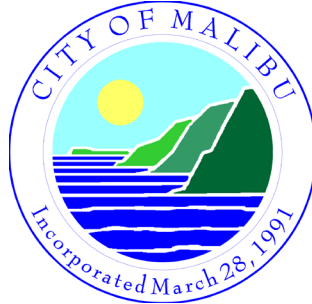


# **CITY OF MALIBU**



## **REQUEST FOR QUALIFICATIONS / PROPOSALS**

**Removal of Hazard Trees throughout  
the City of Malibu**

**Date Issued: July 19, 2021**

Proposals must be received no later than  
4:00 p.m. on Friday, August 6, 2021 at the following address:

City of Malibu  
Attn: Chris Brossard, Fire Safety Liaison  
23825 Stuart Ranch Road  
Malibu, CA 90265  
Phone: (310) 456-2489  
[Cbrossard@Malibucity.org](mailto:Cbrossard@Malibucity.org)

REQUEST FOR QUALIFICATIONS/PROPOSALS FOR  
**Removal of Hazard Trees throughout the City of Malibu**

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ATTACHMENTS

Attachment A – Request for Proposal Terms and Conditions

Attachment B – Agreement for Professional Services

REQUEST FOR QUALIFICATIONS/PROPOSALS  
FOR  
CITYWIDE HAZARD TREE REMOVAL SERVICES

**1. Project Background and Description**

Malibu is a beach city situated about 30 miles west of downtown Los Angeles that stretches for 21 miles along the coastline abutting the Santa Monica Mountains. The City has a population of nearly 13,000 but has a visitor population of up to 15 million people a year. Most Malibu residents live within a few hundred yards of Pacific Coast Highway, which traverses the City, and some residents live up to a mile away from the beach up narrow canyons with one way in and one way out.

The City of Malibu has a long history of damaging wildland fires, including the recent Woolsey Fire of 2018. Inside the Woolsey Fire burn scar, the City has varying degrees of remaining hazard trees that are within 100 feet of homes, streets, and other common areas. The fire left pockets of hazardous vegetation intermixed within these communities. In addition, most neighborhoods east of Malibu Canyon Road have not had a significant fire in nearly 30 years and are extremely vulnerable to a catastrophic fire.

As part of the City of Malibu's ongoing efforts to be prepared for and help residents be prepared for wildfires, the City is implementing a Hazard Tree Removal Program. Residents with dead and dying hazard trees can contact the City's Fire Safety Liaison to have those trees removed.

**2. Proposal Submittal Guidelines**

The City is requiring all proposals submitted in response to this RFQ/P to follow a specific format. A cover letter shall guarantee that key personnel, or equally qualified replacements, will be committed to perform the required tasks throughout the duration of the contract. A cost schedule shall be included with the proposal submittal.

Three (3) copies of the technical qualifications and cost proposal, including one electronic copy, will be required with all copies having been signed by the company official with the power to bind the company in its proposal.

Technical Qualifications and Cost Proposals may be mailed or hand-carried to City Hall but must be received no later than 4:00 p.m. on Friday, August 6, 2021. Proposals may be withdrawn prior to the established date and time.

The City of Malibu does not recognize the U.S. Postal Service, or any other organization, as its agent for purposes of accepting proposals. All proposals received after the deadline will be rejected and returned unopened. No extensions will be granted.

All Technical Qualifications and Cost Proposals will become the property of the City of Malibu and will be made available for public inspection after an award is made or rejected.

The Technical Qualifications and the Cost Proposal shall be placed in separate sealed envelopes.

### **3. Technical Qualifications/Cost Proposal Format**

The Technical Qualifications shall be organized in the following sections to facilitate review by the City. Consultants shall adhere to the page limit stated below. If additional information is needed, it may be included in the Appendix. However, due to time constraints, the City may not be able to review the items in the Appendix.

Technical Qualifications shall be limited to a total maximum of fifteen (15) double-sided pages or thirty (30) single-sided pages, all letter size. This total page limit may be split across Sections 1 through 3 as deemed appropriate by the consultant. Large format pages, including 11" x 17" pages, will be counted as two (2) pages.

