



# Council Agenda Report

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

Prepared by: Susan Dueñas, Public Safety Director

Approved by: Steve McClary, City Manager

Date prepared: September 25, 2023 Meeting date: October 23, 2023

Subject: MOU and License Agreement with Zuma Beach FM Emergency and Community Broadcasting, Inc. (KBUU) for a Booster Antenna at Malibu Bluffs Park

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**RECOMMENDED ACTION:** Authorize the Mayor to enter into a License Agreement and Memorandum of Understanding (MOU) with Zuma Beach FM Emergency and Community Broadcasting, Inc. (KBUU) to utilize Malibu Bluffs Park as the location for an FM booster station.

**FISCAL IMPACT:** Depending on Council direction there may be a fiscal impact to be determined related to the purchase and installation of equipment. However, the cost is not expected to exceed \$25,000 and would not require additional appropriations at this time.

**WORK PLAN:** This item supports the Public Safety Projects (Communications) priority identified in the Adopted FY 2023-24 Strategic Priority Project List.

**DISCUSSION:** Broadcast radio capabilities have been a critical component in emergency communications for decades, and when power is out and cell service is not available, broadcast radio provides one of the only means of communication. In addition, FM radio is now capable of transmitting emergency alerts to the public even when cell service and electrical power is not available. While there are several FM stations that can be received in parts of Malibu, including KBUU, none of them reach all of Malibu due to the City's unique topography. However, KBUU is the only FM station dedicated to serving the Malibu community. There are also some AM stations that can be received in Malibu; however, none of those stations reach all areas of Malibu and none of them are dedicated to serving the Malibu community. In addition, while AM radio is capable of sending Emergency Alert System (EAS) messages, the City is not allowed to use that

system. Only the county, state or federal government can use the EAS system. However, the City can implement an FM radio alerting system.

To alleviate challenges with signal coverage, KBUU submitted a proposal to the City in 2019 requesting permission to place an FM booster station at Malibu Bluffs Park (Attachment 1). Malibu Bluffs Park is the best-known location available where an antenna could be placed that would allow KBUU's listenable broadcast signal to reach the eastern third of Malibu while meeting Federal Communications Commission (FCC) requirements. At the September 19, 2019, Regular City Council Meeting, the Council authorized the City Manager to enter into a license agreement with KBUU to utilize Malibu Bluffs Park as the location for an FM booster station, pending required permits.

Since 2019, KBUU applied for, and obtained, the required FCC license for the booster antenna and has worked with staff to implement the proposal, which has evolved and was temporarily on hold during the pandemic. Originally, KBUU had FCC approval to install the following components at the Maintenance Building at Malibu Bluffs Park:

1. A 28-foot mast with two identical antennae reaching four and a half feet to each side of the mast located on the south side of the building;
2. Two to three small solar collectors with batteries near the base of the mast to be used to power the booster antennae during emergencies and Public Safety Power Shutoffs (PSPS);
3. A 19-watt transmitter inside the Parks Maintenance Building; and,
4. A communications dish, three feet in diameter, on the exterior wall of the Parks Maintenance Building.

However, in 2021, staff determined that the Michael Landon Center would provide a better location because there could be access to electrical power and internet. KBUU agreed and obtained FCC approval to move it to this location. In 2022, KBUU proposed placing a surface mount antenna on the roof of the Michael Landon Center, however, it was determined by staff that it would require an engineering plan to ensure that it was installed in a way that would not damage the building or endanger park visitors.

After much debate in early 2023, the proposed project returned to the original idea of being placed at the Park Maintenance Building. Since this location is further south than the Michael Landon Center, it provides a better place for increased signal coverage. The current proposal mirrors the proposal from 2019, but also includes a 9-inch diameter wireless internet dish attached to the top of the Michael Landon Center and a similar dish on the Parks Maintenance Building to provide internet access and telemetry to the transmitter.

