



Council Agenda Report

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

Prepared by: Kristin Riesgo, Community Services Director

Approved by: Steve McClary, City Manager

Date prepared: September 6, 2023 Meeting date: September 25, 2023

Subject: Professional Services Agreement with Managed Career Solutions

RECOMMENDED ACTION: Authorize the City Manager to execute a Professional Services Agreement with Managed Career Solutions, Social Purpose Corporation, DBA Managed Career Solutions Rehab & FTI-LA & American Medical Careers (MCS) for the removal of non-native vegetation and thinning of native vegetation at Legacy Park.

FISCAL IMPACT: No additional appropriation is required. Funding for this project is included in the Adopted Budget for FY 2023-24 in Account No. 100-4010-5725-00 (Park Maintenance – Trash Pickup/Recycling). Funding for personnel will be provided by the Federal Workforce Innovation and Opportunity Act administered through the California Employment Development Department (EDD). MCS has secured funding through the EDD.

WORK PLAN: This item was included as item #5.e. in the Adopted Work Plan for FY 2022-23. Staff continue to work on ongoing projects and normal business while the FY 2023-24 Work Plan is finalized.

DISCUSSION: Legacy Park opened to the public on October 2, 2010. The park features five native plant habitat areas, including Coastal Bluffs, Riparian Corridor, Coastal Prairie, Woodland, and Wet Meadow. During construction, the park was planted using hand planting and seed broadcasting methods, with the original plant pallet consisting of over 700 trees, shrubs, and thousands of native plants.

Within 18 months of the original planting, staff observed a significant decline in the diversity and health of the landscape. Several species of plants had failed, and the health of the tree population had also declined, with only 50% of the original trees surviving by 2013. Several small revegetation projects took place between 2013 and

2015; however, those were met with limited success, and only 10% of the planted trees survived.

Since 2018, staff has worked with MLA Green dba Studio-MLA to complete the Legacy Park Rehabilitation Project (Project). The primary goal of the Project was to study the cause of a significant decline in diversity and health of the landscape. While working with the Consultant, the plant life in Legacy Park has significantly improved, and the Consultant has provided staff with essential knowledge regarding the types of native plant species that can thrive in the salty conditions at Legacy Park. This month, the Agreement with Studio MLA ended, and the Consultant provided long-term rehabilitation and maintenance plans to ensure the continued success of a healthy park habitat.

As part of the Legacy Park long-term rehabilitation and maintenance plan, Studio MLA suggested continuously removing non-native plant species. Additionally, staff has identified overgrown areas of the park, which require thinning of native species. Many hired staff are needed to complete the hand weeding necessary for the ongoing maintenance, which follows the City's Earth Friendly Management Policy.

Staff contacted and identified a grant opportunity to work through Managed Career Solutions (MCS) to complete the manual landscape work at Legacy Park. MCS will hire a crew of five individuals to remove non-native plants and thin, overgrown native plants three days a week for six hours daily. The work will occur for eight weeks or until funding is depleted. The City previously worked with MCS to complete the trail clearance and remediation work at Charmlee Wilderness Park and non-native plant removal at Trancas Canyon Open Space.

ATTACHMENTS: Professional Services Agreement with Managed Career Solutions

AGREEMENT FOR PROFESSIONAL SERVICES

This Agreement is made and entered into as of 9/25/2023 by and between the City of Malibu (hereinafter referred to as the "City"), and Managed Career Solutions, Social Purpose Corporation, DBA Managed Career Solutions Rehab & FTI-LA & American Medial Careers (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 the removal of nonnative plant species and the thinning of overgrown native plant species at Legacy Park, abiding by the City's Earth Friendly Management Policy (EFMP).

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 September 27, 2023, and will remain in effect for a period of one year 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 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 cost of Consultant's services shall be zero dollars (\$0). No other compensation shall be paid for any other expenses incurred, unless first approved by the City Manager, or his designee.

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

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

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

6.0 GENERAL TERMS AND CONDITIONS.

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

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

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

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

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

6.4 Insurance. The Consultant shall submit to the City certificates indicating compliance with the following minimum insurance requirements no less than one (1) day prior to beginning of performance under this Agreement:

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

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

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

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

3) Specify its acts as primary insurance.

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

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

6.5 Indemnification. Consultant shall indemnify, defend with counsel approved by City, and hold harmless City, its officers, officials, employees and volunteers from and against all liability, loss, damage, expense, cost (including without limitation reasonable attorneys fees, expert fees and all other costs and fees of litigation) of every nature arising out of or in connection with Consultant's performance of work hereunder or its failure to comply with any of its obligations contained in this Agreement, regardless of City's passive negligence, but excepting such loss or damage which is caused by the sole active negligence or willful misconduct of the City. Should City in its sole discretion find Consultant's legal counsel unacceptable, then Consultant shall reimburse the City its costs of defense, including without limitation reasonable attorneys fees, expert fees and all other costs and fees of litigation. The Consultant shall promptly pay any final judgment rendered against the City (and its officers,

officials, employees and volunteers) covered by this indemnity obligation. It is expressly understood and agreed that the foregoing provisions are intended to be as broad and inclusive as is permitted by the law of the State of California and will survive termination of this Agreement.

