



Supplemental Council Agenda Report

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

Prepared by: Lisa Soghor, Assistant City Manager

Approved by: Reva Feldman, City Manager

Date prepared: November 5, 2020 Meeting date: November 9, 2020

Subject: Professional Services Agreement with Quinto Consulting, LP for City Treasurer Services

RECOMMENDED ACTION: At the recommendation of the Administration and Finance Subcommittee, authorize the Mayor to execute an agreement with Quinto Consulting, LP for City Treasurer services.

DISCUSSION: Following the Administrative and Finance Subcommittee Meeting on October 28, 2020, staff worked with Quinto Consulting, LP to develop the Professional Services Agreement (PSA) for City Treasurer services. The PSA was not ready in time for the posting of the agenda for the November 9, 2020 City Council Meeting Agenda on October 29, 2020. The agreement is attached to this supplemental report.

ATTACHMENT: Professional Services Agreement with Quinto Consulting, LP for City Treasurer Services

AGREEMENT FOR PROFESSIONAL SERVICES

This Agreement is made and entered into as of November 10, 2020 by and between the City of Malibu (hereinafter referred to as the "City"), and Quinto Consulting, LP (hereinafter referred to as "Consultant").

The City and the Consultant agree as follows:

RECITALS

A. The City does not have the personnel able and/or available to perform the services required under this Agreement.

B. The City desires to contract out for consulting services for certain projects relating to city treasurer services.

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.

1.1 Consultant agrees that all services shall be performed in a competent, professional, and satisfactory manner in accordance with the standards prevalent in the industry.

1.2. By executing this Agreement, Consultant warrants that Consultant (i) has thoroughly investigated and considered the scope of services to be performed, (ii) has carefully considered how the services should be performed, and (iii) fully understands the facilities, difficulties, and restrictions attending performance of the services under the Agreement.

2.0 TERM OF AGREEMENT. This Agreement will become effective on November 10, 2020, and will remain in effect for a period of two years from said date unless otherwise expressly extended and agreed to by both parties or terminated by either party as provided herein.

3.0 PARTY REPRESENTATIVES.

3.1 The City Manager, 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 her designee, has the authority to provide that approval or authorization.

3.2 The Consultant designates the following person to act on Consultant's behalf: Ruth Quinto.

3.2.1 Consultant represents that the tasks and services required hereunder will be performed by Consultant or under its direct supervision, and that all personnel engaged in such work shall be fully qualified and shall be authorized and permitted under applicable State and local law to perform such tasks and services. Consultant will exclusively determine the means, methods and details of performing the services subject to the requirements of this Agreement.

4.0 COMPENSATION FOR SERVICES. The City shall pay the Consultant for its professional services rendered and costs incurred pursuant to this Agreement in accordance with the Scope of Work's fee and cost schedule (Exhibit A). The cost of services shall not exceed \$2,000 per month for the services described on pages 1-2 of Exhibit A. Additional services may be requested in writing by the City Manager or her designee and shall be compensated for at a hourly rate as described on page 3 of Exhibit A. The cost of additional services shall not exceed \$11,000 per year. Total compensation shall not exceed \$35,000 per year. No additional compensation shall be paid for any other expenses incurred, unless first approved by the City Manager, or her 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.

6.2 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 \$100,000 for personal injury to any one person, \$300,000 for injuries arising out of one occurrence, and \$50,000 for property damages. Each such policy of insurance shall be issued by a reputable insurance company admitted and authorized to do business in the State of California.

(c) Consultant shall maintain professional errors and omissions liability insurance for protection against claims alleging negligent acts, errors, or omissions which may arise from Consultant's operations under this Agreement. The amount of this insurance shall not be less than \$500,000 on an annual aggregate basis, and a \$250,000 per-occurrence basis.

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.

6.5.1 The requirements as to the types and limits of insurance coverage to be maintained by Consultant as required by Section 6.4, and any approval of said insurance by City, are not intended to and will not in any manner limit or qualify the liabilities and obligations otherwise assumed by Consultant pursuant to this Agreement, including, without limitation, to the provisions concerning indemnification.

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.

6.6.1 Consultant shall obtain at its sole cost and expense all licenses, permits, and approvals that may be required by law for the performance of the services required by this Agreement. Consultant shall have the sole obligation to pay any fees, assessments, and taxes, plus applicable penalties and interest, which may be imposed by law and arise from or are necessary for Consultant's performance of the services required by this Agreement, and shall indemnify, defend, and hold harmless City against any such fees, assessments, taxes, penalties, or interest levied, assessed, or imposed against City thereunder.

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. Legal actions concerning any dispute, claim, or matter arising out of or in relation to this Agreement shall be instituted and maintained in the Superior Courts of the State of California in the County of Los Angeles, and the parties agree to submit to the personal jurisdiction of such court.

(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: Reva Feldman
City Manager
City of Malibu
23825 Stuart Ranch Road
Malibu, CA 90265-4861

TEL (310) 456-2489 x 224
FAX (310) 456-2760

CONSULTANT: Ruth F. Quinto
General Partner
Quinto Consulting, LP
29500 Heathercliff Rd. # 194
Malibu, CA 90265

TEL: (559) 970-5629

6.20 Warranty of Authorized Signatories and Acceptance of Facsimile or

By: Ruth F. Quinto, General Partner

APPROVED AS TO FORM:

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

CHRISTI HOGIN, City Attorney

Exhibit A
Quinto Consulting, LP
Scope of Services

Treasury Management services will include serving as the City Treasurer and performing the duties as specified in accordance with Malibu Municipal Code section 2.16.010 and as set forth below in order to achieve the targeted market rate of return with low risk and liquidity that aligns to cash flow requirements, while also utilizing an appropriate level of investments in the County of Los Angeles' portfolio of pooled funds.

This scope of work is intended to be a general guide to the Treasury work expected to be performed and is not a complete listing of all services and requirements that may be required, desired or assigned by the City Council. As an overarching principle, the scope of work includes working closely and in effective coordination with appropriate City staff and any other outside professionals.

Specifically, the scope of work includes:

- Review all applicable federal, state, and local laws and regulations to become familiar with required parameters that may have been established by an overlapping entity.
- Review the City's annual adopted budget, annual independent audit and other audits as requested.
- Review and assess the City's investment policy and internal control procedures and coordinate appropriate recommendations for improvement, allowing for the safe deposit of all moneys in the City's custody.

- Provide updates as needed to the Administrative and Finance Subcommittee and the City Council in collaboration and coordination with the City Manager and Assistant City Manager.
- Establish risk and return objectives including a risk profile that is consistent with the City's risk tolerance, a process for evaluating portfolio risk and a return objective in accord with the City's risk tolerance subject to any and all investment constraints.
- Review the City's surplus cash investments and make recommendations as necessary
- Develop an understanding of cash flow requirements and preparation of an appropriate forecast including the review of receipts and disbursement schedules and all bank reconciliations for accuracy and evaluation of compliance with internal controls.
- Analyze current bank account architecture in relation to the City's operations and existing banking services and products and refresh this analysis once annually.
- Review Quarterly Financial Reports

Fee and Cost Schedule

Quinto Consulting, LP shall be compensated for the monthly services described in Exhibit A pages 1-2 at a rate of \$2,000 per month.

The annual price for monthly City Treasurer services is \$24,000.

In addition, Quinto Consulting, LP shall provide on-call, hourly City Treasurer services as directed by the City Manager or her designee.

The on-call rate for these additional services shall be \$200 per hour and shall not exceed 55 hours or \$11,000 per year.