In recognition of the importance of this project as a critical element of the City's emergency communication capabilities, staff proposes forming a public-private

partnership with KBUU by establishing an MOU (Attachment 1) along with the License Agreement (Attachment 2) for the equipment to be installed on public property. The proposed partnership would include the City assuming financial and permitting responsibility for installing a mast sufficient to hold the booster antennas and KBUU will be responsible for providing the antennas and associated communication equipment as well as obtaining and maintaining the appropriate FCC license. A diagram of where the mast would be installed is included in the License Agreement. The MOU outlines the policies, procedures, and responsibilities of the City and KBUU with respect to utilizing KBUU for emergency communications.

If approved, the next step will be for staff to obtain a Conditional Use Permit and a Coastal Development Permit. Once the permits are secured, staff will identify a vendor to install a mast and the two antennas.

By expanding the signal coverage – which would apply to everyday use as well as emergencies – KBUU would become a more effective communication option for the City to provide important emergency information before, during and after an incident. This would also provide the City the ability to implement an FM radio based disaster notification system to provide emergency notifications to the community when cell service and power is out.

ATTACHMENTS:

- 1) MOU between the City of Malibu and KBUU
- 2) License Agreement with KBUU

# **Memorandum of Understanding between the City of Malibu and Zuma Beach FM Emergency and Community Broadcasting Inc.**

10/4/23 Draft

This Memorandum of Understanding (MOU) is made on (Date) between the City of Malibu (City) and Zuma Beach FM Emergency and Community Broadcasting Inc., a California nonprofit corporation that holds the FCC license for Low Power FM radio station KBUU-LP in Malibu (KBUU).

## **PURPOSE**

The purpose of this MOU is to 1) outline responsibilities and procedures for KBUU to broadcast public safety messages during significant events that threaten life, property and the environment, and for the direct use of KBUU's airwaves and transmitters by the City of Malibu during emergencies, and 2) outline responsibilities for the installation and maintenance of a booster antenna at Bluffs Park located at 24250 Pacific Coast Highway <sup>11</sup>Malibu, California 90265.

## **BACKGROUND**

In an emergency, the effective delivery of public information is critical. Timely, accurate information supports emergency response and recovery, and ensures that members of the public take appropriate actions to protect themselves and others.

In emergency situations (fire, storm, earthquake), the City frequently loses electrical power and cell service in many parts of the City. Broadcast radio capabilities are extremely important in this situation in order to provide critical emergency information to the community. KBUU is the only broadcast radio station located in Malibu. Other broadcast radio stations that have signals that reach parts of Malibu are all located outside the City. Due to this fact, and the fact that KBUU was specifically created to service the City of Malibu, the City wishes to partner with KBUU to establish an effective broadcast radio capability to serve the community during emergencies.

Also, the City is currently evaluating the implementation of an emergency outdoor warning system or sirens to alert people to an emergency situation. However, for this type of emergency alerting system to be effective, it needs to be paired with a broadcast radio system to provide community members with information about the emergency and what actions are needed.

Therefore, it is imperative that the City and KBUU have a clear understanding of the relationship and what the responsibilities of each party are. In addition, to ensure that the KBUU signal reaches most of the Malibu coastline in an emergency, a booster needs to be installed at Bluffs Park. KBUU has acquired the antenna and FCC license to operate a booster, but needs the assistance of the City to install a pole that is appropriate for the antenna to be attached to.

## **TERMS OF MOU**

This MOU will become effective on [date] and will remain in effect from said date unless terminated by either party. The parties to this MOU are independent and no principal/agent relationship, partnership, employment or contract is created by this document.

This MOU is not legally binding on, or enforceable by, either of the parties but the parties acknowledge that this MOU is intended as a statement of mutually agreed intentions. It is not intended to create legally enforceable rights or obligations. The parties agree that KBUU is free from the control and direction of City in connection with KBUU's performance of this Agreement. However, the parties agree that they are

bound in good faith to observe and perform their obligations under this MOU to the best of their ability as if they were legally enforceable.

