



Council Agenda Report

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

Prepared by: Jesse Bobbett, Community Services Director

Approved by: Steve McClary, Interim City Manager

Date prepared: May 3, 2021 Meeting date: May 24, 2021

Subject: Agreement with Malibu Race Series

RECOMMENDED ACTION: Authorize the Interim City Manager to execute a three-year Agreement with Malibu Race Series LLC to host the Malibu Half Marathon and 5K through November 2023.

FISCAL IMPACT: There is no fiscal impact associated with the recommended action.

WORK PLAN: This item was not included in the Adopted Work Plan for Fiscal Year 2020-2021.

DISCUSSION: On December 11, 2012, the Council adopted City Council Policy #47 – Road Race Policy (Attachment 1). In accordance with the Road Race Policy, the City may grant a maximum of two temporary use permits for marathons, triathlons, and cycling events per calendar year.

On April 23, 2018, the Council approved a three-year Agreement with Malibu Race Series (MRS) to host the Malibu Half Marathon and 5K Race (Event). The Agreement contained similar terms to a one-year Agreement previously approved by the Council in 2017, but added escalating minimum donation amounts to the Event's primary benefactor, the Boys & Girls Club of Malibu (BGCM), and a maximum number of participants each year.

Since 2017, MRS has successfully operated the Event each November as one of two annual road race events permitted in Malibu. The Event typically includes parking lot setup on Friday, a Fitness Expo and pre-race packet pickup (Expo) on Saturday, and the 5K and Half Marathon Races on Sunday.

During that time, MRS donated approximately \$102,000 to the Boys and Girls Club of Malibu (BGCM), which was \$65,000 more than the combined minimum donation amount of \$37,500.

	<u>2017</u>	<u>2018</u>	<u>2019</u>	<u>2020</u>
Maximum Participants	2,500	3,400	3,800	4,000
Minimum Donation to BGCM	\$5,000	\$7,500	\$10,000	\$15,000
Amount Donated to BGCM	\$16,032	\$28,440	\$53,178	\$5,270*

* Race held virtually in lieu of an in-person event

New Agreement

Due to the recent success of the Event, MRS is requesting a new three-year Agreement (Attachment 2) and proposing changes to the format. The Agreement would run through 2023 with new escalating minimum donation amounts to BGCM and a maximum number of participants each year:

2021 Proposed Agreement	<u>2021</u>	<u>2022</u>	<u>2023</u>
Maximum Number of Participants	4,200	4,600	5,000
Minimum Donation to BGCM	\$15,000	\$17,250	\$20,000

Additionally, MRS is proposing changes to the Event format, including:

- Moving the 5K Race to Saturday at 8:00 am before the Expo begins
- Adding a 1K Kid's Fun Run on Saturday afternoon at Zuma Beach
- Relocating the Start/Finish Line and Expo to the western end of the Zuma Beach Parking Lot from Lot 1 to Lot 11.

Moving the 5K race to Saturday will reduce the number of participants on site at one time, allowing MRS to accommodate a larger number of participants without significantly impacting the surrounding area and residents. Additionally, relocating the Start/Finish Line and Expo to Lot 11 will help improve Event logistics, parking congestion, and the flow of traffic in and out of the parking area.

Due to the changes, the course for both races will vary slightly from previous years (Attachment 3), with participants traveling east on Zuma Beach Parking Lot Access Road for the first kilometer. Participants would then utilize Westward Beach Road to access Pacific Coast Highway (PCH) for the remainder of the course before returning to the Finish Line at Parking Lot 11. The PCH portion of the course will include a partial closure on the ocean side of the highway only which will be done through a traffic control company in order to dictate safe closures. The partial closure will begin at 5:00 AM on Saturday and 4:30 AM on Sunday, with rolling openings beginning at 9:00 AM on

Saturday and 11:00 am on Sunday. All roads would be fully reopened by 10:00 AM on Saturday and 12:00 PM on Sunday.

Staff is requesting the Council authorize the Interim City Manager to execute a three-year Agreement with MRS allowing the race to take place through 2023. If approved, the 2021 Event is scheduled to take place on Saturday, November 13 and Sunday, November 14, 2021, following all State, County, and Local COVID-19 safety protocols.

