



Council Agenda Report

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

Prepared by: John Cotti, Interim City Attorney
Miriam Woodrow, Human Resources Manager

Date prepared: Jun 4, 2021 Meeting date: June 14, 2021

Subject: Approval of a Professional Services Agreement for City Manager Recruitment Services

RECOMMENDED ACTION: It is recommended that the City Council:

- 1) Consider the recommendation of Mayor Pro Tem Silverstein and Councilmember Pierson relative to the selection of a firm to conduct a recruitment for the vacant City Manager position; and
- 2) Approve a professional services agreement with William Avery & Associates for Executive Search services.

FISCAL IMPACT: Funding for the initial payment is included in the Adopted Budget for Fiscal Year 2020-2021 in Account No. 100-7058-5100 (Human Resources – Professional Services). Funding for the balance of the agreement is included in the Proposed Budget for Fiscal Year 2021-2022 in Account No. 100-7058-5100 (Human Resources – Professional Services). The proposed professional services agreement with William Avery & Associates includes \$19,400 for professional fees, plus reimbursable costs not to exceed \$7,500, for a total maximum cost of \$26,900.

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

DISCUSSION:

As a result of Ms. Feldman's separation from service, the Human Resources Manager solicited proposals from twelve executive search firms to conduct a City Manager recruitment process. The City received five proposals in response: Alliance Resource Consulting, Wendi Brown Creative Partners, Tripepi Smith Talent Solutions, Mathis &

Associates and William Avery & Associates. All are highly regarded and experienced in public entity recruitments, including the City Manager position.

The proposals were provided to Mayor Pro Tem Silverstein and Councilmember Pierson who followed the same process used for selecting Mr. McClary, the Interim City Manager. After reviewing the five proposals, Mayor Pro Tem Silverstein and Councilmember Pierson interviewed all five firms. In addition to other topics, Mayor Pro Tem Silverstein and Councilmember Pierson questioned the firms regarding the cost proposals, their approach to conducting the recruitment process, their commitment to the idea of community involvement, their commitment to equity and diversity in the recruitment process, and their knowledge of the unique challenges that the City may face during the recruitment process.

Having now conducted the interviews, Mayor Pro Tem Silverstein and Councilmember Pierson jointly recommend that the City engage the firm of William Avery & Associates, with Bill Avery as recruiter, to initiate the City Manager search and complete it subject to the City Council's approval of the selection.

The Interim City Attorney prepared the attached professional services agreement (attached) which includes \$19,400 for professional fees, plus reimbursable costs not to exceed \$7,500, for a total maximum cost of \$26,900.

OPTIONS:

In addition to the recommended action, the Council could, among other things, choose to engage another of the recruitment firms that were interviewed by Councilmembers Silverstein and Pierson, to solicit additional proposals, or to refrain from engaging any recruiting firm and discuss other options for conducting the City Manager recruitment, including the utilization of City staff to conduct the search.

ATTACHMENTS:

Professional Services Agreement with William Avery & Associates

**CITY OF MALIBU
PROFESSIONAL SERVICES AGREEMENT**

This Agreement is made and entered into as of June 14, 2021 ("Effective Date") by and between the City of Malibu, a municipal corporation organized and operating under the laws of the State of California ("City"), and William Avery & Associates, Inc. (hereinafter referred to as "Consultant"). City and Consultant are sometimes individually referred to as "Party" and collectively as "Parties" in this Agreement.

RECITALS

A. City is a public agency of the State of California and is in need of professional services for the following project: Recruitment Services (hereinafter referred to as "the Project").

B. Consultant is duly licensed and has the necessary qualifications to provide such services.

C. The Parties desire by this Agreement to establish the terms for City to retain Consultant to provide the services described herein.

AGREEMENT

NOW, THEREFORE, IT IS AGREED AS FOLLOWS:

1. Incorporation of Recitals.

The recitals above are true and correct and are hereby incorporated herein by this reference.

2. Services.

Consultant shall provide the City with the services described in the Scope of Services attached hereto as Exhibit "A."

3. Compensation.

a. Subject to paragraph 3(b) below, the City shall pay for such services in accordance with the Consulting Fee set forth in Exhibit "A."

b. In no event shall the total amount paid for services rendered by Consultant under this Agreement exceed the sum of Twenty-Six Thousand Nine Hundred Dollars and Zero Cents (\$26,900.00) without written approval of the City. Payments to Consultant for work performed will be made on a monthly billing basis.

4. Additional Work.

If changes in the work seem merited by Consultant or the City, and informal consultations with the other party indicate that a change is warranted, it shall be processed in the following manner: a letter outlining the changes shall be forwarded to the City by Consultant with a statement of estimated changes in fee or time schedule. An amendment to this

Agreement shall be prepared by the City and executed by both Parties before performance of such services, or the City will not be required to pay for the changes in the scope of work. Such amendment shall not render ineffective or invalidate unaffected portions of this Agreement.

