



Council Agenda Report

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

Prepared by: Rob DuBoux, Public Works Director/City Engineer

Approved by: Steve McClary, City Manager

Date prepared: May 3, 2022 Meeting date: June 13, 2022

Subject: Amendment to Agreement with Hughes Research Laboratories (HRL) for Design of Civic Center Water Treatment Facility (CCWTF) Phase Two

RECOMMENDED ACTION: Authorize the Mayor to execute Amendment No. 1 to the Agreement with HRL to provide additional funding for the design and engineering assessment of the CCWTF Phase Two project.

FISCAL IMPACT: There is no fiscal impact associated with the recommended action. The original estimated cost to design and develop an Assessment District for Phase Two was \$3.6 million. An additional \$150,000 is needed to perform additional cultural resource geotechnical excavation for a total agreement amount of \$3,750,000. This amount includes the design and development of an Assessment District for all properties in Phase Two including HRL.

The original agreement provides for HRL to fund the project design and the development of an Assessment District and then be reimbursed after an Assessment District for Phase Two is formed and bonds are issued. The agreement proposes a \$500,000 deposit of funds, with all remaining payments being provided on a reimbursable basis. In the event that formation of an Assessment District for Phase Two is not successful, the agreement provides that HRL will have the opportunity to form its own assessment district and either apply the funds provided as a credit or be reimbursed by the City for the costs incurred on the design for the entire Phase Two project. Under this scenario, if the City has to reimburse HRL, it will need to record the costs as a liability until such time that a successful Assessment District for Phase Two is formed and funded.

This amendment will increase the total design budget to include the required cultural resource geotechnical excavations.

WORK PLAN: This item was included as item 5a in the Adopted Work Plan for Fiscal Year 2021-2022.

DISCUSSION: On November 5, 2009, the Regional Water Quality Control Board (RWQCB) approved a resolution prohibiting the use of septic systems in the Malibu Civic Center Area. On September 21, 2010, the State Water Resources Control Board (SWRCB) approved the action taken by the RWQCB, thereby amending the State Basin Plan. The plan established certain dates by which properties in the Civic Center area were required to cease discharge and provided for a municipally owned wastewater treatment facility to be constructed.

On June 27, 2011, the Council approved a Memorandum of Understanding (MOU) between the City, the RWQCB and SWRCB regarding the implementation of the Basin Plan Amendment for the Malibu Civic Center Area Prohibition. The MOU was amended in December 2014, February 2017 and again November 2021 to extend certain dates. Under the amended MOU, properties in Phase One of the Prohibition Area (primarily the commercial core of the Civic Center) were required to connect to a centralized water treatment facility by September 30, 2018. All of properties in Phase One were successfully connected by the mandated date and the facility is completely operational.

The City's MOU with the RWQCB stipulated that all the properties within the Phase Two boundary shall be connected to the CCWTF by November 5, 2024. The MOU includes a third phase that might be implemented but is dependent on the outcome of the first two phases. The MOU as amended included HRL in Phase Three of the project.

On November 27, 2017, the Council approved amending Phase Two and including HRL into Phase Two of the project. There is sufficient capacity in the CCWTF to accommodate the wastewater generated by HRL. The inclusion of HRL in Phase Two provides additional opportunities for disposal of recycle water from the CCWTF.

On November 5, 2021, the MOU was revised by the Regional Board to revise the deadline to form the proposed Phase Two assessment district. This amendment allowed the City to obtain actual construction costs prior to the formation of the assessment district. Recently, the City has requested an 8-month time extension for the project deadlines to secure additional State and Federal grant funding.

On March 28, 2019, the City Council approved an agreement with HRL to provide funding to the City on a reimbursable basis, which allow the City to stay on the necessary timeline to meet the mandated deadlines in the MOU.

The City submitted a project application to the State Water Board for financial assistance under the Clean Water State Revolving Fund Program (CWSRF). The CWSRF provides

agencies with a low interest rate loans for wastewater projects. The CWSRF program has financing terms up to 30 years, no funding limits and the repayment begins one year after the completion of construction. The City used this financial assistance for Phase One as well as other State grants to finance the project.

The State Water Board notified the City that additional cultural resource geotechnical excavations were needed prior to finalizing the CWSRF funding for this project. The additional excavations will be performed along the alignment of proposed wastewater collection pipeline and will be used to investigate if cultural resources are located along the proposed pipelines. If additional cultural resources are found, specific mitigation measures will be added to the construction documents to preserve any Native American cultural resources.

