



# Council Agenda Report

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

Prepared by: Tracey Rossine, Environmental Programs Manager

Reviewed by: Yolanda Bundy, Environmental Sustainability Director

Approved by: Steve McClary, City Manager

Date prepared: May 22, 2024 Meeting date: June 10, 2024

Subject: Professional Services Agreement for Dark Sky Compliance, Plan Review, and Inspections Consulting Services

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**RECOMMENDED ACTION:** 1) Authorize the Mayor to execute a professional services agreement with Kimley-Horn and Associates, Inc. to provide Dark Sky compliance, plan review, and inspection consulting services; and 2) Authorize the Mayor to execute a professional services agreement with Clanton and Associates, Inc. to evaluate and amend the existing Dark Sky ordinance and create corresponding compliance forms.

**FISCAL IMPACT:** No additional appropriation is required. Funding for this project was included in the Adopted Budget for FY 2023-24 and Proposed Budget for FY 2024-25 in Account No. 101-2004-5100-00 (Building Safety Professional Services).

**STRATEGIC PRIORITY:** This item supports day-to-day operations identified in the Strategic Priority Project List.

**DISCUSSION:** On February 13, 2024, a Request for Proposals (RFP) for the Malibu Dark Sky Outreach, Plan Check, and Inspections Consulting Services was distributed. The RFP required applicants to enumerate the firm's capabilities and experience in providing these requested services. In addition, the identification of primary personnel for each firm was required. The City received a proposal from the following firms:

1. Kimley-Horn and Associates, Inc.
2. Clanton and Associates, Inc.

Staff reviewed the proposals, and the two firms were subsequently granted qualification interviews. The interviews were conducted at City Hall on March 28, 2024. Each firm's

interview presentation and RFP package were evaluated, and ability to meet the criteria listed in the RFP determined a selection.

Staff recommends authorizing the Mayor to execute an agreement with both Kimley-Horn and Clanton and Associates based on the quality of the proposals and the interview presentations. The City has previously utilized Kimley-Horn to provide these specialized consulting services and has consistently received excellent service; Kimley-Horn will review projects for Dark Sky compliance, conduct inspections, and provide input on the development process. Conversely, Clanton and Associates will focus on updating the existing outdoor lighting ordinance with 2024 Dark Sky International language and create a new compliance form process for more efficient workflow.

ATTACHMENTS:

1. Professional Services Agreement for Kimley-Horn and Associates, Inc.
2. Professional Services Agreement for Clanton and Associates, Inc.

**AGREEMENT FOR PROFESSIONAL SERVICES**

This Agreement is made and entered into as of May 28, 2024, by and between the City of Malibu (hereinafter referred to as the "City"), and Kimley-Horn and Associates, Inc. (hereinafter referred to as "Consultant").

The City and the Consultant agree as follows:

**RECITALS**

- A. The City does not have the personnel able and/or available to perform the services required under this Agreement.
- B. The City desires to contract out for consulting services for certain projects relating to plan check and inspections for the Malibu Dark Sky Program.
- C. The Consultant warrants to the City that it has the qualifications, experience and facilities to perform properly and timely the services under this Agreement.
- D. The City desires to contract with the Consultant to perform the services as described in Exhibit A of this Agreement.

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

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

**2.0 TERM OF AGREEMENT.** This Agreement will become effective on July 1, 2024, and will remain in effect for a period of two (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 his 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 designee, has the authority to provide that approval or authorization.

**4.0 COMPENSATION FOR SERVICES.** The City shall pay the Consultant for its professional services rendered and costs incurred pursuant to this Agreement in accordance with the Scope of Work’s fee and cost schedule (Exhibit B). No additional compensation shall be paid for any other expenses incurred, unless first approved by the City Manager, or designee.

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

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

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

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

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

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

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

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

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

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

**6.4 Insurance.** The Consultant shall submit to the City certificates indicating compliance with the following minimum insurance requirements no less than one (1) day prior to beginning of performance under this Agreement. Consultant further agrees to comply with all provisions in the attached Exhibit B which is incorporated herein.

**6.5 Indemnification.**  
To the fullest extent permitted by law, Consultant shall indemnify, defend, and hold harmless City and any and all of its officials, employees, agents, and volunteers (“Indemnified Parties”) from and against any and all claims, losses, liabilities, damages, costs, and expenses, including attorney’s fees and costs, to the extent they arise out of, pertain to or relate to the negligence, recklessness, or willful misconduct of the Consultant.

Consultant’s duty to defend shall consist of reimbursement of defense costs incurred by City in direct proportion to the Consultant’s proportionate percentage of fault.

Consultant’s percentage of fault, for both indemnity and defense, shall be determined, as applicable, by a court of law, jury, or arbitrator. In the event any loss, liability, or damage is incurred by way of settlement or resolution without a court, jury or arbitrator having made a determination of the Consultant’s percentage of fault, and the parties cannot mutually agree on Consultant’s percentage of fault, the parties agree to mediation with a neutral third-party to determine the Consultant’s proportionate percentage of fault for purposes of determining the amount of indemnity and defense cost reimbursement owed to the City.