5. Maintenance of Records.

Books, documents, papers, accounting records, and other evidence pertaining to costs incurred shall be maintained by Consultant and made available at all reasonable times during the contract period and for four (4) years from the date of final payment under the contract for inspection by City.

6. Term of Agreement.

This Agreement will become effective on the Effective Date and will remain in effect for the duration of the Project, unless earlier terminated as provided herein. The Parties may, by mutual, written consent, extend the term of this Agreement if necessary to complete the Project. Consultant shall perform its services in a prompt and timely manner within the term of this Agreement.

7. Delays in Performance.

a. Neither City nor Consultant shall be considered in default of this Agreement for delays in performance caused by circumstances beyond the reasonable control of the non-performing party. For purposes of this Agreement, such circumstances include a Force Majeure Event. A Force Majeure Event shall mean an event that materially affects the Consultant's performance and is one or more of the following: (1) Acts of God or other natural disasters occurring at the project site; (2) terrorism or other acts of a public enemy; (3) orders of governmental authorities (including, without limitation, unreasonable and unforeseeable delay in the issuance of permits or approvals by governmental authorities that are required for the services); and (4) pandemics, epidemics or quarantine restrictions. For purposes of this section, "orders of governmental authorities," includes ordinances, emergency proclamations and orders, rules to protect the public health, welfare and safety.

b. Should such a Force Majeure Event occur, the non-performing party shall, within a reasonable time of being prevented from performing, give written notice to the other party describing the circumstances preventing continued performance and the efforts being made to resume performance of this Agreement. Delays shall not entitle Consultant to any additional compensation regardless of the Party responsible for the delay.

c. Notwithstanding the foregoing, the City may still terminate this Agreement in accordance with the termination provisions of this Agreement.

8. Compliance with Law.

a. Consultant shall comply with all applicable laws, ordinances, codes and regulations of the federal, state and local government, including Cal/OSHA requirements.

b. If required, Consultant shall assist the City, as requested, in obtaining and maintaining all permits required of Consultant by federal, state and local regulatory agencies.

c. If applicable, Consultant is responsible for all costs of clean up and/ or removal of hazardous and toxic substances spilled as a result of his or her services or operations performed under this Agreement.

9. Standard of Care.

Consultant's services will be performed in accordance with generally accepted professional practices and principles and in a manner consistent with the level of care and skill ordinarily exercised by members of the profession currently practicing under similar conditions.

10. Conflicts of Interest.

During the term of this Agreement, Consultant shall at all times maintain a duty of loyalty and a fiduciary duty to the City and shall not accept payment from or employment with any person or entity which will constitute a conflict of interest with the City.

11. City Business Certificate.

Consultant shall, prior to execution of this Agreement, obtain and maintain during the term of this Agreement a valid business registration certificate from the City and any and all other licenses, permits, qualifications, insurance, and approvals of whatever nature that are legally required of Consultant to practice his/her profession, skill, or business.

12. Assignment and Subconsultant.

Consultant shall not assign, sublet, or transfer this Agreement or any rights under or interest in this Agreement without the written consent of the City, which may be withheld for any reason. Any attempt to so assign or so transfer without such consent shall be void and without legal effect and shall constitute grounds for termination. Subcontracts, if any, shall contain a provision making them subject to all provisions stipulated in this Agreement. Nothing contained herein shall prevent Consultant from employing independent associates, and subconsultants as Consultant may deem appropriate to assist in the performance of services hereunder.

13. Independent Contractor.

Consultant is retained as an independent contractor and is not an employee of City. No employee or agent of Consultant shall become an employee of City. The work to be performed shall be in accordance with the work described in this Agreement, subject to such directions and amendments from City as herein provided. Any personnel performing the work governed by this Agreement on behalf of Consultant shall at all times be under Consultant's exclusive direction and control. Consultant shall pay all wages, salaries, and other amounts due such personnel in connection with their performance under this Agreement and as required by law. Consultant shall be responsible for all reports and obligations respecting such personnel, including, but not limited to: social security taxes, income tax withholding, unemployment insurance, and workers' compensation insurance.

14. Insurance. Consultant shall not commence work for the City until it has provided evidence satisfactory to the City it has secured all insurance required under this section. In addition, Consultant shall not allow any subcontractor to commence work on any subcontract until it has secured all insurance required under this section.

a. Commercial General Liability

(i) The Consultant shall take out and maintain, during the performance of all work under this Agreement, in amounts not less than specified herein, Commercial General Liability Insurance, in a form and with insurance companies acceptable to the City.

(ii) Coverage for Commercial General Liability insurance shall be at least as broad as the following:

(1) Insurance Services Office Commercial General Liability coverage (Occurrence Form CG 00 01) or exact equivalent.

