consultant shall assess any existing public safety system in place that could be utilized and provide recommendations for a dedicated radio communications system.

**TASK 4. Develop and Present Final Report of Outdoor Warning Siren System Plan**
Consultant shall develop a draft report that would be presented at least one community meeting. Consultant shall final report after receiving feedback at the community meeting and present to the City Council the Final Outdoor Warning Siren System Plan that includes but is not limited to the following:

a. Estimated total project cost, including construction, equipment
b. Estimated ongoing maintenance costs following project completion
c. Map showing range of each proposed siren
d. Descriptions of recommended siren models, including visuals and detailed list of technical features
e. Limitations on the effectiveness of an Outdoor Warning Siren System in the City of Malibu, if applicable