**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:** Steve McClary  
City Manager  
City of Malibu  
23825 Stuart Ranch Road  
Malibu, CA 90265-4861  
TEL (310) 456-2489 x 226  
FAX (310) 456-2760

**CONSULTANT:** Sri Chakravarthy  
Principal-In-Charge/Vice President  
Kimley-Horn and Associates, Inc.  
660 South Figueroa Street, Suite 2050  
Los Angeles, CA 90017  
TEL (213) 261-4040

**6.20 Warranty of Authorized Signatories and Acceptance of Facsimile or Electronic Signatures.** 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. The Parties agree that this Contract, agreements ancillary to this Contract, and related documents to be entered into in connection with this Contract 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.

**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.

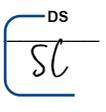
City Initials \_\_\_\_\_

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

**7.2 Disclosure not Required.** By their initials next to this paragraph, City and Consultant hereby acknowledge that Consultant is not a “consultant” for the purpose of the California Political Reform Act because Consultant’s duties and responsibilities are not within the scope of the definition of consultant in Fair Political Practice Commission Regulation 18700.3(a) and is otherwise not serving in staff capacity in accordance with the City’s Conflict of Interest Code.

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

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



This Agreement is executed on May 28, 2024, at Malibu, California, and effective as of July 1, 2024.

CONSULTANT:

DocuSigned by:  
*Sri Chakravarthy*  
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By: SRI CHAKRAVARTHY, Principal-In-Charge/Vice President  
Kimley-Horn and Associates, Inc.

CITY OF MALIBU:

\_\_\_\_\_  
STEVE UHRING, Mayor

ATTEST:

\_\_\_\_\_  
KELSEY PETTIJOHN, City Clerk  
(seal)

APPROVED AS TO FORM:

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

\_\_\_\_\_  
TREVOR RUSIN, Interim City Attorney

**EXHIBIT A**  
**SCOPE OF WORK**

1. Streamline the development process including:
  - Review and evaluate how the City's development process could be streamlined for processing Dark Sky applications; provide memo on streamlined development procedure
  - Update the City's applications and forms for Dark Sky; provide procedures for City staff to process Dark Sky applications
  - Provide training for City staff as requested by the City
  - Be available for public meetings on Dark Sky related projects and agenda items
  - Provide recommendations on deviation requests in the planning phase
  - Provide recommendations to the City to help improve the Dark Sky Program; provide recommendations on City applications and forms
2. Review all Dark Sky applications for compliance with the City of Malibu Dark Sky Ordinance (Malibu Municipal Code Chapter 17.41), California Building Code (CBC), Electrical Code (CEC), and Energy Code as amended by Los Angeles County, as amended by the City of Malibu. Receive final review and approval by the City on all Code interpretations.
3. Conduct reviews within ten (10) business days from the date of receipt to ensure the plans are in conformance with the plans approved by the Planning Department and compliance with the Dark Sky Ordinance. Such review shall be drafted on a City approved form.
4. Consultant will receive 65% of City's collected fees for a complete plan review. Percentage fees shall include an initial review and one (1) recheck for a total of two (2), hourly rates apply thereafter – prior authorization must be given by City.
5. Calculate/Recalculate all plan check and permit fees based on the City's most current fee schedule.
6. Perform all plan checks (commercial and residential) at consultant's offices.
7. Provide the project applicant and the City a list of items needing clarification or change to achieve conformance with all State, Federal, or local regulations.

8. Conduct and coordinate all communications with applicants during the process of completing authorized plan check and copy the City on all correspondence.
9. Provide point-by-point computer calculations in AGI-32 software for specific projects related to compliance with the Dark Sky Ordinance.
10. Conduct final inspections within one (1) week of request, including running final light meter tests onsite to verify compliance with the approved plans, City ordinances, building and codes. Turnaround times may be extended with expressed concurrence of the Planning or Environmental Sustainability Director.
11. Provide recommendations to project applicant and/or property owner on how to comply with the Dark Sky Ordinance.
12. Maintain one (1) individual as the contact for all communication with the City.
13. Respond within one (1) business day upon each notification that a plan check is authorized.
14. Respond within one (1) business day to questions from the City generated during field inspection for each authorized plan check that is subsequently issued a permit for construction.
15. Accept any and all documents electronically; including utilization of OnBase (records management system) and any additional electronic formats accepted by the City.

**EXHIBIT B  
 FEE SCHEDULE**

The City shall pay the Consultant for its professional services rendered and costs incurred pursuant to this Agreement in accordance with the Scope of Work's fee and cost schedule. No additional compensation shall be paid for any other expenses incurred, unless first approved by the City Manager, or designee.

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

**Percentage Fee Services:**

Percentage Fees shall include an initial review and one (1) recheck for a total of two (2), hourly rates apply thereafter – prior notification must be given to City staff. Daily courier fees included.

DESCRIPTION	ASSUMED CITY FEE	CONSULTANT FEE (65% OF CITY FEE)	NOTES
<b>Plan Check</b>			
Small/ Medium Site	\$3,800	\$2,470*	
Large Site	\$5,500	\$3,575*	
<b>Site Inspection</b>			
Small/ Medium Site	\$4,900	\$3,185**	
Large Site	\$6,500	\$4,225**	
<b>Development Procedure/ General Support</b>			The fee for this task will be billed on an hourly basis according to our current rates.
* Assumes up to 2 rounds of plan check - any additional plan check reviews will be billed on an hourly basis according to our then-current rates. ** Assumes up to 2 night time site inspection visits - any additional site inspection visits will be billed on an hourly basis according to our then-current rates.			