#### **Technical Qualifications shall include the following:**

##### **a. Cover Letter/Executive Summary**

Provide a cover letter/executive summary emphasizing the strong points of the project team, qualifications, and experience. The cover letter/executive summary shall include the name, address, telephone number, title and signature of the firm's contact person for this proposal, and state that the submittal is valid for 120 days. The cover letter constitutes certification by the consultant, under penalty of perjury, that the consultant complies with nondiscrimination requirements of the State and the Federal Government. The cover letter/executive summary shall also include a statement by the consultant informing the City whether or not they have any exceptions with the City's terms and contract conditions stated in this RFQ/P, including but not limited to, insurance and the Agreement for Professional Services, and stating that only those exceptions noted in the consultant's proposal will be subject to discussion and negotiation with the City. The cover letter/executive summary shall be signed by a person with the official authority to bind the company. An unsigned proposal or one signed by an individual unauthorized to bind the consultant may be rejected.

**b. Experience of Firm(s) and Individuals**

Include summary descriptions of the company's (or companies') and individuals' applicable experience, and resumes detailing their experience with conducting the services requested as outlined in the Draft Scope of Work.

The Consultant should have a minimum of ten (10) years of experience and the Project Manager shall also have a minimum of ten (10) years of experience in the field on related activity. Include any municipal agencies they have worked with in the past three years and their level of involvement. A description of how overall supervision will be provided should be included.

Provide your firm's experience conducting the services requested. Describe comparable projects performed by your firm in the last five years, including the number of projects, scope of service, and status of projects.

Detailed resumes highlighting experience pertinent to this project should be provided in an Appendix. These resumes will not be counted in the page limit.

**c. Team Organization**

Provide an organization chart of your team. Describe its organization, and the responsibilities and level of commitment of individuals within the team. Identify the team's "key" personnel members. Describe why each team member is proposed for their respective positions or roles on the team.

Identify who will be the Project Manager and personnel responsible for daily management of the services requested and interaction with City staff. (These positions may be filled by the same person, or may be split across two persons, as proposed by the consultant). The Consultant shall have arborists and/or tree workers licensed/certified through the ISA and all certifications/licenses shall be current and active.

**d. Project Understanding and Approach/Methodology**

Prepare a summary description of how the consultant will address the issues described below and to complete the Scope of Work presented below. Consultants are encouraged to suggest modifications to the scope.

The proposal should identify potential issues that arise with removing trees, particularly dead and dying trees, and demonstrate an ability to meet these challenges.

Describe the methods by which your firm will fulfill the services requested in the Scope of Services and subsequent sections.

Comment on other areas that may make your firm different from your competitors.

**e. Conflict of Interest**

The Consultant shall disclose any financial, business, or other relationships with the City that may have an impact on the outcome of this contract or any resulting construction project. The Consultant shall also list current clients who may have a financial interest in the outcome of this contract.

**f. Exceptions**

This section shall discuss any exceptions or requested changes that the Proposer has to the City's RFQ/P conditions, requirements, and sample contract. If there are no exceptions noted, it is assumed the Proposer will accept all conditions and requirements identified in the attached draft Agreement for Professional Services (Attachment B). Items not excepted will not be open to later negotiation.

**g. Cost Proposal**

Three copies of the cost proposal shall be submitted in a separate sealed envelope, plainly labeled "Cost Proposal" with the name of the company and the project title. The cost proposal is considered a criteria once the final recommendation has been made, but is not the sole factor in the selection process. Upon the completion of the initial evaluations, the cost proposals will be opened, and negotiations will commence.

This project will require the firm to comply with all prevailing local, State and Federal wages requirements, including record-keeping requirements.

In accordance with the provisions of Section 1773.2 of the California Labor Code, copies of the general prevailing rate of per diem wages, as determined by the State Director of Industrial Relations, are available on the State Department of Industrial Relations (DIR) website at <https://www.DIR.ca.gov>. It shall be mandatory for the firm to whom the contract is awarded and for any subcontractor to comply with all provisions of the California Labor Code relating to prevailing wage rates, as applicable. The firm and all subcontractors must be registered with the DIR. The firm shall maintain registration for the duration of the project and require the same of any subcontractors. This project may also be subject to compliance monitoring and enforcement by the DIR. It shall be the firm's sole responsibility to comply with all applicable registration and labor compliance requirements, including the submission of payroll records directly to the DIR.

The firm shall complete Appendix C, Cost Proposal. The cost proposal shall be submitted for the firm's services for items outlined in the draft scope of work. The cost proposal shall contain a breakdown of the anticipated labor and equipment rates.