(iii) Commercial General Liability Insurance must include coverage for the following:

- (1) Bodily Injury and Property Damage
- (2) Personal Injury/Advertising Injury
- (3) Premises/Operations Liability
- (4) Products/Completed Operations Liability
- (5) Aggregate Limits that Apply per Project
- (6) Explosion, Collapse and Underground (UCX) exclusion deleted
- (7) Contractual Liability with respect to this Agreement
- (8) Property Damage
- (9) Independent Consultants Coverage

(iv) The policy shall contain no endorsements or provisions limiting coverage for (1) contractual liability; (2) cross liability exclusion for claims or suits by one insured against another; (3) products/completed operations liability; or (4) contain any other exclusion contrary to the Agreement.

(v) The policy shall give City, its officials, officers, employees, agents and City designated volunteers additional insured status using ISO endorsement forms CG 20 10 10 01 and 20 37 10 01, or endorsements providing the exact same coverage.

(vi) The general liability program may utilize either deductibles or provide coverage excess of a self-insured retention, subject to written approval by the City, and provided that such deductibles shall not apply to the City as an additional insured.

b. Automobile Liability

(i) At all times during the performance of the work under this Agreement, the Consultant shall maintain Automobile Liability Insurance for bodily injury and property damage including coverage for owned, non-owned and hired vehicles, in a form and with insurance companies acceptable to the City.

(ii) Coverage for automobile liability insurance shall be at least as broad as Insurance Services Office Form Number CA 00 01 covering automobile liability (Coverage Symbol 1, any auto).

(iii) The policy shall give City, its officials, officers, employees, agents and City designated volunteers additional insured status.

(iv) Subject to written approval by the City, the automobile liability program may utilize deductibles, provided that such deductibles shall not apply to the City as an additional insured, but not a self-insured retention.

c. Workers' Compensation/Employer's Liability

(i) Consultant certifies that he/she is aware of the provisions of Section 3700 of the California Labor Code which requires every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and he/she will comply with such provisions before commencing work under this Agreement.

(ii) To the extent Consultant has employees at any time during the term of this Agreement, at all times during the performance of the work under this Agreement, the Consultant shall maintain full compensation insurance for all persons employed directly by him/her to carry out the work contemplated under this Agreement, all in accordance with the "Workers' Compensation and Insurance Act," Division IV of the Labor Code of the State of California and any acts amendatory thereof, and Employer's Liability Coverage in amounts indicated herein. Consultant shall require all subconsultants to obtain and maintain, for the period required by this Agreement, workers' compensation coverage of the same type and limits as specified in this section.

d. Professional Liability (Errors and Omissions)

At all times during the performance of the work under this Agreement the Consultant shall maintain professional liability or Errors and Omissions insurance appropriate to its profession, in a form and with insurance companies acceptable to the City and in an amount indicated herein. This insurance shall be endorsed to include contractual liability applicable to this Agreement and shall be written on a policy form coverage specifically designed to protect against acts, errors or omissions of the Consultant. "Covered Professional Services" as designated in the policy must specifically include work performed under this Agreement. The policy must "pay on behalf of" the insured and must include a provision establishing the insurer's duty to defend.

e. Minimum Policy Limits Required

(i) The following insurance limits are required for the Agreement:

Combined Single Limit

Commercial General Liability	\$1,000,000 per occurrence/ \$2,000,000 aggregate for bodily injury, personal injury, and property damage
Automobile Liability	\$1,000,000 combined single limit
Employer's Liability	\$1,000,000 per accident or disease

Professional Liability

\$1,000,000 per claim and aggregate (errors and omissions)

(ii) Defense costs shall be payable in addition to the limits.

(iii) Requirements of specific coverage or limits contained in this section are not intended as a limitation on coverage, limits, or other requirement, or a waiver of any coverage normally provided by any insurance. Any available coverage shall be provided to the parties required to be named as Additional Insured pursuant to this Agreement.

f. Evidence Required

Prior to execution of the Agreement, the Consultant shall file with the City evidence of insurance from an insurer or insurers certifying to the coverage of all insurance required herein. Such evidence shall include original copies of the ISO CG 00 01 (or insurer's equivalent) signed by the insurer's representative and Certificate of Insurance (Acord Form 25-S or equivalent), together with required endorsements. All evidence of insurance shall be signed by a properly authorized officer, agent, or qualified representative of the insurer and shall certify the names of the insured, any additional insureds, where appropriate, the type and amount of the insurance, the location and operations to which the insurance applies, and the expiration date of such insurance.

g. Policy Provisions Required

(i) Consultant shall provide the City at least thirty (30) days prior written notice of cancellation of any policy required by this Agreement, except that the Consultant shall provide at least ten (10) days prior written notice of cancellation of any such policy due to non-payment of the premium. If any of the required coverage is cancelled or expires during the term of this Agreement, the Consultant shall deliver renewal certificate(s) including the General Liability Additional Insured Endorsement to the City at least ten (10) days prior to the effective date of cancellation or expiration.

(ii) The Commercial General Liability Policy and Automobile Policy shall each contain a provision stating that Consultant's policy is primary insurance and that any insurance, self-insurance or other coverage maintained by the City or any named insureds shall not be called upon to contribute to any loss.