CLASSIFICATION	RATE
Analyst I	\$130 - \$160
Analyst II	\$170 - \$200
Professional	\$195 - \$230
Senior Professional I	\$245 - \$315
Senior Professional II	\$320 - \$355
Senior Technical Support	\$115 - \$290
Technical Support	\$105 - \$165
Support Staff	\$85 - \$145

All rates listed above shall include overhead costs including, but not limited to salaries, benefits, Workers Compensation Insurance, office expenses, mileage and courier service. If staff substitutions are necessary, or if staff is promoted, the original rates listed above will still apply.

**Annual Escalation.** Standard rates increase per year is limited to the Cost-of-Living Adjustment (COLA) as adopted in the City's budget. All subcontractors shall adhere to this limit to rates increase.

**Non-Billable Administrative Overhead**

The Consultant will bill only for time spent performing assigned professional work. All other activities associated with carrying out the contract are not billable, and are therefore considered overhead or administrative functions contained within the hourly rate. Typical examples of non-billable overhead activities are:

- Discussion with staff or applicant about the cost of services or to address billing disputes.
- Meetings to discuss work performance, contract or additional services.
- Contract administration, such as preparing or discussing contract amendments.
- Time spent resolving errors in the event the Consultant is responsible.

**EXHIBIT C  
INSURANCE LANGUAGE**

Without limiting Consultant's indemnification of City, and prior to commencement of work and/or services under this Agreement, Consultant shall obtain, provide, and maintain at its own expense during the term of this Agreement, policies of insurance of the type and amounts described below and in a form satisfactory to City.

**General Liability Insurance.** Consultant shall maintain commercial general liability insurance with coverage at least as broad as Insurance Services Office form CG 00 01, in an amount not less than \$1,000,000 per occurrence, \$2,000,000 general aggregate, for bodily injury, personal injury, and property damage. The policy must include contractual liability that has not been amended. Any endorsement restricting standard ISO "insured contract" language will not be accepted.

**Automobile Liability Insurance.** Consultant shall maintain automobile insurance at least as broad as Insurance Services Office form CA 00 01 covering bodily injury and property damage for all activities of the Consultant arising out of or in connection with Work to be performed under this Agreement, including coverage for any owned, hired, non-owned, or rented vehicles, in an amount not less than 1,000,000 combined single limit for each accident.

**Professional Liability (Errors & Omissions) Insurance.** Consultant shall maintain professional liability insurance that covers the Services to be performed in connection with this Agreement, in the minimum amount of \$1,000,000 per claim and in the aggregate. Any policy inception date, continuity date, or retroactive date must be before the effective date of this agreement and Consultant agrees to maintain continuous coverage through a period no less than three years after completion of the services required by this agreement.

**Workers' Compensation Insurance.** Consultant shall maintain Workers' Compensation Insurance (statutory limits) and Employer's Liability insurance (with limits of at least \$1,000,000).

Consultant shall submit to Agency, along with the certificate of insurance, a Waiver of Subrogation endorsement in favor of City, its officers, agents, employees, and volunteers.

## **OTHER PROVISIONS OR REQUIREMENTS**

**Proof of Insurance.** Consultant shall provide certificates of insurance and required endorsements to City as evidence of the insurance coverage required herein. Insurance certificates and endorsements must be approved by City's Risk Manager prior to commencement of performance. Current certification of insurance shall be kept on file with City for the contract period and any additional length of time required thereafter. City reserves the right to require complete, certified copies of all required insurance policies, at any time.

**Duration of Coverage.** Consultant shall procure and maintain for the contract period, and any additional length of time required thereafter, insurance against claims for injuries to persons or damages to property, or financial loss which may arise from or in connection with the performance of the Work hereunder by Consultant, their agents, representatives, employees, or subconsultants.

**Primary/Noncontributing.** Coverage provided by Consultant shall be primary and any insurance or self-insurance procured or maintained by City shall not be required to contribute with it. The limits of insurance required herein may be satisfied by a combination of primary and umbrella or excess insurance. Any umbrella or excess insurance shall contain or be endorsed to contain a provision that such coverage shall also apply on a primary and non-contributory basis for the benefit of City before the City's own insurance or self-insurance shall be called upon to protect it as a named insured.

**City's Rights of Enforcement.** In the event any policy of insurance required under this Agreement does not comply with these specifications or is canceled and not replaced, City has the right but not the duty to obtain the insurance it deems necessary, and any premium paid by City will be promptly reimbursed by Consultant or City will withhold amounts sufficient to pay premium from Consultant payments. In the alternative, City may cancel this Agreement.

**Acceptable Insurers.** All insurance policies shall be issued by an insurance company currently authorized by the Insurance Commissioner to transact business of insurance or is on the List of Approved Surplus Line Insurers in the State of California, with an assigned policyholders' Rating of A- (or higher) and Financial Size Category Class VII (or larger) in accordance with the latest edition of Best's Key Rating Guide, unless otherwise approved by the City's Risk Manager.