ATTACHMENTS:

- 1) City Council Policy #47 - Road Race Policy
- 2) Agreement with Malibu Race Series LLC
- 3) Proposed Event Details and Course Map



City of Malibu

City Council Policy

Policy #47

Title: Road Race Policy

Purpose: To establish a process for permitting the use of public roadways for non-motorized (walking, running, bicycling) races and events conducted by the private sector that affect residents or use of public resources.

Policy Statement:

This policy is intended to insure the city and its residents have adequate advance notice of any proposed race or related event and the cooperation of the organizers in order to properly plan city services, such as security, sanitation and traffic control, that are required for such an event.

Implementation:

This policy applies to marathons, triathlons and bicycling races or related events requiring the use of public roads in the City of Malibu.

A. Race requirements

1. A City of Malibu Temporary Use Permit is required for all race events;
2. The City may grant a maximum of two (2) temporary use permits for marathons, triathlons, and cycling events per calendar year;
3. Race courses are limited to the section of Pacific Coast Highway between Zuma Beach and the western city limits of Malibu;
4. Race events may only take place the weekend following Labor Day through April 15;
5. Race events may not be held within 30 days of another race event;
6. Race events must be held on Saturdays and/or Sundays, excluding City-designated holidays;
7. Race events must take place during daylight hours, between sunrise and sunset;
8. In the event of a "Red Flag Warning" condition, as determined by the Los Angeles County Fire Department, race organizers shall be required to cancel or postpone any race event on the affected days; and
9. The City retains the right to require cancellation or postponement of any race event that risks the health and safety of the racers, spectators, and/or residents due to inclement weather, floods, fire, or other similar circumstances which substantially interfere with the operation of the race event.

B. Requests that exceed race requirements

In order to exceed the requirements, event organizers are required to submit a completed Temporary Use Permit Application and receive City Council approval of the proposed modifications by adoption of a resolution.

C. Additional application requirements

In addition to the application requirements, the following additional information, submitted to the Planning Division, shall constitute a complete application:

1. An overall race plan which includes:
 - a. Course route designation;
 - b. Proposed road and intersection closures;
 - c. Locations of proposed first aid, water stations and restroom facilities; and
 - d. Location of medical assistance facilities, to be determined by the Los Angeles County Fire Department.
2. Maximum number of participants
3. Traffic and Parking Plan
 - a. For events on City streets, the plan shall be approved by the City Public Works Department.
 - b. For events on State highways, the plan shall be approved by the State of California Department of Transportation (Caltrans).

D. Special Event Encroachment Permit

In addition to the Temporary Use Permit, a Special Event Encroachment Permit shall be obtained from the City Public Works Department for any events, including but not limited to setup, race course, staging, and parking, to be located in any City public right-of-way.

E. Interagency permits

The applicant shall be responsible for obtaining all required permits and permissions from all applicable agencies and jurisdictions. The applicant must comply with all conditions set forth by all applicable agencies and jurisdictions, including but not limited to:

1. City of Malibu Planning Department
2. City of Malibu Public Works Department
3. State of California Department of Transportation
4. State of California Department of Parks and Recreation
5. California Highway Patrol
6. County of Los Angeles Sheriff's Department

7. County of Los Angeles Department of Beaches and Harbors
8. County of Los Angeles Department of Health Services
9. County of Los Angeles Fire Department
10. County of Los Angeles Department of Public Works

Date Adopted:

December 10, 2012

**AGREEMENT BETWEEN THE CITY OF MALIBU
AND MALIBU RACES SERIES LLC**

This Agreement is made and entered into as of May 24, 2021, by and between the City of Malibu (hereinafter referred to as the "City"), and Malibu Race Series LLC (hereinafter referred to as "MRS")

The City and MRS agree as follows:

RECITALS

A. The City desires to provide recreational events that are of interest and benefit to the residents of the City.

B. MRS is in the business of producing and conducting running events.

C. MRS 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 and MRS have agreed that MRS shall produce and conduct a Half Marathon and 5K Event (as defined herein) within Malibu city limits and outlying areas pursuant to the terms and conditions set forth in Exhibit A of this Agreement.

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

1.0 INTRODUCTORY TERMS.

1.1 Recitals. The statements contained in the recitals set forth above ("Recitals") are true and correct, and the Recitals are by this reference made a part of this Agreement.