All fees shall remain unchanged for two years. Thereafter, fees may be adjusted based upon the Los Angeles-Long Beach-Anaheim, CA Consumer Price Index for the past 12 months as of the April report, to be effective July 1. The City shall solely determine if a fee adjustment will be approved. In no event shall a fee adjustment exceed 5% in any one year.

#### **4. Selection Procedure**

The following is an outline of the procedure the City will use in the selection process:

- a. A Selection Committee is formed comprised of City personnel and, if the City chooses, other agency personnel.
- b. The Selection Committee reviews and evaluates the proposals submitted by the prospective consultants and determines if oral interviews are needed.
- c. If needed, the Selection Committee determines which of the prospective consultants will be invited to the oral interview process.
- d. The Selection Committee evaluates and ranks the firms based on the oral interview (if needed) and completeness of the proposal, and makes a final recommendation.
- e. Negotiations will take place with the primary firm on the final scope of work, contract, and proposal price.

#### **5. Evaluation Criteria**

The Selection Committee will evaluate, rate, and rank the proposals based on the following criteria:

- **Technical Proposal (Total Points Possible = 60)**
  - a. Responsiveness to the terms, conditions, and items of performance (5 pts.)
  - b. Presentation, completeness, and thoroughness of the proposal (10 pts.)
  - c. Experience and knowledge of the scope and services to be performed (20 pts.)
  - d. Project understanding and methodology (10 pts.)
  - e. Qualifications and experience of key personnel (15 pts.)
  
- **Oral Interview Presentation (if needed) (Total Points Possible = 40)**
  - a. Overall quality of presentation and response to questions (15 pts.)
  - b. Understanding scope of work (10 pts.)
  - c. Experience with engineering related issues within the City or other agencies (10 pts.)
  - d. Approach to performing work (5 pts.)

- **Cost Proposal**

No cost proposal will be reviewed prior to the evaluation of the technical qualifications proposals and oral interviews. Once final recommendations have been made, negotiations on the final cost proposal will ensue. In the event no agreement can be reached on the price, the City reserves the right to begin negotiations with all eligible proposers.

The City reserves the right to reject any and all proposals.

## 6. **Time Schedule**

The dates below are subject to change at the City's discretion:

- |   |                 |
|---|-----------------|
| • Solicit for Proposals                     | July 19, 2021   |
| • Last Day to Submit Questions              | July 30, 2021   |
| • Last Day for City to Respond to Questions | August 5 , 2021 |
| • Proposal Deadline                         | August 6, 2021  |
| • Complete Review, Rank Proposals           | TBD             |
| • Oral Interviews (if needed)               | TBD             |
| • Negotiations                              | TBD             |
| • Award of Contract                         | TBD             |

## 7. **Inquiries**

All questions regarding the Request for Qualifications/Proposals (RFQ/P) must be submitted in writing. All questions regarding this RFQ/P should be sent via email to Chris Brossard, Fire Safety Liaison, at [CBrossard@malibucity.org](mailto:CBrossard@malibucity.org) no later than 4:00 p.m. on Friday, August 6, 2021.

## 8. **Draft Scope of Work**

- A. The Consultant shall provide all professional services described herein below. The City is seeking a Certified Arborist and Tree Removal Company to evaluate and remove approximately 100 dead and/or damaged trees throughout the City. Approximately 7,000 homes exist within the City and are all immediately adjacent to or within the Wildland Urban Interface. The scope of work includes the removal of dead or damaged trees on both private and public property that pose a hazard to people, personal property, other structures and/or critical infrastructure. Removal includes cutting a tree to its base and disposing of the tree material but does not include stump grinding. All work will take place within 100 feet or 1.5 times the height of a hazard tree in relation to a structure, road, trail, or common area.
- B. Evaluation. The Fire Safety Liaison will identify the trees for the selected Arborist to determine if the tree is dead, dying and poses a hazard. The Fire Safety Liaison will determine if removal of the tree would have any impacts on the environment or wildlife.