The proposed amendment to the HRL Agreement will add the additional funds to perform the required cultural resource geotechnical excavations. Staff recommends that the Council authorize the Mayor to execute an amendment to the Agreement with HRL.

ATTACHMENTS:

1. Amendment to Agreement with HRL
2. Original Agreement with HRL

**AMENDMENT NO. 1 TO THE ASSESSMENT DISTRICT
REIMBURSEMENT AGREEMENT**

THIS AMENDMENT NO. 1 TO THE ASSESSMENT DISTRICT REIMBURSEMENT AGREEMENT (“Agreement”), entered in the City of Malibu on April 8, 2019, by and between the CITY OF MALIBU, hereinafter referred to as City, and HRL Laboratories, LLC, a Delaware limited liability company (HRL) hereinafter referred to as HRL.

The City and HRL agree as follows:

RECITALS

A. On April 8, 2019, the City entered into the Agreement with HRL to advance funds to the City for consulting costs, administration costs, and expenses related to the design and formation of the Civic Center Water Treatment Facility, Phase Two project.

B. The City desires to amend the Agreement to increase the advancements to the City, and HRL has agreed to supplying the increases.

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

1. Section 1.0 – Advances, of the Agreement, is hereby amended to increase the total amount an additional \$150,000 for a total not to exceed \$3,750,000.
2. The Parties agree that this Amendment will be considered signed when the signature of a party is delivered physically or by facsimile transmission or scanned and delivered via electronic mail. Such facsimile or electronic mail copies will be treated in all respects as having the same effect as an original signature.
3. All terms and conditions of the Agreement not amended by this Amendment No. 1 remain in full force and effect.

This Agreement is executed on _____, at Malibu, California, and effective as of June 13, 2022.

CITY OF MALIBU:

PAUL GRISANTI, Mayor

ATTEST:

KELSEY PETTIJOHN, City Clerk
(seal)

APPROVED AS TO FORM:

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

JOHN COTTI, Interim City Attorney

CONSULTANT:



By: Rob Pesceone
Title: Chief Financial Officer

5.17.2022

ASSESSMENT DISTRICT REIMBURSEMENT AGREEMENT

THIS ASSESSMENT DISTRICT REIMBURSEMENT AGREEMENT (“Agreement”) is made and entered into this 8 day of APRIL, 2019, by and between the City of Malibu (hereinafter referred to as the “City”), and HRL Laboratories, LLC, a Delaware limited liability company (“HRL”).

RECITALS

- A. The City is implementing a wastewater treatment plan (the “Plan”) in the Malibu Civic Center Area, which includes the construction of a centralized wastewater treatment facility (the “CCWTF”) to which properties primarily in the commercial core of the Civic Center would connect. The Plan will bring wastewater collection and recycled water distribution pipelines to individual properties, generating recycled water for use at those properties. As part of phase one of the Plan proceedings were initiated under the provisions of the Municipal Improvement Act of 1913 (Streets and Highways Code Section 10000 and following) to form an assessment district (the “Phase 1 Assessment District”). Those proceedings were completed and a Phase 1 Assessment District was created. The CCWTF has been constructed.
- B. Pursuant to this same authority, the City desires to proceed to Phase 2 of the Plan, which would involve creating another assessment district (the “Phase 2 Assessment District” or “Assessment District”) and connecting additional properties to the CCWTF, including HRL’s property at 3011 Malibu Canyon Road (the “HRL Property”). In that regard, the City may finance the acquisition and/or construction of certain public improvements and issue bonds under the provisions of the Improvement Bond Act of 1915 (Streets and Highways Code Section 8500 and following), or such other statutory scheme authorizing the Assessment District, as determined in the sole discretion of the City, to be secured by the levy of assessments within such Assessment District to finance the acquisition and/or construction of such improvements.
- C. HRL desires to advance funds to the City for the payment of up to \$3,600,000 of initial consulting and administration costs and expenses incurred by the City related to the proceedings to consider the formation of the Phase 2 Assessment District and to subsequently authorize, issue and sell bonds for the Phase 2 Assessment District (the “Proceedings”). Such monies advanced by HRL shall be subject to reimbursement or credit pursuant to the provisions of this Agreement.
- D. If the Phase 2 Assessment District is not formed as anticipated for any reason, HRL desires to nevertheless have the option of connecting the HRL Property to the CCWTF through the creation of a smaller assessment district. In that event, HRL shall have the right to apply the funds advanced to the City relating to the Proceedings, as described immediately above, to offset the cost of such connection and/or the formation of the smaller assessment district.
- E. If HRL’s Property is connected to the CCWTF, HRL desires to receive recycled water in proportion to the amount of wastewater the HRL Property sends to the CCWTF.