1.2 Exhibits. The exhibits which are attached to this Agreement are by this reference made a part of this Agreement.

1.3 Abbreviations and Definitions. The following abbreviations and definitions will be used for purposes of this Agreement:

1.3.1 The abbreviations of the Parties set forth in the Preamble will be used for purposes of this Agreement.

1.3.2 "City Services" means the following services provided by the City for a fee during the Half Marathon and 5K Event: (1) law enforcement and fire protection; (2) garbage and refuse disposal; (3) crowd control and traffic control; (4) utilities; and (5) any additional services the City deems appropriate in its sole and absolute discretion.

1.3.3 "City Permit and Use Fees" means the fees and charges imposed by the City in connection with the issuance of permits and the fees and charges imposed by the City in connection with MRS's Half Marathon and 5K Event (as defined herein).

1.3.4 "Concessions" means all concessions associated with the Half Marathon and 5K Event (as defined herein) offered or provided for a fee within the Race Facilities and during the Race Period, including, without limitation: (1) alcoholic and non-alcoholic beverages; (2) wearing apparel; (3) programs; (4) souvenirs; (5) seating; and (6) all other merchandise or services offered for sale in connection with the Half Marathon and 5K Event and during the Half Marathon and 5K Event Period.

1.3.5 "Laws" means all existing and future federal, state, and local constitutions, statutes, ordinances, rules, regulations, and resolutions, and all orders and decrees of lawful authorities having jurisdiction over the matter at issue.

1.3.6 "Race Course" means the staging and routes used by MRS for the Half Marathon and 5K Event. A description of the Race Course is attached to and made part of this Agreement as Exhibit A.

1.3.7 "Half Marathon and 5K Event" means MRS's event, an athletic racing event consisting of pre-event set up on Friday, conducting a 5K race, 1K Fun Run, and Fitness Expo on Saturday, and conducting a Half Marathon race on Sunday, and post-event clean-up on Sunday.

1.3.8 "Race Facilities" means those lands, improvements, buildings, public or other rights of way, or property, owned, leased to, or controlled by the City or under City authority used by MRS for the purpose of staging the Half Marathon and 5K Events.

1.3.9 "Race Period" means from 6:00 a.m. on Friday until 6:00 p.m. on Sunday.

1.3.10 "Ticket Sale Rights" means the right to sell tickets and otherwise charge for admission to, or for participation in, the Half Marathon and 5K Event, and to sell tickets and otherwise charge for admission to, or for the use of Race Facilities in connection with Half Marathon and 5K Event, excluding the right to sell tickets to the general public that are solely for parking.

2.0 TERM OF AGREEMENT. This Agreement will become effective on May 24, 2021, and will remain in effect for a period of three (3) 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 their designee, for the purposes of this Agreement, is the agent for the City; whenever approval or authorization is required, MRS understands that the City Manager, or their designee, has the authority to provide that approval or authorization.

4.0 WARRANTIES AND REPRESENTATIONS

4.1 Warranties and Representations by MRS. MRS warrants and represents to the City as follows:

4.1.1 MRS is a for-profit corporation, duly formed, presently existing, and in good standing under the laws of the State of California.

4.1.2 All appropriate action exists or has been accomplished by MRS so as to duly authorize the officers set forth below to execute this Agreement and all documents contemplated hereby on behalf of MRS so as to fully and firmly bind MRS to the terms and provisions of this Agreement and such other documents.

4.1.3 MRS has the financial capability to and shall conduct a Half Marathon and 5K Event in accordance with this Agreement.

4.2 Warranties and Representations by City. The City warrants and represents to MRS as follows:

4.2.1 The City is a municipality organized and existing under the laws of the State of California.

4.2.2 All appropriate action exists or has been accomplished by the City so as to duly authorize the officials set forth below to execute this Agreement and all documents contemplated hereby on behalf of the City so as to fully and firmly bind the City to the terms and provisions of this Agreement and such other documents.

5.0 SCHEDULING AND CONDUCTING A HALF MARATHON AND 5K EVENT

5.1 Obligation to Conduct a Half Marathon and 5K Event. MRS shall produce and conduct a two-day Half Marathon and 5K Event on Saturday and Sunday on either the first or second weekend of November. MRS shall provide the City with written notice in the form of a City Temporary Use Permit Application.