(iii) The retroactive date (if any) of each policy is to be no later than the effective date of this Agreement. Consultant shall maintain such coverage continuously for a period of at least three years after the completion of the work under this Agreement. Consultant shall purchase a one (1) year extended reporting period A) if the retroactive date is advanced past the effective date of this Agreement; B) if the policy is cancelled or not renewed; or C) if the policy is replaced by another claims-made policy with a retroactive date subsequent to the effective date of this Agreement.

(iv) All required insurance coverages, except for the professional liability coverage, shall contain or be endorsed to provide a waiver of subrogation in favor of the City, its officials, officers, employees, agents, and volunteers or shall specifically allow Consultant or others providing insurance evidence in compliance with these specifications to waive their right of recovery prior to a loss. Consultant hereby waives its own right of recovery

against City, and shall require similar written express waivers and insurance clauses from each of its subconsultants.

(v) The limits set forth herein shall apply separately to each insured against whom claims are made or suits are brought, except with respect to the limits of liability. Further the limits set forth herein shall not be construed to relieve the Consultant from liability in excess of such coverage, nor shall it limit the Consultant's indemnification obligations to the City and shall not preclude the City from taking such other actions available to the City under other provisions of the Agreement or law.

h. Qualifying Insurers

(i) All policies required shall be issued by acceptable insurance companies, as determined by the City, which satisfy the following minimum requirements:

(1) Each such policy shall be from a company or companies with a current A.M. Best's rating of no less than A:VII and admitted to transact in the business of insurance in the State of California, or otherwise allowed to place insurance through surplus line brokers under applicable provisions of the California Insurance Code or any federal law.

i. Additional Insurance Provisions

(i) The foregoing requirements as to the types and limits of insurance coverage to be maintained by Consultant, and any approval of said insurance by the City, is not intended to and shall not in any manner limit or qualify the liabilities and obligations otherwise assumed by the Consultant pursuant to this Agreement, including but not limited to, the provisions concerning indemnification.

(ii) If at any time during the life of the Agreement, any policy of insurance required under this Agreement does not comply with these specifications or is canceled and not replaced, City has the right but not the duty to obtain the insurance it deems necessary and any premium paid by City will be promptly reimbursed by Consultant or City will withhold amounts sufficient to pay premium from Consultant payments. In the alternative, City may cancel this Agreement.

(iii) The City may require the Consultant to provide complete copies of all insurance policies in effect for the duration of the Project.

(iv) Neither the City nor any of its officials, officers, employees, agents or volunteers shall be personally responsible for any liability arising under or by virtue of this Agreement.

j. Subconsultant Insurance Requirements. Consultant shall not allow any subcontractors or subconsultants to commence work on any subcontract until they have provided evidence satisfactory to the City that they have secured all insurance required under this section. Policies of commercial general liability insurance provided by such subcontractors or subconsultants shall be endorsed to name the City as an additional insured using ISO form CG 20 38 04 13 or an endorsement providing the exact same coverage. If requested by

Consultant, City may approve different scopes or minimum limits of insurance for particular subcontractors or subconsultants.

15. Indemnification.

To the fullest extent permitted by law, Consultant shall defend (with counsel of City's choosing), indemnify and hold the City, its officials, officers, employees, volunteers, and agents free and harmless from any and all claims, demands, causes of action, costs, expenses, liability, loss, damage or injury of any kind, in law or equity, to property or persons, including wrongful death, in any manner arising out of, pertaining to, or incident to any acts, errors or omissions, or willful misconduct of Consultant, its officials, officers, employees, subcontractors, consultants or agents in connection with the performance of the Consultant's Services, the Project or this Agreement, including without limitation the payment of all damages, expert witness fees and attorney's fees and other related costs and expenses except such loss or damage caused by the sole negligence or willful misconduct of the City. Consultant's obligation to indemnify shall survive expiration or termination of this Agreement and shall not be restricted to insurance proceeds, if any, received by Consultant, the City, its officials, officers, employees, agents, or volunteers.

16. Reserved.

17. Verification of Employment Eligibility.

By executing this Agreement, Consultant verifies that it fully complies with all requirements and restrictions of state and federal law respecting the employment of undocumented aliens, including, but not limited to, the Immigration Reform and Control Act of 1986, as may be amended from time to time, and shall require all subconsultants and sub-subconsultants to comply with the same.

18. Reserved.

19. Laws and Venue.

This Agreement shall be interpreted in accordance with the laws of the State of California. If any action is brought to interpret or enforce any term of this Agreement, the action shall be brought in a state or federal court situated in the County of Los Angeles, State of California.