## **RESPONSIBILITIES**

### City of Malibu responsibilities:

1. The City will be responsible for installing and maintaining a pole at Bluffs Park that is sufficient to support the KBUU antenna, including all permitting and fees.
2. If the City decides to enable live audio feeds, the City will purchase and maintain an Internet audio codec system to deliver the live signal.
3. The City will develop the content of its official messages to be aired on KBUU.
4. The City will create the audio feed to be played live, or a recorded audio file for intermittent and/or continuous play and replay, during emergencies, on KBUU.
5. The City will communicate to the Malibu community that KBUU is the official emergency broadcast radio station.
6. The City will include the use of KBUU in all appropriate emergency plans and procedures.
7. The City will ensure that Public Safety and Media Team staff are trained in the development of audio feeds and submitting them to KBUU.
8. The City will provide KBUU with a suitable indoor location to put its electronic equipment (including but not limited to several 12-volt car batteries, Internet switches, and the broadcast amplifier), a flat-mounted solar panel, and ancillary gear.
9. The City will provide KBUU with Internet access for a continuous Internet path of 3 megabits per second, capable of handling KBUU's peer-to-peer multiplex broadcast signal transmission through any city Internet firewalls. The point of demarcation between the City's Cat-5 cable and KBUU will be at the Bluffs Park Maintenance Building, unless the City elects to place the point of demarcation at the Michael Landon Center, in which case the City will allow KBUU to place a small WiFi dish atop Michael Landon Center, and a reciprocal small WiFi dish atop the Maintenance Building, in locations to be as obscure to the general public as possible.
10. The City agrees to abide by all FCC policies and public laws, including prescriptions from *Federal Communications Commission v. Pacifica Foundation* 38 US 726 (1978), and the prohibition on advertising from the Local Community Radio Act of 2009.

### KBUU responsibilities:

1. Zuma Beach FM Emergency and Community Broadcasters Inc. shall at all times retain control of KBUU-LP but will allow the City of Malibu to use KBUU-LP's facilities for the vital role of transmitting official communications from the city, as deemed necessary by the two parties.
2. KBUU will broadcast urgent messages from the City when furnished by the City on an hourly basis or more frequently, at no charge to the city.
3. KBUU will accommodate City-owned equipment, if the City elects to purchase it, to enable transmission of live audio transmissions from the City, subject to Internet functionality, on KBUU.
4. KBUU will allow the direct use of its airwaves and transmitters by the City during emergencies. This use shall mean the city may furnish a live audio feed to be played live, or a recorded audio file for continuous play and replay, on the station's FM signal on FM 99.1.

5. Should the City elect to buy and configure the proper equipment, KBUU will train City staff on how to operate the KBUU automation system, and on how to put City live and recorded City announcements on the KBUU air. KBUU will install and maintain the broadcast booster equipment in a location inside a building at Bluffs Park to be designated by the City.
6. All equipment to be installed by KBUU will be FCC type accepted, will comply with applicable laws, including, but not limited to, applicable laws governing RF emissions, electrical codes and fire codes, and it will not necessitate any electrical rewiring by the city.
7. KBUU will allow the City of Malibu to install, at any future point, communications antennae and equipment for at the KBUU main transmitter and tower location, 5911 Murphy Way, for the City's current or future needs, at no charge, subject to amending the master license from KBUU's landlord. The landlord has given KBUU a revocable license to erect broadcast equipment at that location, which is outside the city limits.