5.2 Half Marathon and 5K Event. 5K Event shall be conducted on the Race Course on Saturday between 8:00 a.m. and 10:00 a.m.; Fitness Expo shall be conducted in the Zuma Beach Park Lot on Saturday between 10:00 a.m. and 6:00 p.m.; 1K Fun Run shall be conducted on Zuma Beach on Saturday between 3:00 p.m. and 4:00 p.m.; the Half Marathon shall be conducted on the Race Course on Sunday between 5:00 a.m. and 2:00 p.m. The Half Marathon and 5K Event shall be conducted in accordance with the terms and conditions of this Agreement, the City's Road Race Policy and all necessary governmental permits and/or approvals.

5.3 Set-Up, Operation and Dismantling Periods. MRS shall have the use of the Race Facilities during the Race Period for purposes of setup of the facilities and apparatus associated with the Half Marathon and 5K Event provided, however, that access to the Race Course will only be restricted during the time necessary to conduct the Half Marathon and

5K Event. It is anticipated that all facilities and apparatus associated with the Half Marathon and 5K Event will be set up and dismantled during the Race Period. In the event MRS requires additional time to dismantle the facilities and apparatus following the Half Marathon and 5K Event, MRS shall be permitted such additional time beyond the Race Period, so long as MRS has commenced the dismantling during the Race Period and continues to proceed in a diligent manner to complete the dismantling. MRS shall provide the City with a schedule indicating the dates and location of setup and dismantling of the facilities and apparatus associated with the Half Marathon and 5K Event, along with updates and changes thereto, as soon as is reasonably possible after the necessity for such updates and changes become known to MRS.

5.4 Clean-up and Restoration. MRS shall be responsible for cleaning up the Race Course and Race Facilities at the end of the Half Marathon and 5K Event. Such clean-up shall include, without limitation, removal of litter and debris from City streets and the Race Facilities.

5.5 Conditions of Race Facilities. MRS shall be responsible to promptly return the Race Facilities to the condition they were in immediately prior to the Half Marathon and 5K Event, reasonable wear and tear excepted. MRS shall be responsible for repairing any damage to the Race Facilities occurring during the Half Marathon and 5K Event by acts or omissions of MRS, its patrons or concessionaires.

5.6 City Services. The City shall provide City Services for the Half Marathon and 5K Event. The estimated costs and expenses for City Services, as required in the City Temporary Use Permit, shall be determined. Once determined, the estimated costs and expenses for City Services shall be made part of this Agreement. MRS shall pay the estimated costs and expenses for City Services to the City no later than sixty (60) days prior to the Half Marathon and 5K Event.

5.7 Compliance with Laws and Related Matters. MRS, its officers, employees, volunteers, agents, and concessionaires shall comply with all applicable Laws throughout the Term of this Agreement.

5.8 Liability for Expenses. Under no circumstances shall the City be liable for any costs or expenses incurred by MRS in any way related to or connected with the Half Marathon and 5K Event unless specifically provided for in this Agreement.

5.9 Authorizations. MRS shall be responsible for seeking and obtaining any and all permits, licenses, certifications, consents, or other authorizations required from any governmental agency or other public or private entity in order to hold the Half Marathon and 5K Event and perform all other activities in connection therewith.

6.0 GENERAL TERMS.

6.1 Right to Conduct Half Marathon and 5K Event. The City hereby grants to MRS the right to produce and conduct a Half Marathon and 5K Event in accordance with the

terms and conditions of this Agreement and City Council Policy No. 47 (Road Race Policy). MRS is responsible for applying for and securing all applicable governmental approvals/permits in a timely manner, prior to conducting any portion of the Half Marathon and 5K Event or performing any setup activity related to the Half Marathon and 5K Event and complying with the City's Road Race Policy. The City and MRS agree that the Half Marathon and 5K Event is one of the two road race events which are entitled to seek a City Temporary Use Permit each calendar year as set forth in the City's Road Race Policy. All discretionary authority of the City with respect to any and all such permits and/or approvals is expressly retained and nothing in this Agreement shall be construed as limiting or expanding the City's discretionary authority in any way, or committing the City to any particular decision or outcome, with respect to any requisite permits or approvals. The City's denial of any discretionary permit necessary to conduct the Half Marathon and 5K Event shall not be deemed a breach of this Agreement, so long as such denial complies with applicable law and regulation. MRS hereby acknowledges that the City has police powers pursuant to applicable Laws to take reasonable and appropriate action in the event the conduct of the Half Marathon and 5K Event, or any portion thereof or activity associated therewith, is endangering the health, safety or welfare of the general public, is violating any applicable law or regulation, or is otherwise creating a public nuisance. The safety of the Half Marathon and 5K Event participants shall be the sole responsibility of MRS.