**Waiver of Subrogation.** All insurance coverage maintained or procured pursuant to this agreement shall be endorsed to waive subrogation against City, its elected or appointed officers, agents, officials, employees, and volunteers or shall specifically allow Consultant or others providing insurance evidence in compliance with these specifications to waive their right of recovery prior to a loss. Consultant hereby waives its own right of recovery against City and shall require similar written express waivers and insurance clauses from each of its subconsultants.

**Enforcement of Contract Provisions (Non Estoppel).** Consultant acknowledges and agrees that any actual or alleged failure on the part of the City to inform Consultant of non-compliance with any requirement imposes no additional obligations on the City nor does it waive any rights hereunder.

**Requirements Not Limiting.** Requirements of specific coverage features or limits contained in this Section are not intended as a limitation on coverage, limits or other requirements, or a waiver of any coverage normally provided by any insurance. Specific reference to a given coverage feature is for purposes of clarification only as it pertains to a given issue and is not intended by any party or insured to be all inclusive, or to the exclusion of other coverage, or a waiver of any type. If the Consultant maintains higher limits than the minimums shown above, the City requires and shall be entitled to coverage for the higher limits maintained by the Consultant. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the City.

**Notice of Cancellation.** Consultant agrees to oblige its insurance agent or broker and insurers to provide the City with a thirty (30) day notice of cancellation (except for nonpayment for which a ten (10) day notice is required) or nonrenewal of coverage for each required coverage. If any of

the Consultant's insurers are unwilling to provide such notice, then Consultant shall have the responsibility of notifying the City immediately in the event of Consultant's failure to renew any of the required insurance coverages, or insurer's cancellation or non-renewal.

**Additional Insured Status.** General liability, automobile liability, and umbrella/excess liability insurance policies shall provide or be endorsed to provide that City and its officers, officials, employees, agents, and volunteers shall be additional insureds under such policies.

**Prohibition Of Undisclosed Coverage Limitations.** None of the coverages required herein will be in compliance with these requirements if they include any limiting endorsement of any kind that has not been first submitted to City and approved of in writing.

**Separation of Insureds.** A severability of interests' provision must apply for all additional insureds ensuring that Consultant's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the insurer's limits of liability. The policy(ies) shall not contain any cross-liability exclusions.

**Pass Through Clause.** Consultant agrees to ensure that its subconsultants, subcontractors, and any other party who is brought onto or involved in the project/service by Consultant (hereinafter collectively "Subcontractor"), provide the same minimum insurance coverage and endorsements required of Consultant under this Agreement. Consultant agrees to monitor and review all such coverage and assumes all responsibility for ensuring that such coverage is provided in conformity with the requirements of this section. However, in the event Consultant's Subcontractor cannot comply with this requirement, which proof must be submitted to the City, Consultant may still be able to utilize the Subcontractor provided Consultant shall be required to ensure that its Subcontractor provide and maintain insurance coverage and endorsements sufficient to the specific risk of exposure involved with Subcontractor's scope of work and services, with limits less than required of the Consultant, but in all other terms consistent with the Consultant's requirements under this Agreement. This provision does not relieve the Consultant of its contractual obligations under the Agreement and/or limit its liability to the amount of insurance coverage provided by its subcontractors. This provision is intended solely to provide Consultant with the ability to utilize a Subcontractor who may be otherwise qualified to perform the work or services but may not carry the same insurance limits as required of the Consultant under this Agreement given the limited scope of work or services provided by the subcontractor. Consultant agrees that upon request, all agreements with Subcontractors, and others engaged in the project and/or services, will be submitted to City for review.

**City's Right to Revise Specifications.** The City reserves the right at any time during the term of the contract to change the amounts and types of insurance required by giving the Consultant ninety (90) days' advance written notice of such change. If such a change results in substantial additional costs to the Consultant, the City and Consultant may renegotiate the Consultant's compensation.

**Self-Insured Retentions.** Any self-insured retentions must be declared to and approved by the City. City reserves the right to require that self-insured retentions be eliminated, lowered, or replaced by a deductible, or require proof of ability to pay losses and related investigations,

claim administration, and defense expenses within the retention through confirmation from the underwriter.

**Timely Notice Of Claims.** Consultant shall give City prompt and timely notice of claims made or suits instituted that arise out of or result from Consultant's performance under this Agreement, and that involve or may involve coverage under any of the required liability policies.

**Additional Insurance.** The consultant shall also procure and maintain, at its own cost and expense, any additional kinds of insurance, which in its own judgment may be necessary for its proper protection and prosecution of the work.

**AGREEMENT FOR PROFESSIONAL SERVICES**

This Agreement is made and entered into as of May 28, 2024, by and between the City of Malibu (hereinafter referred to as the "City"), and Clanton & Associates, Inc. (hereinafter referred to as "Consultant").