- C. Schedule of Work and Hours of Operation. The Contractor will be required to commence work within ten (10) calendar days of award of contract. Contractor shall work with the Fire Safety Liaison on establishing a schedule for all types of work. Contractor shall submit and gain approval of a daily work schedule indicating the order and location of work. The general hours of operations shall be 8:00 AM to 5:00 PM. The days of operations shall be Monday through Friday with all major holidays observed. No work shall be performed outside of the general hours of operation or on Saturday/Sunday without prior authorization by the City.
- D. Safety Requirements. Contractor will be responsible for high visibility vests for employees when working within 25 feet of roadways. Safety cones shall be used around equipment and roadway. All traffic control measures shall be implemented per the California Manual on Uniform Traffic Control Devices for Streets and Highways (MUTCD). The Contractor shall take all due precautions to avoid damaging any property. Any damage to private property or to the infrastructure by the contractor during the terms of this contract shall be repaired at the sole expense of the Contractor within ten (10) days of the damage. All damages must be reported to the Fire Safety Liaison.
- E. Removal. The selected Contractor shall fell the identified trees, remove and haul away all debris from the site, and flush cut the stump as low as possible. Under no circumstances shall debris be left on the parkway or street over weekends or holidays. In addition, keeping debris off the street and parkway areas and out of the gutters prevents the debris from entering and plugging the storm drain system. Environmentally accepted practices of debris disposal are also an important part of this work.
- F. Site Restoration. The Contractor shall ensure that all wood chips and debris generated by the felling process are raked and removed from the stump location. Site cleanup shall be completed immediately after tree removal has been completed. More specifically, all wood chips, wood dust or any other materials generated during the job shall be removed from the work area before completion. The work area includes the street and curb, parkway, sidewalk, private lawns, driveways and any area affected by the work. If site cleanup is to be delayed for any reason, barricades, cones and/or caution tape must be used until the site is clean as determined by the Fire Safety Liaison. Gas blowers will not be allowed at any time in the City of Malibu. Upon completion of the entire operation, the site should be returned to the same condition that existed prior to work being done.
- G. Disposal of Material. The Contractor shall legally dispose of all waste material generated on and from the removal of trees at a dump site compliant with State and Federal regulations. Contractor shall provide a monthly report of the amount in cubic yards of material disposed and where the material was disposed.

H. Contractor is required to take before and after photos of the tree, as well as the job site. Photos will be furnished to the Fire Safety Liaison.

CITY OF MALIBU

Public Safety

REQUEST FOR PROPOSAL TERMS AND CONDITIONS

Contract Requirement - The Consultant to whom the contract is awarded shall execute a written contract with the City within ten (10) calendar days after notice of the award has been sent by mail to the Consultant at the address given in the Proposal. The contract/agreement shall be made in the form adopted by the City and incorporated in these specifications. The Consultant warrants that it possesses, or has arranged through subcontracts, all capital and other equipment, labor and materials to carry out and complete the work hereunder in compliance with all Federal, State, County, City and Special District Laws, Ordinances, and Regulations, which are applicable. Consultant, in its proposal, shall inform the City of any exceptions it may have with the City's terms and contract conditions stated in this RFQ/P, including, but not limited to, insurance and the Agreement for Professional Services. Only those exceptions noted in the Consultant's proposal will be subject to discussion and negotiation with the City.

Contract Assignment - The Consultant shall not assign, transfer, convey or otherwise dispose of the contract, or its right, title or interest, or its power to execute such a contract to any individual or business entity of any kind without the previous written consent of the City of Malibu.

Non-Discrimination - In the performance of the terms of this contract, the Consultant agrees that it will not engage in, nor permit such subcontractors as it may employ to engage in, discrimination in employment of persons because of age, race, color, sex, national origin or ancestry, or religion of such person(s).

Communications Regarding Request for Qualifications/Proposals (RFQ/P) - If a Consultant is in doubt as to the true meaning or intent of any part of the RFQ/P, he/she may submit to the Fire Safety Liaison, or his designee, a written request for an interpretation or a correction thereof. Interpretation or corrections of the RFQ/P shall be made only by addendum duly issued by the Fire Safety Liaison, or his designee, and a copy of such addendum will be mailed or delivered to each person receiving an RFQ/P, and such addendum shall be considered a part of, and incorporated in, the RFQ/P. All timely requests for information submitted in writing will receive a written response from the City. Telephone communication with City staff is not encouraged but will be permitted. However, any such oral communication shall not be binding on the City. The deadline for submitting requests for information related to the RFQ/P shall be 4:00 p.m. on Friday, July 30, 2021. A final response will be made no later than 5:30 p.m. on Thursday, August 5, 2021.

Modification or Withdrawal of Submittals - Any proposal received prior to the date and time specified for receipt of proposals may be withdrawn or modified by written request of the Consultant. To be considered, however, the modified proposal must be received by the time and date specified.