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

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

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

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

6.9 Legal Construction.

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

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

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

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

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

6.11 Final Payment Acceptance Constitutes Release. The acceptance by the Consultant of the final payment made under this Agreement shall operate as and be a release of the City from all claims and liabilities for compensation to the Consultant for anything done, furnished or relating to the Consultant's work or services. Acceptance of payment shall be any negotiation of the City's check or the failure to make a written extra compensation claim within ten (10) calendar days of the receipt of that check. However, approval or payment by the City shall not constitute, nor be deemed, a release of the responsibility and liability of the Consultant, its employees, sub-consultants and agents for the accuracy and competency of the information provided and/or work performed; nor shall such approval or payment be deemed to be an assumption of such responsibility or liability by the City for any defect or error in the work prepared by the Consultant, its employees, sub-consultants and agents.

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

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

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

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

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

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

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

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

CITY:	Steve McClary City Manager City of Malibu 23825 Stuart Ranch Road Malibu, CA 90265-4861 TEL (310) 456-2489 x 224 FAX (310) 456-2760	CONSULTANT:	Philip Starr, PsyD Executive Director Managed Career Solutions, SPC 3333 Wilshire Blvd. #405 Los Angeles, CA 90010 TEL (213) 355-3512
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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 DS
PS

This Agreement is executed on 9/6/2023, 2023, at Malibu, California, and effective as of September 27, 2023.

CITY OF MALIBU:

 STEVE McCLARY, City Manager

ATTEST:

 KELSEY PETTIJOHN, City Clerk (seal)

CONSULTANT:

DocuSigned by:
Philip Starr

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By: PHILIP STARR, PsyD, Executive Director

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

Legacy Park Nonnative Plant Removal and Native Plant Thinning

1. Background

Legacy Park, located at 23500 Civic Center Way, Malibu, CA 90265 (Location), is owned by the City of Malibu. The property encompasses approximately 15 acres of passive use parkland and trails that includes populations of nonnative plants and overgrown native plants which the City seeks to remove following the guidelines of the City's Earth Friendly Management Policy (EFMP).

2. Scope of Work

General Specifications

The Consultant shall provide skilled and adequately trained personnel to perform the clearance of nonnative plant species and the thinning of overgrown native plant species at Legacy Park.

The Consultant shall not subcontract any portion of the Agreement, or any additions made to the Agreement without first receiving approval from the Community Services Director. All persons engaged in the scope of work shall be considered employees of the Consultant, with the supervisor being directly responsible for their work.

Weed Removal Site

The Consultant will remove nonnative plant species and thin, overgrown native plant species at Legacy Park from approximately 15 acres of parkland outlined in Attachments 1 and 2, which includes the priority areas.

- Legacy Park (Attachment 1)
- Legacy Park Priority Map – marked priority areas (Attachment 2)

Tools and Clearance

The Consultant shall perform all work by following the best industry standards of landscape maintenance, workmanship, safety practices, and standards of cleanliness. All work shall be performed without the use of poisons, including pesticides, herbicides, insecticides, and rodenticides.

The Consultant may use mechanical methods or hand tools to perform the clearance of nonnative plant species and the thinning of overgrown native plant species. All work must be completed following the City's EFMP.

Vehicles, including utility vehicles (UTVs or RTVs), cannot be used at the Location unless approved by the Community Services Director and/or her designee.

Debris and green waste will be removed by the Consultant and placed in the appropriate waste bins.

The Consultant will use existing soil to backfill plant removal locations. The introduction of new materials for erosion control methods must be approved by the Community Services Director and/or her designee before installation.

Hours and Access

The Consultant will coordinate priority areas and timelines with the Community Services Director and/or her designee. The timelines must be approved before work is performed and/or scheduled.

The Consultant may have access to Malibu Equestrian Park and work at Legacy Park from 8:00 AM to 4:00 PM Monday through Friday. The Consultant cannot work on legal holidays.

The Consultant cannot use mechanical tools such as but not limited to weed trimmers, edgers, or leaf blowers on Red Flag Warning Days. All mechanical tools must be electric powered; gas leaf blowers are prohibited in the City of Malibu (MMC 8.24.050).

The Consultant may park their vehicles in the designated parking lot at Legacy Park.

The Consultant will secure and store all tools in the designated storage at Malibu Equestrian Park, 6225 Merritt Drive Malibu, CA 90265.

The Consultant shall adequately secure keys, other entry devices, and codes provided by the City. The Consultant shall maintain a record of the keys or codes issued to its employees. The Consultant shall not allow such items to be duplicated or removed from The Malibu Equestrian Park or Legacy Park.

Reporting and Communication

The Consultants crew(s) shall work under the supervision of a Contractor designated Lead Worker. All working employees must be at least eighteen (18) years of age. All employees must be able to follow directions and physically capable of the duties assigned to them.

At the request of the Community Services Director and/or her designee, the Consultant may be requested to provide copies of daily inspection forms, log-in sheets, or other reporting documents related to the Scope of Work.

The Consultant will report any maintenance or safety concerns to the Community Services Director and/or her designee via email or telephone by the next business day.

The Consultant will contact the Los Angeles County Sheriff Department Lost Hills Division to report crimes or illegal activity. The Consultant will remain on-site until Sheriff's Deputies arrive and report the incident to the Community Services Director and/or her designee via email or telephone within 12 hours.

September 27, 2023
Exhibit A Scope of Work
Managed Career Solutions

ATTACHMENT 1

Legacy Park
23500 Civic Center Way
Malibu, CA 90265



September 27, 2023
Exhibit A Scope of Work
Managed Career Solutions

ATTACHMENT 2

Legacy Park Priority Map 23500 Civic Center Way Malibu, CA 90265

Priority 1: Yellow Highlight

Priority 2: All other park areas outlined in red