The City and the Consultant agree as follows:

**RECITALS**

- A. The City does not have the personnel able and/or available to perform the services required under this Agreement.
- B. The City desires to contract out for consulting services for certain projects relating to plan check and inspections for the Malibu Dark Sky Program.
- C. The Consultant warrants to the City that it has the qualifications, experience and facilities to perform properly and timely the services under this Agreement.
- D. The City desires to contract with the Consultant to perform the services as described in Exhibit A of this Agreement.

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

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

**2.0 TERM OF AGREEMENT.** This Agreement will become effective on July 1, 2024, and will remain in effect for a period of two (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 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 his designee, has the authority to provide that approval or authorization.

**4.0 COMPENSATION FOR SERVICES.** The City shall pay the Consultant for its professional services rendered and costs incurred pursuant to this Agreement in accordance with the Scope of Work’s fee and cost schedule (Exhibit B). No additional compensation shall be paid for any other expenses incurred, unless first approved by the City Manager, or designee.

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

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

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

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

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

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

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

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

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

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

**6.4 Insurance.** The Consultant shall submit to the City certificates indicating compliance with the following minimum insurance requirements no less than one (1) day prior to beginning of performance under this Agreement. Consultant further agrees to comply with all provisions in the attached Exhibit B which is incorporated herein.

**6.5 Indemnification.**

To the fullest extent permitted by law, Consultant shall indemnify and hold harmless City and any and all of its officials, employees, agents, and/or volunteers (“Indemnified Parties”) from and against any and all losses, liabilities, damages, costs, and expenses, including attorney’s fees and costs, caused in whole or in part by the negligent or wrongful act, error or omission of Consultant, its officers, agents, employees or subconsultants (or any agency or individual that Consultant shall bear the legal liability thereof) in the performance of services under this Agreement. Consultant’s duty to indemnify and hold harmless City shall not extend to the City’s sole or active negligence or willful misconduct.

**6.5.1. Duty to defend:**

In the event the Indemnified Parties, individually or collectively, are made a party to any action, lawsuit, or other adversarial proceeding arising from the performance of the services encompassed by this Agreement, and upon demand by City, Consultant shall defend the Indemnified Parties at Consultant’s cost or at City’s option, to reimburse City for its costs of defense, including reasonable attorney’s fees and costs incurred in the defense of such matters to the extent the matters arise from, relate to or are caused by Consultant’s negligent acts, errors or omissions. Payment by City is not a condition precedent to enforcement of this provision. In the event of any dispute between Consultant and City, as to whether liability arises from the sole or active negligence or willful misconduct of the City or its officers, employees, or agents, Consultant will be obligated to pay for City’s defense until such time as a final judgment has been entered adjudicating the Indemnified Parties as solely or actively negligent or to have acted with willful misconduct. Consultant will not be entitled in the absence of such a determination to any reimbursement of defense costs including but not limited to attorney’s fees, expert fees, and costs of litigation.

**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 and appropriately executed by both the

City and the Consultant.

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

<b>CITY:</b>	Steve McClary City Manager City of Malibu 23825 Stuart Ranch Road Malibu, CA 90265-4861 TEL (310) 456-2489 x 226 FAX (310) 456-2760	<b>CONSULTANT:</b>	Dane Sanders President Clanton & Associates, Inc. 4699 Nautilus Court, Suite 102 Boulder, CO 80301 TEL: (303) 530-7229
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**6.20 Warranty of Authorized Signatories and Acceptance of Facsimile or Electronic Signatures.** 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. The Parties agree that this Contract, agreements ancillary to this Contract, and related documents to be entered into in connection with this Contract 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.

**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.

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

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

**7.2 Disclosure not Required.** By their initials next to this paragraph, City and Consultant hereby acknowledge that Consultant is not a “consultant” for the purpose of the California Political Reform Act because Consultant’s duties and responsibilities are not within the scope of the definition of consultant in Fair Political Practice Commission Regulation 18700.3(a) and is otherwise not serving in staff capacity in accordance with the City’s Conflict of Interest Code.

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

Consultant Initials DA

This Agreement is executed on May 28, 2024, at Malibu, California, and effective as of July 1, 2024.

CONSULTANT:

  
\_\_\_\_\_  
By: DANE SANDERS, President  
Clanton & Associates, Inc.

CITY OF MALIBU:

\_\_\_\_\_  
STEVE UHRING, Mayor

ATTEST:

\_\_\_\_\_  
KELSEY PETTIJOHN, City Clerk  
(seal)

APPROVED AS TO FORM:

THIS DOCUMENT HAS BEEN REVIEWED  
BY THE CITY ATTORNEY'S OFFICE  
\_\_\_\_\_  
TREVOR RUSIN, Interim City Attorney

## **EXHIBIT A SCOPE OF WORK**

Amend the City of Malibu's existing outdoor lighting ordinance with updated 2024 vocabulary from Dark Sky International and create a corresponding compliance form to streamline the City of Malibu's application process. The objective will be to simplify the application process, eliminate the need to outsource application review, determine how to bring projects into compliance, determine permit fees, and conduct light trespass calculations.