Property Rights - Proposals received within the prescribed deadline become the property of the City and all rights to the contents therein become those of the City.

Confidentiality - Prior to award of the contract, all proposals will be designated confidential to the extent permitted by the California Public Records Act. After award of the contract, or if not awarded, after rejection of all proposals, all responses will be regarded as public records and will be subject to review by the public. Any language purported to render confidential all or portions of the proposals will be regarded as non-effective and will be disregarded.

Amendments to Request for Proposal - The City reserves the right to amend the Request for Proposal by addendum prior to the final proposal submittal date.

Payment Terms - The City's payment terms are 30 days from the receipt of an original invoice referencing the City's Purchase Order number and acceptance of the services.

Ownership of Reports and Data - The originals of all studies, reports, logs, exhibits, documents, data and/or other work/material(s) prepared and/or used to comply with any section/condition of these specifications, plus any copies of same required by the agreement to be furnished to the City and County, shall be deemed to be public records which shall be open to inspection by the public and, as such, shall become and remain the sole property of the City.

Contract Term - This contract will cover services per the contract. The cost proposed by Consultant must be valid for the entire period unless otherwise conditioned in the Proposal.

Non-Exclusive Contract - The City reserves the right to contract with other tree removal firms during the contract term.

Insurance - The Consultant shall meet the following provisions (Sections 1 through 7) relating to insurance coverages.

1. General Conditions - Without limiting the Consultant's indemnification of the City, Consultant shall provide and maintain at its own expense the insurance listed under Section 7 (Evidence of Coverages) covering its operations, subject to the following conditions:
  - a) The City, its Boards, Officers, Agents, and Employees shall be included as additional insured in all liability insurance policies except for Workers Compensation and Professional Errors and Omissions. The City shall be named Loss Payee as its interest may appear in all property insurance.
  - b) Such insurance shall be primary with respect to any insurance maintained by the City and shall not call on the City's insurance.

- c) With respect to the interests of the City, the Consultant's insurance shall not be cancelled nor reduced in coverage or limits until after thirty (30) days written notice shall have been sent by certified mail (return receipt requested) to the City of Malibu, Attn: Fire Safety Liaison, 23825 Stuart Ranch Road, Malibu, California 90265, and shall contain an unequivocal clause stating these terms.
  - d) A City-approved endorsement or copy of insurance policies providing coverage shall be submitted to and approved by the Fire Safety Liaison prior to commencement of any work or tenancy.
2. Workers Compensation - The Consultant shall procure and maintain during the life of the contract, workers compensation insurance or a valid certificate of consent to self-insure for all its employees engaged in or at the site of the project; and in case any of the work is sublet, the Consultant shall require all subconsultant(s) to similarly provide workers compensation insurance for all the latter's employees unless such employees are covered by protection afforded by workers compensation insurance carried by the Consultant.

By submitting a proposal pursuant to these specifications, Consultant hereby certifies that it is aware of the provisions of Section 3700 et seq., of the Labor Code, which require every employer to be insured against liability for Workers Compensation.

3. Aggregate Limits/Blanket Coverage - If any of the required insurance coverage's contain aggregate limits, or apply to other operations or tenancy of the Consultant outside these specifications, Consultant shall give the City prompt, written notice of any incident, occurrence, claim, settlement, or judgment against that insurance which may diminish the protection that such insurance affords the City. Consultant shall further take immediate steps restoring such aggregate limits or shall provide other insurance protection for such aggregate limits.
4. Modification of Coverage - The City reserves the right at any time during the term of any contract executed with the Consultant pursuant to these specifications to change the amounts and types of insurance required hereunder by giving the Consultant ninety (90) days written notice. If such change should result in a premium increase in excess of ten (10%) percent to the Consultant, the City agrees to negotiate additional compensation proportional to the increased benefit to the City.
5. Failure to Procure Insurance - The Consultant's failure to procure or maintain the required insurance shall constitute a material breach of contract under which the City may immediately terminate the Agreement or, at its discretion, procure or renew such insurance to protect the City's interests and pay any and all premiums in connection therewith, and recover all monies so paid from the Consultant, or deduct all monies so paid from payment(s) due to the Consultant.