## **ACKNOWLEDGEMENTS**

1. KBUU is a volunteer organization, and no staff are paid.
2. The KBUU control point is staffed about 95 percent of the time, 24 hours a day, seven days a week on an annual basis. However, it is occasionally left on automation for several days or up to two weeks at a time. During these periods, the station playback equipment is maintained via remote control over long distances.
3. KBUU relies on volunteer specialized Internet and broadcast engineers who do not live in Malibu, and who sometimes are not available immediately to repair items.
4. The station's automation, encoders, power supplies, transmitters and studio-transmitter links are complicated pieces of electronic equipment. There are times when they function without fault for months at a time. There are times when components go down unexpectedly. KBUU keeps spare components on hand, but these must be installed in person. This cannot be done if KBUU's volunteers are out of town or not available.
5. KBUU intends to install a completely-solar-powered transmission device, which will include:
  - 2 or 3 solar panels to be installed on the storage containers, as directed by the City;
  - 2 or 4 deep-charge 12-volt batteries, that will sit in spill-proof containers;
6. KBUU warrants that this is an experimental installation, and that the additional signal coverage area that is anticipated by our engineer's projections cannot be guaranteed. The KBUU Bluffs booster is licensed for approximately 5 watts of actual radiated power in two tight directional lobes, pointing due east and west, and even the improved signal may, during some weather conditions, experience substantial interference in some parts of Malibu from 72,000-watt KGGI, transmitting from Lake Arrowhead.
7. The KBUU booster will emit electronic signals at a combined actual power of less than 20 watts (10 watts per antenna).
8. No signage or lighting is required by the FCC or any other agency.

**WHO IS AUTHORIZED TO REQUEST AN EMERGENCY BROADCAST:**

The following City of Malibu employees are authorized to request an emergency broadcast:

- City Manager
- Assistant City Manager
- Deputy City Manager
- Public Safety Director
- Public Works Director
- Media Information Officer
- Environmental Services Director/Building Official
- Any designee of the above parties

**COMPENSATION**

No payment by either party is required for this MOU to take effect.

**MOU MANAGERS:**

The Public Safety Director shall be responsible for maintaining this MOU in partnership and coordination with KBUU.

**TERMINATION:**

Either the City Manager or KBUU may terminate this MOU, without cause, by giving the other party ten (10) days written notice of such termination and the effective date thereof; and under such circumstances, KBUU will remove its equipment within 30 days of such notice.

**MODIFICATIONS**

No modification, variation or amendment of this MOU shall be effective without the written consent of all of the parties to this MOU at the time of such modification, variation or amendment.

**SUCCESSORS**

This MOU shall be binding on and inure to the benefit of each of the parties' successors and assigns.

**SEVERABILITY**

If any term, covenant or condition of this MOU shall, to any extent, be invalid, void, illegal or unenforceable, the remainder of this MOU shall not be affected thereby, and each other term, covenant or condition of this MOU shall be valid and be enforced to the fullest extent permitted by law.

**GOVERNING LAW**

This MOU is made and entered into in the State of California and shall be governed by and construed and enforced in accordance with the laws of the State of California. The venue for resolving any disputes regarding this agreement shall be within the County of Los Angeles.

**NOTICES**

Any party delivering notice or requesting information from the other shall send such notice or request as indicated below:

City: City of Malibu  
Attention: City Manager  
23825 Stuart Ranch Road  
Malibu, CA 90265

KBUU:

Zuma Beach FM Emergency and Community Broadcasting Inc.  
Attention: Hans Laetz, General Manager  
6402 Surfside Way  
Malibu, CA 90265

**CITY OF MALIBU**

**ZUMA BEACH FM EMERGENCY AND  
COMMUNITY BROADCASTING INC.**

By: \_\_\_\_\_  
Steve Uhring  
Mayor

By:  \_\_\_\_\_  
Hans Laetz  
General Manager

Date: \_\_\_\_\_

Date: \_\_\_\_\_

ATTEST:

By: \_\_\_\_\_  
Kelsey Pettijohn  
City Clerk

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

## **REVOCABLE NON-EXCLUSIVE CONDITIONAL LICENSE AGREEMENT**

This Non-Exclusive License Agreement is made by and between the CITY OF MALIBU, a California municipal corporation ("City") and the ZUMA BEACH FM EMERGENCY AND COMMUNITY BROADCASTING, INC., a California nonprofit corporation that holds the FCC license for the low power FM radio station KBUU-LP in Malibu ("KBUU"). Each of the City and the KBUU is a "Party" and together they are the "Parties" to this Agreement.