- F. The parties hereto wish to enter into this Agreement to memorialize the terms and conditions pursuant to which HRL shall advance monies and the monies so advanced may, subject to certain conditions contained herein, be reimbursed or credited against future assessment obligations.

AGREEMENT

The parties hereto, for mutual consideration, agree as follows:

SECTION 1. **Advances.**

A. HRL shall advance monies to the City in such amounts and at such times as specified below to pay the costs and expenses incurred by the City in undertaking the Proceedings (except those costs and expenses which are contingent upon the issuance of bonds for the Assessment District and payable solely from the proceeds of such bonds), including the following:

1. Design engineering services;
2. Environment review consulting services;
3. Assessment engineering services;
4. Bond counsel services;
5. Financial advisory services;
6. Appraisal and market absorption services; and
7. Such other costs or expenses as authorized by the statutory scheme authorizing and/or relating to the creation of the Assessment District and authorization, issuance, sale, and/or levy of bonds thereunder.

Provided, however, that in no event shall monies advanced by HRL be used to pay: (i) any costs or expenses incurred by the City in undertaking the Proceedings which are not authorized under California law to be included within the costs for which a special assessment may be levied; and (ii) any costs or expenses for City staff and City Attorney time. All such costs and expenses are collectively referred to as the "Formation and Issuance Costs."

B. Advances, not to exceed \$3,600,000, shall be made to the City pursuant to the following schedule:

1. At the time of execution of this Agreement, HRL shall advance the amount of \$500,000 ("Initial Advance"), receipt of which is hereby acknowledged by the City.
2. If monies in addition to the Initial Advance are necessary to pay for the Formation and Issuance Costs, the City shall as necessary and from time to time, but in no event less than quarterly, to the extent required, make written demand upon HRL and HRL shall

immediately thereafter, within twenty (20) business days, deposit said monies with the City to pay for the then-existing balance of the Formation and Issuance Costs.

3. If such additional monies are not timely received such that the then-existing balance held by the City is insufficient to pay for any then-known or incurred Formation and Issuance Costs, all Proceedings may, at the option of the City in its sole and absolute discretion, be suspended until such monies are received or the City may advance such monies to be later reimbursed by HRL.
4. HRL is under no obligation to advance monies to the City in excess of \$3,600,000, except through a mutually agreed Amendment to this Agreement, signed by both parties.

SECTION 2. Records. The City agrees to keep records consistent with its regular accounting practices of the amount of monies advanced and the expenditure of such monies. Additionally, the City shall enter into and maintain contracts with all consultants that shall specify the scope of services and compensation to be paid to all such consultants. Such records and contracts shall be available for review by HRL during normal business hours upon reasonable notice to the City.

SECTION 3. Reimbursement. In the event the Phase 2 Assessment District is formed and the City proceeds with the issuance and sale of bonds thereunder, HRL, as determined in its sole and absolute discretion, may elect among the following options for the reimbursement of monies advanced pursuant to this Agreement:

- A. All monies advanced shall be reimbursed in cash solely from bond proceeds;
- B. All monies advanced shall be applied as a credit upon the assessments to be levied against properties then owned by HRL within the Assessment District; or
- C. A combination of the above.

Notwithstanding the foregoing, and for the avoidance of doubt, nothing herein shall be interpreted to relieve any property owned by HRL within the boundaries of the Assessment District from being subject to its proportionate share of the Formation and Issuance Costs, to the extent any assessments levied within the Assessment District include, consistent with the statutory scheme authorizing and/or relating to the creation of the Assessment District, costs for the special benefits associated with the Proceedings.

Further, notwithstanding the foregoing, if the Proceedings to form the Phase 2 Assessment District are not completed or are otherwise abandoned for any reason at any time prior to the successful sale of bonds, or if the City does not issue or sell the bonds for the Assessment District, there will be no obligation on the part of the City to reimburse HRL for any monies previously advanced pursuant to this Agreement; provided, however, the City does agree to (i) return to HRL any monies previously advanced which remain on deposit with the City and which the City reasonably and in good faith determines are in excess of the amount necessary to pay for any outstanding Formation and Issuance Costs previously incurred by the City (the "Excess Funds") and (ii) credit any monies advanced that are not "Excess Funds" towards the cost of connecting the HRL Property to the CCWTF consistent with the

provisions of Section 4 below. HRL may elect to apply any Excess Funds held by the City toward the costs of connecting the HRL Property to the CCWTF, consistent with the provisions of Section 4, below or it may elect to receive the Excess Funds directly from the City, to be paid within 90 days of the formation of the Assessment District.