6. Underlying Insurance - The Consultant shall be responsible for requiring indemnification and insurance as it deems appropriate from its employees receiving mileage allowance, consultants, agents, and subconsultant(s), if any, to protect the Consultant's and the City's interests, and for ensuring that such persons comply with any applicable insurance statutes. The Consultant is encouraged to seek professional advice in this regard.
7. Evidence of Coverages - Evidence of coverages, as checked below, having as a minimum the limits shown, must be submitted and approved prior to commencement of work or any tenancy. Amounts shown are Combined Single Limit (CSL). Split limits may be substituted if the total per occurrence equals or exceeds the CSL amount.

<u>Description</u>	<u>Limits</u>
<input checked="" type="checkbox"/> Workers Compensation	Statutory
(X) Employer's Liability	<u>\$250,000</u>
( ) Waiver of Subrogation	
<input checked="" type="checkbox"/> General Liability	<u>\$1,000,000</u>
(must be written on an occurrence form)	
(X) Premises and Operations	
(X) Contractual Liability	
(X) Independent Consultants	
(X) Products/Completed Operations	
(X) Broad Form Property Damage	
(X) Personal Injury	
(X) Broad Form Liability Endorsement	
(X) Explosion Hazard	
(X) Collapse/Underground Hazard	
<input checked="" type="checkbox"/> Automobile Liability	<u>\$1,000,000</u>
(must be written on an Occurrence Form)	
(X) Owned Automobiles	
(X) Non-Owned/Hired Automobiles	
(X) Garage Keeper's Legal Liability	
<input checked="" type="checkbox"/> Professional Liability (Errors and Omissions)	<u>\$1,000,000</u>
(to be in continuous force from date of award until one year after final acceptance of the property)	

Non-Commitment of Department - This Request for Proposal does not commit the City to award a contract, to pay any costs incurred in the preparation of a Proposal for this request, or to procure or contract for services. The City reserves the right to accept or reject any or all proposals received as a result of this request, to negotiate with any qualified firm or to modify or cancel in part or in its entirety the Request for Proposal if it is in the best interests of the City to do so.

Public Domain - All products used or developed in the execution of any contract resulting from this Request for Proposal will remain in the public domain at the completion of the contract.

Termination - The City reserves the right to terminate this agreement upon thirty (30) calendar days from written notice to the Consultant.

Processing Requirements - All reports/drawings are required to be submitted directly to and picked up from the City of Malibu Fire Safety Liaison. All reports/drawings will be transmitted directly between the Consultant and the City. The Consultant is required to develop and furnish the Fire Safety Liaison with a legible written report. If the Consultant fails to submit the required reports/drawings as set forth in this section, the City shall have the right to withhold payment, and/or terminate the agreement. Once the reports/drawings have been completed and/or reviewed, the consultant will be required to return them to the City for further processing and coordination with other Departments and Divisions.

Required Timeframes - The Consultant office hours shall be 8:00 a.m. to 5:00 p.m., Monday through Friday, so that the Consultant will be available to City staff and design professionals.

Conflicts of Interest - Consultant agrees to promptly notify the City whenever a client of Consultant has an interest in any project referred to Consultant for professional services. In particular, Consultant shall disclose any financial interest or relationship with any construction company that might submit a bid on the resulting construction project. Such project may be withdrawn by the City with no compensation due if the Consultant has a conflicting interest.

Inspections – City reserves the right to inspect the work being accomplished by the Consultant at any time.

Assignment of Consultant Personnel - The Consultant shall have the City's approval prior to changing the staff or subconsultants assigned to this project.

**AGREEMENT FOR PROFESSIONAL SERVICES**

This Agreement is made and entered into as of [date] by and between the City of Malibu (hereinafter referred to as the "City"), and \_\_\_\_\_ (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  
\_\_\_\_\_.

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 [date], and will remain in effect for a period of \_\_\_\_ 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 his or her designee, has the authority to provide that approval or authorization.

**4.0 COMPENSATION FOR SERVICES.** The City shall pay the Consultant for its professional services rendered and costs incurred pursuant to this Agreement in accordance with the Scope of Work’s fee and cost schedule. The cost of services shall be \$ \_\_\_\_\_ per month, for a total amount not to exceed \$ \_\_\_\_\_. No additional compensation shall be paid for any other expenses incurred, unless first approved by the City Manager, or his or her 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:

(a) Workers Compensation Insurance as required by law. The Consultant shall require all subcontractors similarly to provide such compensation insurance for their respective employees.