### **I. RECITALS**

**A.** The City desires to grant, and KBUU to accept, a revocable license for the installation and maintenance of a booster antenna at Bluffs Park located at 24250 Pacific Coast Highway Malibu, California 90265.

**B.** In conjunction with that certain Memorandum of Understanding executed separately from this Agreement, this Agreement for the installation of the booster antenna will allow the broadcast of public safety message during significant events that threaten life, property and the environment, and for the direct use of KBUU's airwaves and transmitters by the City of Malibu during emergencies.

### **AGREEMENT**

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

### **II. GRANT OF LICENSE TO KBUU**

**A.** The City, for good and valuable consideration, grants KBUU a revocable, non-exclusive license (the "License") to use the Property identified in Exhibit A for the purpose described in this Agreement.

#### **B. Use of Property**

**i.** KBUU shall only use the Property for the installation and maintenance of a booster antenna and related equipment at Bluffs Park located at 24250 Pacific Coast Highway Malibu, California 90265. At no times shall the KBUU cause the Property to be inaccessible to the City and its agents.

**ii.** City and its agents shall have access to the Property at all times. In the event that the City's use of the Property shall interfere with the purposes and uses contemplated in Exhibit A, City shall use reasonable efforts to notify KBUU of any use that would interfere with the KBUU's use and KBUU shall ensure that its use of the Property shall not interfere with City's use of the Property. Nothing shall infringe or impede the City's absolute discretion to use the Property, and to prohibit KBUU's use, for public safety purposes.

### **III. TERM, CONSIDERATION AND BREACH REGARDING LICENSE**

**A.** The term of this Agreement shall be for the period commencing on September 11, 2023 and ending upon the termination of this Agreement by either the City or the KBUU as provided herein (the "Term"). This Agreement shall expire automatically at the end of the Term, unless extended by mutual agreement of the Parties.

**B.** Should KBUU breach the Agreement in a manner that constitutes a danger to health or safety, the Agreement may be terminated immediately; provided however, this Agreement may be reinstated at the City's discretion in the event KBUU removes such danger.

**C.** Either Party may terminate this Agreement at any time and for any reason by giving ten

(10) days written notice to the other Party.

#### **IV. INDEMNIFICATION**

**A.** KBUU shall indemnify, defend and hold harmless the City, its officers, employees and agents from and against all claims, causes of action, liabilities and damages for injuries to persons and property, including costs of defense and reasonable attorney fees, arising from or related to KBUU's use of the Property, including use by its guests, agents, patrons, invitees, customers, employees, officers, and contractors hired in connection with this license, except for liability resulting from the gross negligence or willful misconduct of the City, its employees and agents. KBUU shall promptly pay the amount of any judgment rendered against the City, its officers, employees and agents for any such indemnified claims, and reasonable costs and attorney fees incurred by the City in the defense of such claims. 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. The obligations of KBUU under this Section shall survive the expiration, cancellation, or termination of this Agreement and Term.

#### **V. DAMAGE TO PROPERTY AND RESTORATION OF PROPERTY**

**A.** KBUU assumes responsibility for all damage to the Property caused by, or related to, its use thereof, and shall reimburse the City for correction of any such damage.

**B. Duty to Repair, Restore or Replace.** Within five (15) days of the termination or expiration of this Agreement KBUU shall remove any remaining personal property and restore the property to the condition it was in prior to the execution of this agreement. If KBUU fails to remove such Property or restore the Property pursuant to the reasonable satisfaction of the Community Services Director, within this time frame it shall be liable for liquidated damages in the amount of \$100 per day. In such event, the City shall have the option of restoring the Property at KBUU's expense. Any cost incurred by the City in so doing shall constitute a debt of KBUU to the City, recoverable by the City in any manner provided by law, and shall be in addition to any liquidated damages due.