6.2 Concession Rights. The City hereby grants MRS the right to operate, or to license (in whole or in part) to others, the Concessions associated with the Half Marathon and 5K Event during the Race Period. The City agrees not to hereafter extend any Concession rights to any person or entity other than MRS which would permit the operation or licensing of Concessions, or the vending or offering for sale of any goods or services competitive with the Concessions. Notwithstanding the foregoing, this grant of rights to Concessions shall not affect the activities of otherwise properly licensed Malibu merchants and business persons in conducting their trade or business during the Half Marathon and 5K Event, or parties with which it has contracted to provide Concessions at any City-owned property or facility.

6.3 Ticket Sale Rights and City Rights. The City hereby grants to MRS exclusive Ticket Sale Rights for the Half Marathon and 5K Event.

6.4 Participation. The total number of participants for the Half Marathon and 5K Event shall not exceed:

2021 – 4,400 participants
2022 – 4,800 participants
2023 – 5,000 participants

6.5 No Interest in Land. MRS rights pursuant to this Agreement shall not be construed as a lease, easement, or other interest in land, buildings, or other property of the City.

6.6 Donation. MRS agrees to donate the following minimum amount to the Boys & Girls Club of Malibu, or another community-oriented charitable organization as designated by the City, no later than 60 calendar days after the final event date each year:

2021 – \$15,000
2022 – \$17,500
2023 – \$20,000

MRS agrees that the Boys & Girls Club of Malibu will identify the specific area or areas of their organization that said donation will go towards.

This Agreement and all of its terms, conditions, and provisions, is made and entered into for the sole protection and benefit of MRS and the City and not for the benefit of any other individual or entity. No other person has any right of action of any kind based on any provision of this Agreement nor may any other person be deemed to be a third-party beneficiary under this Agreement.

6.7 Termination. Either the City or MRS may terminate this Agreement, without cause, by giving the other party thirty (30) days written notice of such termination and the effective date thereof.

6.7.1 If MRS or the City fail to fulfill in a timely and proper manner its obligations under this Agreement, or if MRS or the City violate any of the covenants, agreements, or stipulations of this Agreement, MRS 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. MRS shall be entitled to receive compensation in accordance with the terms of this Agreement for any work satisfactorily completed hereunder. Notwithstanding the foregoing, MRS 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 offset anticipated damages.

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

6.9 Non-Discrimination. MRS 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.

6.10 Insurance. MRS shall submit to the City certificates indicating compliance with the following minimum insurance requirements no less than ten (10) days prior to Half Marathon and 5K Event conducted under this Agreement:

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

(b) Comprehensive general and automobile liability insurance

protecting MRS in amounts not less than \$2,000,000 for personal injury to any one person, \$2,000,000 for injuries arising out of one occurrence, and \$500,000 for property damages or a combined single limit of \$2,000,000. 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 MRS pursuant to the terms of this Agreement.

6.11 Indemnification. MRS 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 MRS's activities related to producing and conducting a Half Marathon and 5K Event 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 MRS's legal counsel unacceptable, then MRS shall reimburse the City its costs of defense, including without limitation reasonable attorney's fees, expert fees and all other costs and fees of litigation. MRS 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.

6.12 Compliance with Applicable Law. MRS 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.

6.13 Independent Contractor. This Agreement is by and between the City and MRS 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 MRS.

6.13.1 MRS 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 MRS, or any of MRS's employees, except as herein set forth, and MRS 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 MRS is and shall at all times remain to the City a wholly independent contractor and MRS's obligations to the City are solely such as are prescribed by this Agreement.

6.14 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.