- Streamline the development process including:
  - Review and evaluate how the City's development process could be streamlined for processing Dark Sky applications; provide memo on streamlined development procedure
  - Update the City's applications and forms for Dark Sky; provide procedures for City staff to process Dark Sky applications
  - Provide training for City staff as requested by the City
  - Be available for public meetings on Dark Sky related projects and agenda items
  - Provide recommendations on deviation requests in the planning phase
  - Provide recommendations to the City to help improve the Dark Sky Program; provide recommendations on City applications and forms
- Maintain one (1) individual as the contact for all communication with the City.
- Respond within one (1) business day to questions from the City.
- Accept any and all documents electronically; including utilization of OnBase (records management system) and any additional electronic formats accepted by the City.

### **Phase 1: Evaluation and Amendment of Existing Dark Sky Ordinance**

- Review existing ordinance and create amendments (80% draft) based on 2024 Dark Sky vocabulary.
- Virtual review and collection of feedback from City staff and key stakeholders.
- Finalize 100% draft of amended outdoor lighting ordinance.
- Virtual training for City staff and key stakeholders.

### **Task Deliverable(s)**

2024 City of Malibu Dark Sky Ordinance

City staff training

### **Phase 2: Evaluation of application process and compliance form creation**

- Review of current process for City development.
- Review current process for outdoor lighting applications.
- Review examples of existing Dark Sky applications.
- Coordination with City staff to determine lighting application format.
  - Determine if it will be a web form, excel spreadsheet, etc.
  - City to own and host compliance form.
- Create Dark Sky application compliance form to address the following:
  - Identify project criteria from the municipal lighting code to be input on application form.

- Input of City’s plan check and permit fees.
- Identify how to submit for mixed use applicants.
- Information on form to bring a project into compliance, based on project inputs.
- Compliance form will be a living document so it can be updated as needed.

**Task Deliverable:**

Lighting compliance form for Public Open Space, Residential, and All Other Zoning Districts

**Phase 3: Education and Outreach – for ease of adoption of compliance forms**

- Attendance for up to two public meetings, one in-person and one virtual.
  - In-person Consultant attendance for two staff members
- One in-person City Staff Training workshop
- In-person Public Workshop Training
- Video training (to be distributed by City)

**Task Deliverable:**

City staff compliance form training and materials, public workshop training and materials, video of training.

**Phase 4: Optional Services**

- In Person Lighting Education for Community/Stakeholders
  - Trip would be grouped with Phase 3 in-person City Staff Training workshops
  - Consultant attendance for two staff members
- Virtual City/Staff Lighting Education Session
- Ongoing Professional Review of Deviation Requests (up to ten)

**EXHIBIT B**  
**FEE SCHEDULE**

The City shall pay the Consultant for its professional services rendered and costs incurred pursuant to this Agreement in accordance with the Scope of Work's fee and cost schedule. No additional compensation shall be paid for any other expenses incurred, unless first approved by the City Manager, or designee.

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

**Annual Escalation.** Standard rates increase per year is limited to the Cost-of-Living Adjustment (COLA) as adopted in the City's budget. All subcontractors shall adhere to this limit to rates increase.

**Non-Billable Administrative Overhead**

The Consultant will bill only for time spent performing assigned professional work. All other activities associated with carrying out the contract are not billable and are therefore considered overhead or administrative functions contained within the hourly rate. Typical examples of non-billable overhead activities are:

- Discussion with staff or applicant about the cost of services or to address billing disputes.
- Meetings to discuss work performance, contract or additional services.
- Preparation of invoices and other administrative clerical services.
- Contract administration, such as preparing or discussing contract amendments.
- Time spent resolving errors in the event the Consultant is responsible.

City of Malibu Professional Engineering Services Citywide Dark Sky	Clanton & Associates								Hours per Task	Cost per Task
	President	Outdoor Lighting Specialist	Senior Designer II	Engineer II	Engineer I	Designer II	Designer I			
	\$350	\$240	\$235	\$170	\$150	\$155	\$145			
<b>1 Evaluation of Existing Dark Sky Ordinance</b>										
Project kick-off meeting	2	2	4	0	0	0	2	10	\$2,410	
Review existing ordinance and draft 80% Dark Sky update	0	16	2	0	0	0	2	20	\$4,600	
Virtual meetings to collect feedback from city staff and stakeholders	0	8	2	0	0	0	2	12	\$2,680	
Coordination meetings to release 100% draft with city staff	0	4	2	0	0	0	0	6	\$1,430	
<b>Task 1 Totals</b>	<b>2</b>	<b>30</b>	<b>10</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>6</b>	<b>48</b>	<b>\$11,120</b>	
<b>2 Creation of Lighting Ordinance Compliance Form</b>										
Review existing ordinance and city development process	0	3	3	3	0	3	3	15	\$2,835	
Evaluate current Dark Sky lighting application process (including review of existing applications)	0	2	2	2	2	0	2	10	\$1,880	
Determine lighting application format	2	4	8	8	0	0	4	26	\$5,480	
Coordination with city staff	0	0	20	0	0	0	8	28	\$5,860	
Three Lighting Ordinance Compliance Forms: Public Open Space, Residential and All Other Zoning Districts	4	8	16	24	36	12	24	124	\$21,900	
<b>Task 2 Totals</b>	<b>6</b>	<b>17</b>	<b>49</b>	<b>37</b>	<b>38</b>	<b>15</b>	<b>41</b>	<b>203</b>	<b>\$37,955</b>	
<b>3 Education and Outreach</b>										
Attendance for two (2) public meetings, one in person, one virtual (including travel time and preparation for meetings)	0	12	16	0	0	0	8	36	\$7,800	
Creation of material for training workshops	0	2	8	8	0	0	16	34	\$6,040	
One in person city staff training workshop	0	8	8	0	0	0	0	16	\$3,800	
One in person public training workshop	0	8	8	0	0	0	0	16	\$3,800	
Video training and materials	0	2	4	8	0	0	8	22	\$3,940	
<b>Task 3 Totals</b>	<b>0</b>	<b>32</b>	<b>44</b>	<b>16</b>	<b>0</b>	<b>0</b>	<b>32</b>	<b>22</b>	<b>\$25,380</b>	
<b>Total Hours By Staff</b>	<b>8</b>	<b>79</b>	<b>103</b>	<b>53</b>	<b>38</b>	<b>15</b>	<b>79</b>	<b>273</b>		
									Direct Labor Costs:	\$74,455
									Travel & Lodging	\$5,000
									Other Material Direct Costs	\$500
									<b>Clanton &amp; Associates Total Cost</b>	<b>\$79,955</b>