20. Termination or Abandonment

a. City has the right to terminate or abandon any portion or all of the work under this Agreement by giving ten (10) calendar days written notice to Consultant. In such event, City shall be immediately given title and possession to all original field notes, drawings and specifications, written reports and other documents produced or developed for that portion of the work completed and/or being abandoned. City shall pay Consultant the reasonable value of services rendered for any portion of the work completed prior to termination. If said termination occurs prior to completion of any task for the Project for which a payment request has not been received, the charge for services performed during such task shall be the reasonable value of such services, based on an amount mutually agreed to by City and Consultant of the portion of such task completed but not paid prior to said termination. City shall

not be liable for any costs other than the charges or portions thereof which are specified herein. Consultant shall not be entitled to payment for unperformed services, and shall not be entitled to damages or compensation for termination of work.

b. Consultant may terminate its obligation to provide further services under this Agreement upon thirty (30) calendar days' written notice to City only in the event of substantial failure by City to perform in accordance with the terms of this Agreement through no fault of Consultant.

21. Attorneys' Fees.

In the event that litigation is brought by any Party in connection with this Agreement, the prevailing Party shall be entitled to recover from the opposing Party all costs and expenses, including reasonable attorneys' fees, incurred by the prevailing Party in the exercise of any of its rights or remedies hereunder or the enforcement of any of the terms, conditions, or provisions hereof. The costs, salary, and expenses of the City Attorney's Office in enforcing this Agreement on behalf of the City shall be considered as "attorneys' fees" for the purposes of this Agreement.

22. Responsibility for Errors.

Consultant shall be responsible for its work and results under this Agreement. Consultant, when requested, shall furnish clarification and/or explanation as may be required by the City's representative, regarding any services rendered under this Agreement at no additional cost to City. In the event that an error or omission attributable to Consultant's professional services occurs, Consultant shall, at no cost to City, provide all other services necessary to rectify and correct the matter to the sole satisfaction of the City and to participate in any meeting required with regard to the correction.

23. Prohibited Employment.

Consultant shall not employ any current employee of City to perform the work under this Agreement while this Agreement is in effect.

24. Documents. Except as otherwise provided in "Termination or Abandonment," above, all original field notes, written reports, Drawings and Specifications and other documents, produced or developed for the Project shall, upon payment in full for the services described in this Agreement, be furnished to and become the property of the City.

25. Organization.

Consultant shall assign Bill Avery as Project Manager. The Project Manager shall not be removed from the Project or reassigned without the prior written consent of the City.

26. Limitation of Agreement.

This Agreement is limited to and includes only the work included in the Project described above.

27. Notice.

Any notice or instrument required to be given or delivered by this Agreement may be given or delivered by depositing the same in any United States Post Office, certified mail, return receipt requested, postage prepaid, addressed to:

CITY:

City of Malibu

23825 Stuart Ranch Road

Malibu, CA 90265-4861

Attn: City Manager

CONSULTANT:

Bill Avery

3 ½ N. Santa Cruz Ave. #A

Los Gatos, CA 95030

and shall be effective upon receipt thereof.

28. Third Party Rights.

Nothing in this Agreement shall be construed to give any rights or benefits to anyone other than the City and the Consultant.

29. Equal Opportunity Employment.

Consultant represents that it is an equal opportunity employer and that it shall not discriminate against any employee or applicant for employment because of race, religion, color, national origin, ancestry, sex, age or other interests protected by the State or Federal Constitutions. Such non-discrimination shall include, but not be limited to, all activities related to initial employment, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff or termination.

30. Entire Agreement.

This Agreement, with its exhibits, represents the entire understanding of City and Consultant as to those matters contained herein, and supersedes and cancels any prior or contemporaneous oral or written understanding, promises or representations with respect to those matters covered hereunder. Each party acknowledges that no representations, inducements, promises or agreements have been made by any person which are not incorporated herein, and that any other agreements shall be void. This Agreement may not be modified or altered except in writing signed by both Parties hereto. This is an integrated Agreement.

31. Severability.

If any provision of this Agreement is determined by a court of competent jurisdiction to be invalid, illegal, or unenforceable for any reason, such determination shall not affect the validity or enforceability of the remaining terms and provisions hereof or of the offending provision in any other circumstance, and the remaining provisions of this Agreement shall remain in full force and effect.

32. Successors and Assigns

This Agreement shall be binding upon and shall inure to the benefit of the successors in interest, executors, administrators and assigns of each party to this Agreement. However, Consultant shall not assign or transfer by operation of law or otherwise any or all of its rights, burdens, duties or obligations without the prior written consent of City. Any attempted assignment without such consent shall be invalid and void.

33. Non-Waiver.

The delay or failure of either Party at any time to require performance or compliance by the other Party of any of its obligations or agreements shall in no way be deemed a waiver of those rights to require such performance or compliance. No waiver of any provision of this Agreement shall be effective unless in writing and signed by a duly authorized representative of the Party against whom enforcement of a waiver is sought. The waiver of any right or remedy with respect to any occurrence or event shall not be deemed a waiver of any right or remedy with respect to any other occurrence or event, nor shall any waiver constitute a continuing waiver.