SECTION 4. HRL CCWTF Connection. If the Proceedings to form the Phase 2 Assessment District as currently anticipated are not completed or are abandoned for any reason at any time prior to the successful sale of bonds, or if the City does not issue or sell bonds for the Phase 2 Assessment District, as set forth in Section 3, above, City shall explore formation of a smaller assessment district (referred to herein as the “Phase 2A Assessment District” in anticipation that the properties that are currently planned to be a part of Phase 2 that are excluded from Phase 2A would be part of a “Phase 2B Assessment District”) that includes the HRL Property. In such event the provisions of this Agreement shall apply to the Phase 2A Assessment District as if it were the Phase 2 Assessment District except that City shall reimburse HRL for Formation and Issuance Costs as follows: Formation and Issuance Costs attributable to Phase 2A and Phase 2B Assessment Districts will be reimbursed when the formation of Phase 2A Assessment District is complete, and the reimbursement due shall be refunded within 90 days of the formation of Phase 2A Assessment District as a direct payment to HRL or, if preferred by HRL, applied as a credit upon the assessments to be levied against properties then owned by HRL within the Phase 2A Assessment District. If the HRL Property is connected to the CCWTF, HRL will receive recycled water in an amount proportional to the amount of wastewater the HRL Property sends to the CCWTF.

SECTION 5. Ownership of Documents. All documents prepared as part of the environmental review for the Phase 2 of the Plan, all plans and specifications for Phase 2 of the Plan, all appraisals, market absorption studies, assessment engineer’s reports and other documentation prepared as a part of or related to the Proceedings shall become the property of the City, regardless as to whether the Phase 2 Assessment District is actually formed or bonds are issued or sold.

SECTION 6. No Obligation to Form Assessment District or Issue Bonds. HRL acknowledges that the decision of the City Council of the City (the “City Council”) to form the Phase 2 Assessment District, or to issue or sell bonds thereunder, is an exercise of the legislative authority of the City Council and that the City may not enter into a contract to obligate the City Council to exercise its legislative discretion in a particular manner. This Agreement does not, therefore, in any way create a contractual, legal or equitable obligation of or commitment by the City Council to approve the formation of the Phase 2 Assessment District or any assessment district at all or to otherwise issue or sell bonds for any such assessment district. The City expressly reserves the right, in its sole and absolute discretion, to abandon the Proceedings for any reason at any time prior to the completion thereof and such action shall not constitute a default or breach of this Agreement and shall not give rise to a cause of action based on breach of contract. Notwithstanding the foregoing, if the City Council does not approve the formation of any of the Phase 2, Phase 2A, or Phase 2B Assessment Districts, the City agrees to credit HRL for monies advanced that are not Excess Funds towards the cost of connecting the HRL Property to the CCWTF as described in Sections 3 and 4 above.

SECTION 7. Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

SECTION 8. **Authority to Execute Agreement.** The City and HRL represent that the individuals signing this Agreement have full right and authority to bind their respective parties to this Agreement.

SECTION 9. **Best Efforts; Further Assurances.** The parties promise to use their best efforts to satisfy all conditions to this Agreement and to take all further steps and execute all further documents reasonably necessary to put this Agreement into effect.

SECTION 10. **Successor and Assigns.** This Agreement shall be binding on and inure to the benefit of the respective parties and their respective heirs, legal representatives, successors and assigns. Neither party may assign its rights or obligations hereunder, except upon prior written consent by the other party, which consent may be given, withheld, delayed or conditioned in other party's sole and absolute discretion. Notwithstanding the foregoing, the parties agree that any assessment district created with respect to Phase 2 of the Plan or HRL's connection to the CCWTF will be considered a part of the City and is not an assignment for purposes of this Section 10.

SECTION 11. **Singular and Plural; Gender.** Whenever used herein, the singular number shall include the plural, the plural number shall include the singular, and the masculine feminine or neuter gender shall include the others whenever the context of the Agreement so indicates.

SECTION 12. **Entire Agreement.** This Agreement contains the entire Agreement between the parties hereto with respect to the subject matter hereof. All prior or contemporaneous agreements, understandings, representations and statements, oral or written, are merged in this Agreement and shall be of no further force or effect. This Agreement may not be altered, modified or amended except by an instrument in writing executed by all of the parties.

SECTION 13. **Governing Law.** This Agreement has been executed in and shall be governed by the laws of the State of California, for all purposes. Venue for any action related to this Agreement shall lie exclusively in the courts of Los Angeles County, California.