#### **VI. INSURANCE**

**A.** During the term of the License, KBUU shall maintain in full force and effect, at its cost and expense, the following coverages and amounts of insurance. 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

**i.** Full replacement cost Property Insurance (written on a "special perils" basis) for the Property and all other personal Property, machinery, equipment and trade fixtures owned by the KBUU;

**ii.** Commercial General Liability Insurance, written on an occurrence basis, covering bodily injury (including death), personal injury, and property damage, with limits of not less than One Million Dollars (\$1,000,000) per occurrence, \$2,000,000 general aggregate, that includes coverage for contractual liability, independent contractors, premises/operations, products/completed operations, and cross liabilities/separation of insureds; KBUU shall consider its own insurance primary, and shall not seek contribution from similar insurance being maintained by the City.

**iii.** Automobile Liability Insurance. KBUU shall maintain automobile insurance in the amount not less than \$500,000 per person and \$1,000,000 per accident for bodily injury liability and up to \$100,000 per accident for property damage liability. City shall require proof of coverage and limits and the insurance shall name the City as an additional insured.

**iv.** Three Million Dollars (\$3,000,000) in excess liability coverage per occurrence, for injuries, losses, claims for damages to persons or Property occurring on the Property,

and resulting from the use of the Property by KBUU and/or the negligence of KBUU and its agents, contractors, employees or invitees, which coverage shall sit excess of the scheduled underlying General Liability, and Automobile Liability and Employer's Liability Insurance policies with exclusions that are no more broad than those contained in the underlying policies. Such policy or policies shall include the following terms and conditions:

1. A drop-down feature requiring the policy to respond if any primary insurance that would otherwise have applied proves to be uncollectible in whole or in part for any reason, other than bankruptcy or insolvency of said primary insurer;
2. "Pay on behalf of" wording as opposed to "reimbursement";
3. Concurrency of effective dates with primary policies.

Such policy or policies shall include wording that the excess liability policy follows the terms and conditions of the underlying policies.

- B.** With respect to KBUU's Commercial General Liability Insurance, Automobile Liability Insurance and Excess Liability Insurance, they shall include City as an additional insured with respect to liability arising out of KBUU's use of the Property. They shall be primary and non-contributing with any other insurance available to City and shall contain a full waiver of subrogation clause.

## **VII. MISCELLANEOUS**

**A.** Taxes. This Agreement may create a taxable property interest in the Property. KBUU is solely responsible for the personal Property, possessory interest, income, franchise and similar taxes imposed on the Property up to and including the date of expiration, termination or cancellation of this Agreement and Term.

**B.** Notices. All notices permitted or required under this Agreement shall be in writing, and shall be deemed made when delivered to the applicable Party's representative as provided in this Agreement. Additionally, such notices may be given to the respective Parties at the following addresses, or at such other addresses as the parties may provide in writing for this purpose. Such notices shall be deemed made when personally delivered or when mailed forty-eight (48) hours after deposit in the U.S. mail, first-class postage prepaid, and addressed to the party at its applicable address, as follows:

KBUU: Hans Laetz, General Manager  
6402 Surfside Way  
Malibu, CA 90265  
TEL (424) 442-9862

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

Each party may change its address for notice by giving notice thereof to the other party.

**C.** Entire Agreement / Modification. This Agreement supersedes any and all other agreements, either oral or written, between the parties pertaining to the subject matter hereof, and contains all of the covenants and agreements between the Parties. Each Party to this Agreement acknowledges that no representations, inducements, promises, or agreements, oral or otherwise, have been made by any party, or anyone acting on behalf of any party, which are not embodied herein. Any agreement, statement, or promise not contained in the Agreement, and any modification to the Agreement, will be effective only if signed by both Parties.

**D. Authority.** Each of the persons signing this Agreement represents and warrants that they have authority to bind the party for whom they are signing.