34. Time of Essence.

Time is of the essence for each and every provision of this Agreement.

35. Headings.

Paragraphs and subparagraph headings contained in this Agreement are included solely for convenience and are not intended to modify, explain, or to be a full or accurate description of the content thereof and shall not in any way affect the meaning or interpretation of this Agreement.

36. Amendments.

Only a writing executed by all of the Parties hereto or their respective successors and assigns may amend this Agreement.

37. City's Right to Employ Other Consultants.

City reserves its right to employ other consultants, including engineers, in connection with this Project or other projects.

38. Prohibited Interests.

Consultant maintains and warrants that it has not employed nor retained any company or person, other than a bona fide employee working solely for Consultant, to solicit or secure this Agreement. Further, Consultant warrants that it has not paid nor has it agreed to pay any company or person, other than a bona fide employee working solely for Consultant, any fee, commission, percentage, brokerage fee, gift or other consideration contingent upon or resulting from the award or making of this Agreement. For breach or violation of this warranty, City shall have the right to rescind this Agreement without liability. For the term of this Agreement, no director, official, officer or employee of City, during the term of his or her service with City, shall have any direct interest in this Agreement, or obtain any present or anticipated material benefit arising therefrom.

39. Counterparts.

This Agreement may be executed in one or more counterparts, each of which shall be deemed an original. All counterparts shall be construed together and shall constitute one single Agreement.

40. Authority.

The persons executing this Agreement on behalf of the Parties hereto warrant that they are duly authorized to execute this Agreement on behalf of said Parties and that by doing so, the Parties hereto are formally bound to the provisions of this Agreement.

[SIGNATURES ON FOLLOWING PAGE]

**SIGNATURE PAGE FOR PROFESSIONAL SERVICES AGREEMENT
BETWEEN THE CITY OF MALIBU
AND WILLIAM AVERY & ASSOCIATES**

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date first written above.

CITY OF MALIBU

WILLIAM AVERY & ASSOCIATES

By: _____
Paul Grisanti
Mayor

By: _____

Its: _____

Printed Name: _____

ATTEST:

By: _____
Kelsey Pettijohn, Acting City Clerk

APPROVED AS TO FORM:

By: _____
THIS DOCUMENT HAS BEEN REVIEWED
BY THE CITY ATTORNEY'S OFFICE
John C. Cotti, Interim City Attorney

EXHIBIT A

SCOPE OF SERVICES

PROPOSAL FOR THE CITY OF MALIBU RECRUITMENT FOR CITY MANAGER

William Avery & Associates, Inc. – Overview

William Avery & Associates, Inc. (Avery Associates) is a successful and service focused Management Consulting firm based in Los Gatos, California. Incorporated in 1982, the firm specializes in Executive Search, Labor Relations and Human Resources/Management Consulting.

The firm currently includes two Principals and several key consultants. Bill Avery, the founder of Avery Associates, heads and manages the firm. He oversees the Labor Relations practice and is heavily involved in the search business including leading key searches. Paul Kimura focuses on and manages the Executive Search and Recruitment practice. Key staff members include Bill Lopez and Sam Avery, who support the search practice and the firm's administrative staff includes Tomi Ewing, Jackie Collins and Michelle Ross. Temporary staff as needed augments the team.

Mr. Avery, having served in the past as a City Manager, provides the firm with direct experience and knowledge of city administration. Mr. Kimura's expertise in executive, technical and business recruitment, which he gained during his nineteen years of high technology experience, provides the basis for many of the recruitment strategies and tactics utilized by the firm. (Their profiles are attached.) Collectively and combined, the firms Principals offer exceptional expertise in the area of public sector recruitment and consulting.

Below is the location and phone numbers of the office which will coordinate this activity along with the contacts and authorized representatives of Avery Associates:

Bill Avery	Paul Kimura, Principal
3 ½ N. Santa Cruz Ave. #A	3 ½ N. Santa Cruz Ave. #A
Los Gatos, CA 95030	Los Gatos, CA 95030
(office) 408 399-4424	(office) 408 399-4424
(cell) 408 472-7873	(cell) 408 472-7936
(email) bill@averyassoc.net	(email) paulk@averyassoc.net

Firm Qualifications/Experience – What Differentiates Avery Associates

Exceptional service delivery and a very high-quality work product provide excellent results for our clients. This begins with the initial client meetings, which lead to detailed timelines for deliverables followed by weekly recruitment status updates following initiation of the search. Our candidate outreach efforts are professionally and confidentially conducted. The evaluation materials we provide clients are routinely characterized as accurate, comprehensive and of very high quality. We believe more so than any other public sector recruitment firm. This is largely based on our interview system utilizing behavioral interview techniques, which we describe in our recruitment plan. This leads to a quality product with excellent end results for our clients.