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

6.16 Default. The following shall be deemed events of default ("Default") under this Agreement:

6.16.1 By City. Failure by the City to perform or comply with its obligations or responsibilities hereunder, which is not cured within a reasonable time, but in no event to exceed thirty (30) days following receipt by the City of written notice from MRS specifying with particularity the Default so claimed. The thirty (30) day curative period provided herein may be expanded by so much additional time as is reasonably necessary to cure the Default, provided that the City commences to cure such Default within such thirty (30) day period and thereafter diligently and continuously proceeds to cure the Default.

6.16.2 By MRS. Any one or more of the following shall be deemed a Default by MRS:

6.16.2.1 Failure of MRS to perform or comply with its obligations or responsibilities hereunder, which is not cured within a reasonable time, but in no event to exceed thirty (30) days following receipt by MRS of written notice from the City specifying with particularity the Default so claimed. The thirty (30) day curative period provided

herein may be expanded by so much additional time as is reasonably necessary to cure the Default provided that MRS commences to cure such Default within such thirty (30) day period and thereafter diligently and continuously proceeds to cure the Default.

6.16.2.2 MRS attempts to assign or transfer any interest in this Agreement without the express prior written consent of the City.

6.16.2.3 MRS makes a voluntary assignment for the benefit of its creditors.

6.16.2.4 MRS files a voluntary petition in bankruptcy or becomes the subject of an involuntary petition in bankruptcy which is not discharged within sixty (60) days after the filing of such involuntary petition in bankruptcy.

6.17 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. In no event shall either party be liable for any loss of use, loss of time, inconvenience, lost profits or other special, incidental or consequential damages in any way related to or arising from this Agreement or the Half Marathon and 5K Event.

6.18 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.

6.19 Force Majeure. Each Party shall be excused from performance of its obligations hereunder to the extent such performance has been delayed, hindered or prevented by any cause or causes beyond such Party's reasonable control, which shall include, without limitation, labor disputes, riots, civil commotion or insurrection, war, war-like operations or terrorist acts, invasion, rebellion, military or usurped power, sabotage, governmental restrictions, regulations, or controls, inability to obtain any materials or services, fire or other casualties, natural disasters or acts of God. In the event any Race Facility or portion thereof is destroyed or substantially damaged at any time during the Term of this Agreement by fire, casualty or other cause, the City shall not be required to repair or rebuild such Race Facilities or portion thereof. If the Race Course set forth in Exhibit A is unavailable due to circumstances beyond the City's control, the Parties shall mutually agree in writing on a revised Exhibit A.

6.20 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.

6.21 Entire Agreement. This Agreement constitutes the whole agreement between the City and MRS, 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 MRS.

6.22 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
Interim City Manager
City of Malibu
23825 Stuart Ranch Road
Malibu, CA 90265-4861
TEL (310) 456-2489 x 224
FAX (310) 456-2760

MRS: Erica Segel
Malibu Race Series LLC
30765 Pacific Coast Highway,
Suite 165,
Malibu CA 90265

6.23 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.

This Agreement is executed on _____, 2021, at Malibu, California, and effective as of May 24, 2021.

CITY OF MALIBU:

STEVE MCCLARY, Interim City Manager

ATTEST:

KELSEY PETTIJOHN, Acting City Clerk
(seal)

MALIBU RACE SERIES:

Erica Segel

By: ERICA SEGEL, Race Director

APPROVED AS TO FORM:

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

JOHN COTTI, City Attorney

Malibu Half Marathon and 5K

Event Schedule

- Friday
 - 7:00 am – 6:00 pm: Event Setup
 - *Zuma Beach Parking Lot Only
- Saturday
 - 6:00 – 8:00 am: Course Setup
 - 7:00 – 8:00 am: 5K Participant Packet Pickup
 - 8:00 – 10:00 am: 5K Run
 - 10:00 am – 6:00 pm: Participant Expo
 - 3:00 – 4:00 pm: 1K Kids Fun Run on Zuma Beach
- Sunday
 - 4:30 – 7:00 am: Course Setup
 - 7:00 am – 12:00 pm: Half Marathon
 - 12:00 – 6:00 pm: Event Clean-Up

5K Race - Course Overview

Saturday: 8:00 – 10:00 AM



Participant Expo – Zuma Beach Parking Lot 11

Saturday: 10:00 AM – 5:00 PM



Half Marathon - Course Overview

Sunday: 7:00 AM – 12:00 PM