(b) Comprehensive general and automobile liability insurance protecting the Consultant in amounts not less than \$1,000,000 for personal injury to any one person, \$1,000,000 for injuries arising out of one occurrence, and \$500,000 for property damages or a combined single limit of \$1,000,000. Each such policy of insurance shall:

1) Be issued by a financially responsible insurance company or companies admitted and authorized to do business in the State of California or which is approved in writing by City.

2) Name and list as additional insured the City, its officers and employees.

3) Specify its acts as primary insurance.

4) Contain a clause substantially in the following words: "It is hereby understood and agreed that this policy shall not be canceled nor materially changed except upon thirty (30) days prior written notice to the City of such cancellation or material change."

5) Cover the operations of the Consultant pursuant to the terms of this Agreement.

**6.5 Indemnification.** Consultant shall indemnify, defend with counsel approved by City, and hold harmless City, its officers, officials, employees and volunteers from and against all liability, loss, damage, expense, cost (including without limitation reasonable attorneys fees, expert fees and all other costs and fees of litigation) of every nature arising out of or in connection with Consultant's performance of work hereunder or its failure to comply with any of its obligations contained in this Agreement, regardless of City's passive negligence, but excepting such loss or damage which is caused by the sole active negligence or willful misconduct of the City. Should City in its sole discretion find Consultant's legal counsel unacceptable, then Consultant shall reimburse the City its costs of defense, including without limitation reasonable attorneys fees, expert fees and all other costs and fees of litigation. The Consultant shall promptly pay any final judgment rendered against the City (and its officers, officials, employees and volunteers) covered by this indemnity obligation. It is expressly understood and agreed that the foregoing provisions are intended to be as broad and inclusive as is permitted by the law of the State of California and will survive termination of this Agreement.

**6.6 Compliance with Applicable Law.** The Consultant and the City shall comply with all applicable laws, ordinances and codes of the federal, state, county and city governments, including, without limitation, Malibu Municipal Code Chapter 5.36 Minimum Wage.

**6.7 Independent Contractor.** This Agreement is by and between the City and the Consultant and is not intended, and shall not be construed, to create the relationship of agency, servant, employee, partnership, joint venture or association, as between the City and the Consultant.

6.7.1. The Consultant shall be an independent contractor, and shall have no power to incur any debt or obligation for or on behalf of the City. Neither the City nor any of its officers or employees shall have any control over the conduct of the Consultant, or any of the Consultant's employees, except as herein set forth, and the Consultant expressly warrants not to, at any time or in any manner, represent that it, or any of its agents, servants or employees are in any manner employees of the City, it being distinctly understood that the Consultant is and shall at all times remain to the City a wholly independent contractor and the Consultant's obligations to the City are solely such as are prescribed by this Agreement.

**6.8 Copyright.** No reports, maps or other documents produced in whole or in part under this Agreement shall be the subject of an application for copyright by or on behalf of the Consultant.

**6.9 Legal Construction.**

(a) This Agreement is made and entered into in the State of California and shall in all respects be interpreted, enforced and governed under the laws of the State of California.

(b) This Agreement shall be construed without regard to the identity of the persons who drafted its various provisions. Each and every provision of this Agreement shall be construed as though each of the parties participated equally in the drafting of same, and any rule of construction that a document is to be construed against the drafting party shall not be applicable to this Agreement.

(c) The article and section, captions and headings herein have been inserted for convenience only and shall not be considered or referred to in resolving questions of interpretation or construction.

(d) Whenever in this Agreement the context may so require, the masculine gender shall be deemed to refer to and include the feminine and neuter, and the singular shall refer to and include the plural.

**6.10 Counterparts.** This Agreement may be executed in counterparts and as so executed shall constitute an agreement which shall be binding upon all parties hereto.

**6.11 Final Payment Acceptance Constitutes Release.** The acceptance by the Consultant of the final payment made under this Agreement shall operate as and be a release of the City from all claims and liabilities for compensation to the Consultant for anything done, furnished or relating to the Consultant's work or services. Acceptance of payment shall be any negotiation of the City's check or the failure to make a written extra compensation claim within ten (10) calendar days of

the receipt of that check. However, approval or payment by the City shall not constitute, nor be deemed, a release of the responsibility and liability of the Consultant, its employees, sub-consultants and agents for the accuracy and competency of the information provided and/or work performed; nor shall such approval or payment be deemed to be an assumption of such responsibility or liability by the City for any defect or error in the work prepared by the Consultant, its employees, sub-consultants and agents.