The service element is based on two factors: The first is the collective service philosophy from all of our organizational team members. They are each dedicated to providing service and support to clients. The second factor is based on the high level of engagement and participation from the firm Principals in every search assignment. This hands-on involvement includes client interface, identifying and developing the ideal candidate profile and position specification, development of the search strategy, candidate outreach, interviewing and assessment, completion of reference interviews, candidate presentation, final interview facilitation and when desired, negotiation of employment terms with the successful candidate.

Recruitment Team for the City of Malibu

Bill Avery will serve as the Project Lead for this assignment and will be assisted by Bill Lopez and Sam Avery. Mr. Avery will be personally involved in the initial client meetings, development of the ideal candidate profile and search strategy, interviewing and assessment of candidates, the presentation of candidates, attendance at final interviews and will be available throughout the search process to provide other related consulting services.

Recruitment Approach/Methodology

I. Position Profile and Organizational Assessment

The initial assessment phase is a critical component of the search process. Mr. Avery will individually meet with City Council members, and with other city staff (as deemed appropriate by the policy makers) to discuss the organizational needs and position requirements and to formalize the job description.

We understand that some communities are committed to engaging their residents in determining the ideal profile for the new City Manager. As this is a priority for the City, we can utilize various approaches in reaching out to the community in soliciting their insights/inputs regarding the ideal City Manager. The ideal approach towards reaching the greatest number of residents is through an online community survey linked through your city's website. Alternative options include: A town hall meeting (in today's environment, this would be conducted via video conferencing); conducting a "targeted" outreach effort to key community members as identified by the City Council (i.e., Service club/Chamber of Commerce/Downtown Association leaders; educational executives; homeowners association leaders; executives of community-based organizations). Any or all of these community outreach efforts can be incorporated into our recruitment model. We would include the Council's preferred approach as part of our Scope of Services at no additional charge.

Our goals in securing the collective insights from our meetings are to:

- Understand the City priorities for this position.
- Develop a clear understanding and consensus on the expertise, experience, education, performance attributes and operational style of the ideal candidate.



- Discuss the goals, objectives, deliverables, and challenges related to this position.
- Gain insight of the various organizational dynamics and departmental issues that exist within the organization.
- Identify the compelling aspects to this opportunity.

The formal recruitment announcement that includes the ideal candidate profile would be developed from the above discussions and incorporated into the formal position announcement. The candidate profile is also utilized in various other means as a marketing tool, for advertising copy, postings, and for other announcements.

II. Development of the Search Strategy

Our search strategy will be developed in conjunction with the organizational assessment. The final approach is based on your input and considerations during the assessment activity. We would incorporate the following elements into this search:

- Original research, which consists of identification and contact of current incumbents or other candidates who meet the profile but are not actively seeking other employment.
- Development of a targeted candidate list based on our extensive database of key executive contacts, referrals and recommendations from key sources, and other current and former City Management personnel who have extensive contacts and networks in this area. We also make extensive use of Linked-In Recruiter and email/phone contact in our proactive outreach efforts to solicit interest from potential candidates.
- Public information sources that include various membership listings such as the League of California Cities, ICMA and the various municipal organizations within the U.S.
- An extensive mailing campaign to current city managers and select assistant managers throughout the U.S.
- Print advertising in ICMA Newsletter, Jobs Available and any other print publications deemed appropriate by the City.
- Internet job postings on national public sector employment bulletin boards, City Management and Municipal association-based web sites, and our company website.

III. Candidate Assessment

Our assessment process involves several “tiers” of evaluation. All candidates responding to this position will initially be evaluated based on their resume and if appropriate, an extensive phone “screening” by a member of the project team. Candidates who pass the initial “qualifying” criteria are then scheduled for a formal interview with Mr. Avery. These



extended personal interviews typically take one hour and a thorough discussion of their experience, accomplishments, management philosophy and interpersonal style takes place.

In interviewing candidates, we utilize a methodology based on “behavioral” interview techniques. Fundamentally, this approach explores a candidate’s past accomplishments and experiences that relate to the position being considered. The philosophy here is that the best indicator of future performance is to evaluate past behavior. This methodology allows the firm to “project” how a candidate would approach and address the key challenges in the new position.

Those individuals who best fit the position requirements will have a Candidate Assessment Report developed by the Principal who conducted the interview. Additionally, two initial reference interviews are performed on these candidates. The reference interviews provide our clients with additional insights on the candidate’s “behavior” and style.

IV. Candidate Presentation

Based on a predetermined date to meet and present candidate recommendations to the City Council, Mr. Avery will provide an overview of the recruitment and present our recommendations. We feel our extensive qualification, interview, and reference interviewing process and the knowledge gained during our initial assessment period; enable our client to proceed with fewer rather than more finalists. However, we will not restrict or limit the number of candidates recommended as this decision is related to the overall strength and depth of the candidate pool.

The final candidates are presented in our extensive candidate presentation “book”. Each finalist will have a file consisting of a candidate summary sheet, the submitted cover letter and resume, the Candidate Assessment Report (based on the “behavioral” interview), and two candidate reference interviews. This extensive profile on each recommended candidate continually generates positive feedback from our clients as it provides extensive detail beyond just a resume.