SECTION 14. **Construction.** This Agreement shall be construed as a whole and in accordance with its fair meaning. Captions and organizations are for convenience and shall not be used in construing meaning.

SECTION 15. **Severability.** In the event that any one or more of the provisions of this Agreement that is or are material to the entering into this Agreement by either HRL or the City shall for any reason be held to be unenforceable in any material respect by a court of competent jurisdiction, HRL and the City may mutually agree that such unenforceability shall not affect any other provision of this Agreement, and that this Agreement shall be construed as if such unenforceable provision or provisions had never been contained herein. If HRL and the City fail to so mutually agree, this Agreement shall terminate, without penalty to either party, after the giving by one party of thirty (30) days' prior written notice to the other party. In such event, the City shall use all efforts to minimize any and all Formation and Issuance Costs and shall return to HRL Excess Funds which remain on deposit with the City.

SECTION 16. **Notices.** All notices and demands shall be given in writing by personal delivery or first-class mail, postage prepaid. Notices shall be addressed as appears below for the respective party;

provided that, if any party gives notice of a change of name of address, notices to the giver of that notice shall thereafter be given as demanded in that notice. Notices shall be deemed received upon personal delivery or seventy-two (72) hours after deposit in the United States mail.

CITY: Reva Feldman
City Manager
23825 Stuart Ranch Rd.
Malibu, CA 90265

With a Copy to: _____

HRL: MS. KRIS TANIGUCHI
HRL CONTRACTS MGR.
3011 MALIBU CYN RD RL53
MALIBU, CA 90265

With a Copy to: MR. GARY LAWRENCE
HRL CFO
3011 MALIBU CYN RD RL53
MALIBU, CA 90265

SECTION 17. Time of the Essence. Time is of the essence in the performance of the parties respective obligations herein contained.

SECTION 18. Waiver. The waiver by one party of the performance of any covenant, condition or promise shall not invalidate this Agreement, nor shall it be considered a waiver by him of any other covenant, condition or promise. The waiver by either or both parties of the time for performing any act shall not constitute a waiver of the time for performing any other act or an identical act required to be performed at a later time. The exercise of any remedy provided in this Agreement shall not be a waiver of any consistent remedy provided by law, and any provision of this Agreement for any remedy shall not exclude other consistent remedies unless they are expressly excluded.

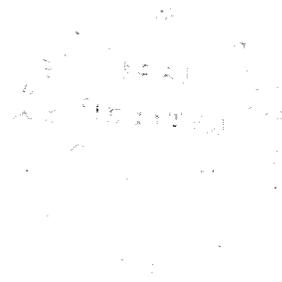
SECTION 19. Amendment. No provision of this Agreement may be modified, waived, amended or added to except by a writing signed by the party against which the enforcement of such modification, waiver, amendment or addition is or may be sought.

SECTION 20. Relationship Between City and HRL. It is hereby acknowledged that the relationship between City on the one hand and HRL on the other hand is not that of a partnership or joint venture and that City and HRL shall not be deemed or construed for any purpose to be the agent of the other.

SECTION 21. **Attorney's Fees.** In any action between the parties to interpret, enforce, reform, modify, rescind or that otherwise relates to any of the terms or provisions of this Agreement, the prevailing party in the action shall be entitled, in addition to damages, injunctive relief or any other relief to which it might be entitled, reasonable costs and expenses including, without limitation, expert fees, litigation costs and reasonable attorneys' fees.

SECTION 22. **Tax Consequences.** Each party is responsible for its own taxes that may arise from, or are otherwise attributable to, the transactions contemplated by this Agreement. Notwithstanding the foregoing, any taxes arising from or attributable to the reimbursement of Formation and Issuance Costs shall be borne by HRL.

[Remainder of this page intentionally left blank; signature page follows.]



Signature Page
to
Assessment District Reimbursement Agreement
between
the City of Malibu
and
HRL Laboratories, LLC

IN WITNESS WHEREOF, City and HRL have executed this Agreement thereby indicating that they have read and understood same, and indicate their full and complete consent to its terms.

CITY OF MALIBU,
a California municipal corporation

By: Reva N
Name: Reva Feldman
Its: city manager

“CITY”

ATTEST:

Heather Glaser
HEATHER GLASER, City Clerk
(seal)

APPROVED AS TO FORM:

Christi Hugin
CHRISTI HUGIN, City Attorney

HRL LABORATORIES, LLC,
a Delaware limited liability company

By: Emily Lawrence
Name: EMILY LAWRENCE
Its: CFO

“HRL”