**E. Compliance with Applicable Law.** KBUU and the City shall comply with all applicable laws, ordinances and codes of the Federal, State, County and City governments

**F. Assignment.** This Agreement is binding on and inures to the benefit of the Parties and their respective heirs, successors, assigns, and personal representatives. Neither Party may assign its rights and obligations in and under this License without first obtaining prior written consent of the other Party, which shall not be unreasonably withheld.

**G. Independent Contractor.** This Agreement is by and between the City and KBUU 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 KBUU or any of KBUU's agents or employees.

**H. Governing Law.** This Agreement shall be governed by and interpreted in accordance with the internal laws of the State of California without giving effect to conflict of law rules. The Parties further agree that all actions brought under this Agreement shall be brought in the courts located in Los Angeles County.

**I. Force Majeure.** Neither Party is responsible for any delay or failure in performance of any part of this Agreement to the extent that delay or failure is caused by fire, flood, explosion, war, embargo, government requirement, civil or military authority, act of God, act or omission of carriers or other similar causes beyond the Party's control.

**J. No Waiver.** The failure of a Party to insist on strict performance of any provision of the Agreement does not constitute a waiver of, or estoppel against asserting, the right to require performance in the future. A waiver or estoppel given in any one instance does not constitute a waiver or estoppel with respect to a later obligation or breach.

**K. No Third Party Beneficiaries.** This Agreement does not confer any rights or remedies on any person other than the Parties and their respective successors and permitted assigns.

**L. Remedies.** The rights and remedies provided by this Agreement are cumulative, and the use of any right or remedy by any Party does not preclude or waive its right to use any or all other remedies. These rights and remedies are given in addition to any other rights a Party may have under applicable law, in equity or otherwise.

**M. Severability.** If any term of this Agreement is held by any court of competent jurisdiction to contravene, or to be invalid under, the laws of any political body having jurisdiction over this subject matter, that contravention or invalidity shall not invalidate the entire Agreement. Instead, this Agreement shall be construed as reformed to the extent necessary to render valid the particular provision or provisions held to be invalid, consistent with the original intent of that provision and the rights and obligations of the Parties shall be construed and enforced accordingly, and this Agreement shall remain in full force and effect as reformed.

**N. Counterpart Execution.** This Agreement may be executed in any number of counterparts with the same effect as if all the Parties had signed the same document; all counterparts shall be construed together and shall constitute one and the same instrument. The delivery of an executed counterpart to this Agreement by electronic means (including via email) shall be as effective as the delivery of a manually executed counterpart.

**O. Construction.** The headings in this Agreement are inserted for convenience and identification only. When the context requires, the number of all words shall include the singular and

the plural. In this Agreement, words importing any gender include the other genders and the words including, includes and include shall be deemed to be followed by the words without limitation. All documents or items attached to, or referred to in, this Agreement are incorporated into this Agreement as fully as if stated within the body of this Agreement. The Agreement expresses the mutual intent of the Parties to this Agreement and the rule of construction against the drafting Party has no application to this Agreement.

This Agreement is executed on October 23, 2023, at Malibu, California, and effective as of October 23, 2023

CITY OF MALIBU:

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

ATTEST

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

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

KBUU:

  
\_\_\_\_\_  
HANS LAETZ, General Manager

## EXHIBIT A

KBUU will install the following components at the Maintenance Building at Malibu Bluffs Park:

1. A 28-foot mast with two identical antennae reaching four and a half feet to each side of the mast located on the south side of the building;
2. Two to three small solar collectors with batteries near the base of the mast to be used to power the booster antennae during emergencies and Public Safety Power Shutoffs (PSPS);
3. A 19-watt transmitter inside the Parks Maintenance Building; and
4. A communications dish, three feet in diameter, on the exterior wall of the Parks Maintenance Building.
5. A 9-inch diameter wireless internet dish attached to the top of the Michael Landon Center and a similar dish on the Parks Maintenance Building to provide internet access and telemetry to the transmitter.

**Map of Park and location of mast**



**Mock up of where the mast would be installed**