**6.12 Corrections.** In addition to the above indemnification obligations, the Consultant shall correct, at its expense, all errors in the work which may be disclosed during the City's review of the Consultant's report or plans. Should the Consultant fail to make such correction in a reasonably timely manner, such correction shall be made by the City, and the cost thereof shall be charged to the Consultant.

**6.13 Files.** All files of the Consultant pertaining to the City shall be and remain the property of the City. The Consultant will control the physical location of such files during the term of this Agreement and shall be entitled to retain copies of such files upon termination of this Agreement.

**6.14 Waiver; Remedies Cumulative.** Failure by a party to insist upon the performance of any of the provisions of this Agreement by the other party, irrespective of the length of time for which such failure continues, shall not constitute a waiver of such party's right to demand compliance by such other party in the future. No waiver by a party of a default or breach of the other party shall be effective or binding upon such party unless made in writing by such party, and no such waiver shall be implied from any omissions by a party to take any action with respect to such default or breach. No express written waiver of a specified default or breach shall affect any other default or breach, or cover any other period of time, other than any default or breach and/or period of time specified. All of the remedies permitted or available to a party under this Agreement, or at law or in equity, shall be cumulative and alternative, and invocation of any such right or remedy shall not constitute a waiver or election of remedies with respect to any other permitted or available right of remedy.

**6.15 Mitigation of Damages.** In all such situations arising out of this Agreement, the parties shall attempt to avoid and minimize the damages resulting from the conduct of the other party.

**6.16 Partial Invalidity.** If any provision in this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions will nevertheless continue in full force without being impaired or invalidated in any way.

**6.17 Attorneys' Fees.** The parties hereto acknowledge and agree that each will bear his/her or its own costs, expenses and attorneys' fees arising out of and/or connected with the negotiation, drafting and execution of the Agreement, and all matters arising out of or connected therewith except that, in the event any action is brought by any party hereto to enforce this Agreement, the prevailing party in such action shall be entitled to reasonable attorneys' fees and costs in addition to all other relief to which that party or those parties may be entitled.

**6.18 Entire Agreement.** This Agreement constitutes the whole agreement between the City and the Consultant, and neither party has made any representations to the other except as expressly contained herein. Neither party, in executing or performing this Agreement, is relying upon any statement or information not contained in this Agreement. Any changes or modifications to this Agreement must be made in writing appropriately executed by both the City and the Consultant.

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

<b>CITY:</b>	Steve McClary Interim City Manager City of Malibu 23825 Stuart Ranch Road Malibu, CA 90265-4861 TEL (310) 456-2489 x 224 FAX (310) 456-2760	<b>CONSULTANT:</b>
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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 \_\_\_\_\_

This Agreement is executed on \_\_\_\_\_, 2020, at Malibu, California, and effective as of [date].

CITY OF MALIBU:

\_\_\_\_\_  
PAUL GRISANTI, Mayor

ATTEST:

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

CONSULTANT:

\_\_\_\_\_  
By:

APPROVED AS TO FORM:

\_\_\_\_\_  
JOHN COTTI, Interim City Attorney

Appendix C  
 REQUEST FOR QUALIFICATIONS/PROPOSALS FOR  
**Removal of Hazard Trees throughout the City of Malibu**

COST PROPOSAL

The matrix below describes items upon which the City requests a proposal. It is the City’s intent to have all items of work completed by the contracted firm. However, circumstances may arise where it is in the City’s best interest to consider an alternate delivery method for one or more items of work or portion thereof. No change in any form of compensation or unit costs for items of work will be allowed if the City chooses to separately bid any item of work or portion thereof and have the work completed by a different firm. Please note that the numbers listed below are estimates only, and will not be used for any purpose other than to compare proposals received in response to this Request for Qualifications/Proposals. The actual payments made to the Contractor will be based on the Contractor’s actual work performed for the City with agreed upon unit rates for labor and equipment.

<b>Task</b>	<b>Description</b>	<b>Qty.</b>	<b>Unit Rate (\$/Hr.)</b>	<b>Hours</b>	<b>Total</b>
Task 1 – Tree Maintenance Service					
	Forman	1		8	
	Tree Workers	3		8	
	Chipper Truck	1		8	
	Chipper	1		8	
	Aerial Tower	1		8	
				<b>Total</b>	