<b>4 Optional Services Under Contract</b>										
In Person Lighting Education for Community/Stakeholders.	0	4	8	0	8	16	0	36	\$6,520	
Virtual City/Staff Lighting Education Session.	0	4	4	0	4	0	4	16	\$3,080	
Ongoing Professional Review of Deviation Requests, up to ten (10).	0	30	8	0	0	8	0	46	\$10,320	
<b>Task 4 Totals</b>	<b>0</b>	<b>38</b>	<b>20</b>	<b>0</b>	<b>12</b>	<b>24</b>	<b>4</b>	<b>98</b>	<b>\$19,920</b>	

All rates listed above shall include overhead costs including, but not limited to salaries, benefits, Workers Compensation Insurance, office expenses, mileage and courier service. If staff substitutions are necessary, or if staff is promoted, the original rates listed above will still apply.

**EXHIBIT C**  
**INSURANCE LANGUAGE**

Without limiting Consultant's indemnification of City, and prior to commencement of work and/or services under this Agreement, Consultant shall obtain, provide, and maintain at its own expense during the term of this Agreement, policies of insurance of the type and amounts described below and in a form satisfactory to City.

**General Liability Insurance.** Consultant shall maintain commercial general liability insurance with coverage at least as broad as Insurance Services Office form CG 00 01, in an amount not less than \$1,000,000 per occurrence, \$2,000,000 general aggregate, for bodily injury, personal injury, and property damage. The policy must include contractual liability that has not been amended. Any endorsement restricting standard ISO "insured contract" language will not be accepted.

**Automobile Liability Insurance.** Consultant shall maintain automobile insurance at least as broad as Insurance Services Office form CA 00 01 covering bodily injury and property damage for all activities of the Consultant arising out of or in connection with Work to be performed under this Agreement, including coverage for any owned, hired, non-owned, or rented vehicles, in an amount not less than 1,000,000 combined single limit for each accident.

**Professional Liability (Errors & Omissions) Insurance.** Consultant shall maintain professional liability insurance that covers the Services to be performed in connection with this Agreement, in the minimum amount of \$1,000,000 per claim and in the aggregate. Any policy inception date, continuity date, or retroactive date must be before the effective date of this agreement and Consultant agrees to maintain continuous coverage through a period no less than three years after completion of the services required by this agreement.

**Workers' Compensation Insurance.** Consultant shall maintain Workers' Compensation Insurance (statutory limits) and Employer's Liability insurance (with limits of at least \$1,000,000).

Consultant shall submit to Agency, along with the certificate of insurance, a Waiver of Subrogation endorsement in favor of City, its officers, agents, employees, and volunteers.

**OTHER PROVISIONS OR REQUIREMENTS**

**Proof of Insurance.** Consultant shall provide certificates of insurance and required endorsements to City as evidence of the insurance coverage required herein. Insurance certificates and endorsements must be approved by City's Risk Manager prior to commencement of performance. Current certification of insurance shall be kept on file with City for the contract period and any additional length of time required thereafter. City reserves the right to require complete, certified copies of all required insurance policies, at any time.

**Duration of Coverage.** Consultant shall procure and maintain for the contract period, and any additional length of time required thereafter, insurance against claims for injuries to persons or damages to property, or financial loss which may arise from or in connection with the

performance of the Work hereunder by Consultant, their agents, representatives, employees, or subconsultants.

**Primary/Noncontributing.** Coverage provided by Consultant shall be primary and any insurance or self-insurance procured or maintained by City shall not be required to contribute with it. The limits of insurance required herein may be satisfied by a combination of primary and umbrella or excess insurance. Any umbrella or excess insurance shall contain or be endorsed to contain a provision that such coverage shall also apply on a primary and non-contributory basis for the benefit of City before the City's own insurance or self-insurance shall be called upon to protect it as a named insured.

**City's Rights of Enforcement.** In the event any policy of insurance required under this Agreement does not comply with these specifications or is canceled and not replaced, City has the right but not the duty to obtain the insurance it deems necessary, and any premium paid by City will be promptly reimbursed by Consultant or City will withhold amounts sufficient to pay premium from Consultant payments. In the alternative, City may cancel this Agreement.

**Acceptable Insurers.** All insurance policies shall be issued by an insurance company currently authorized by the Insurance Commissioner to transact business of insurance or is on the List of Approved Surplus Line Insurers in the State of California, with an assigned policyholders' Rating of A- (or higher) and Financial Size Category Class VII (or larger) in accordance with the latest edition of Best's Key Rating Guide, unless otherwise approved by the City's Risk Manager.

**Waiver of Subrogation.** All insurance coverage maintained or procured pursuant to this agreement shall be endorsed to waive subrogation against City, its elected or appointed officers, agents, officials, employees, and volunteers or shall specifically allow Consultant or others providing insurance evidence in compliance with these specifications to waive their right of recovery prior to a loss. Consultant hereby waives its own right of recovery against City and shall require similar written express waivers and insurance clauses from each of its subconsultants.

**Enforcement of Contract Provisions (Non Estoppel).** Consultant acknowledges and agrees that any actual or alleged failure on the part of the City to inform Consultant of non-compliance with any requirement imposes no additional obligations on the City nor does it waive any rights hereunder.

**Requirements Not Limiting.** Requirements of specific coverage features or limits contained in this Section are not intended as a limitation on coverage, limits or other requirements, or a waiver of any coverage normally provided by any insurance. Specific reference to a given coverage feature is for purposes of clarification only as it pertains to a given issue and is not intended by any party or insured to be all inclusive, or to the exclusion of other coverage, or a waiver of any type. If the Consultant maintains higher limits than the minimums shown above, the City requires and shall be entitled to coverage for the higher limits maintained by the Consultant. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the City.

**Notice of Cancellation.** Consultant agrees to oblige its insurance agent or broker and insurers to provide the City with a thirty (30) day notice of cancellation (except for nonpayment for which a ten (10) day notice is required) or nonrenewal of coverage for each required coverage. If any of the Consultant's insurers are unwilling to provide such notice, then Consultant shall have the responsibility of notifying the City immediately in the event of Consultant's failure to renew any of the required insurance coverages, or insurer's cancellation or non-renewal.

**Additional Insured Status.** General liability, automobile liability, and umbrella/excess liability insurance policies shall provide or be endorsed to provide that City and its officers, officials, employees, agents, and volunteers shall be additional insureds under such policies.

**Prohibition Of Undisclosed Coverage Limitations.** None of the coverages required herein will be in compliance with these requirements if they include any limiting endorsement of any kind that has not been first submitted to City and approved of in writing.

**Separation of Insureds.** A severability of interests' provision must apply for all additional insureds ensuring that Consultant's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the insurer's limits of liability. The policy(ies) shall not contain any cross-liability exclusions.

**Pass Through Clause.** Consultant agrees to ensure that its subconsultants, subcontractors, and any other party who is brought onto or involved in the project/service by Consultant (hereinafter collectively "Subcontractor"), provide the same minimum insurance coverage and endorsements required of Consultant under this Agreement. Consultant agrees to monitor and review all such coverage and assumes all responsibility for ensuring that such coverage is provided in conformity with the requirements of this section. However, in the event Consultant's Subcontractor cannot comply with this requirement, which proof must be submitted to the City, Consultant may still be able to utilize the Subcontractor provided Consultant shall be required to ensure that its Subcontractor provide and maintain insurance coverage and endorsements sufficient to the specific risk of exposure involved with Subcontractor's scope of work and services, with limits less than required of the Consultant, but in all other terms consistent with the Consultant's requirements under this Agreement. This provision does not relieve the Consultant of its contractual obligations under the Agreement and/or limit its liability to the amount of insurance coverage provided by its subcontractors. This provision is intended solely to provide Consultant with the ability to utilize a Subcontractor who may be otherwise qualified to perform the work or services but may not carry the same insurance limits as required of the Consultant under this Agreement given the limited scope of work or services provided by the subcontractor. Consultant agrees that upon request, all agreements with Subcontractors, and others engaged in the project and/or services, will be submitted to City for review.

**City's Right to Revise Specifications.** The City reserves the right at any time during the term of the contract to change the amounts and types of insurance required by giving the Consultant ninety (90) days' advance written notice of such change. If such a change results in substantial additional costs to the Consultant, the City and Consultant may renegotiate the Consultant's compensation.

**Self-Insured Retentions.** Any self-insured retentions must be declared to and approved by the City. City reserves the right to require that self-insured retentions be eliminated, lowered, or replaced by a deductible, or require proof of ability to pay losses and related investigations, claim administration, and defense expenses within the retention through confirmation from the underwriter.

**Timely Notice Of Claims.** Consultant shall give City prompt and timely notice of claims made or suits instituted that arise out of or result from Consultant's performance under this Agreement, and that involve or may involve coverage under any of the required liability policies.

**Additional Insurance.** The consultant shall also procure and maintain, at its own cost and expense, any additional kinds of insurance, which in its own judgment may be necessary for its proper protection and prosecution of the work.