The Candidate book also identifies other candidates who were given secondary consideration, which provides the client insight on others who were interviewed. Candidate summary sheets are created for everyone who submitted a resume would also be included. This provides the client an insight to the level and nature of response for their position.

V. Selection Process

At the conclusion of the candidate presentation, it is anticipated the final candidate interview group will be determined by the Council. At that time, Mr. Avery will also help finalize the Council’s desired interview process. Thereafter, we will coordinate the final interview logistics with city staff.



Our firm will develop interview schedules, notify candidates of status and provide travel guidance if required, related to the interview process. We will also develop potential interview questions and be in attendance during final interviews to help facilitate the process and to lead an end of day debrief and evaluation process. The City will provide the facility. Based on the desired consideration process, our firm will coordinate all necessary logistics with city staff for each phase of the process.

VI. Position Closure and Follow-Up

Based on the firm's experience in human resource management and executive search, we are able to assist our clients in formulating appropriate compensation and other employment arrangements. We will be available throughout our retention to assist in this process.

As a matter of policy, Avery Associates monitors the transition and progress of any executive we place with a client. Within the first three to six months following the hired individual joining the City, we will speak with that individual to ensure the transition has effectively occurred. During the same period, we will also review the individual's status with your office.

Recruitment Timeline

We have the capacity to be available within a one-to-two week window to initiate new recruitments.

Task	Scheduled Dates
<i>Search Initiation, Marketing & Advertising Development:</i> <ul style="list-style-type: none"> ▪ <i>Initial meetings with city manager and city staff to define the ideal candidate profile</i> ▪ <i>Develop draft of recruitment brochure for approval by client</i> ▪ <i>Recruitment strategy finalized</i> ▪ <i>Determination of advertising scope and placement deadlines</i> ▪ <i>Brochure designed and printed</i> 	<i>Weeks 1 - 4</i>
<i>Marketing, Advertisement and Outreach Period:</i> <i>Advertise in:</i> <ul style="list-style-type: none"> ▪ <i>Mailing of brochures</i> ▪ <i>Jobs Available</i> ▪ <i>ICMA newsletter and website</i> <i>Preliminary candidate screening</i>	<i>Weeks 4 - 10</i>
<i>Candidate Review - Screening and Finalists Selection</i>	<i>Weeks 9-12</i>
<i>Development and finalization of Interview process and interview questions</i>	<i>Weeks 13-14</i>
<i>Interviews with City</i>	<i>Week 15</i>
<i>Final interviews and reference checks</i>	<i>Week 16</i>
<i>Appointment Offer/Acceptance</i>	<i>Week >17</i>
<i>Report to Work Date</i>	<i>Week >17</i>



Client References

- I. City of Anaheim
Chris Zapata, Former City Manager; 619.240.5620 (C); email: chriszapata007@gmail.com
Tom Tait, Former Mayor; 714.403.1804; email: tomtait@tait.com
- II. City of Paso Robles
Greg Carpenter, Interim City Manager; 310.261.1910 (C); email: citymanager@prcity.com
(former City Manager in El Segundo)
Steve Martin, Mayor; 805.674.4890 (C); email: smartin@prcity.com
- III. City of Foster City
Peter Pirnejad, City/District Manager (placed candidate); 650.286.3220;
email: email: ppirnejad@fostercity.org
Jon Froomin, Council Member; 650.286.3502; email: jfroomin@fostercity.org
- IV. City of Stockton
Michael Tubbs, Former Mayor; 209.351.2956 (C)

Consulting Fee

Based on the services described in our proposal, the professional services consulting fee for this recruitment will be \$19,400. We would provide our first consulting invoice in the amount of \$8,400 at the outset of the search. A second invoice of \$5,500 would be billed with the presentation of candidate recommendations and the final invoice of \$5,500 for the retainer will be submitted at the completion of the search. The consulting fee will be inclusive of all services defined within this proposal unless otherwise stated.

In addition to the Professional Services Fee, normal and direct out-of-pocket expenses associated with the search are charged back to the client. Expenses for this assignment would not exceed \$7,500 without the express consent of the City. These expenses include advertising, clerical time, supplies, printing, telephone, postage, background checks and consultant travel for client discussions, meetings, local and out-of-area candidate interviews. All expense items are reimbursed "at cost" and will be detailed and billed on a monthly basis.

Guarantees and Ethics

Whenever William Avery & Associates, Inc. is retained; we make several guarantees and commitments to a client. Due to our experience, knowledge and success within the management-consulting field, we assure a client that we will only present candidates who meet a substantial majority of the ideal qualifications that you have outlined. We are also committed to continue our search efforts until a successful candidate is employed.



During our placement efforts, we openly share any relationships, previous experience and knowledge for any candidate we present for consideration. Our commitment and responsibility are to our clients and their best interests.

It is also our practice to replace a candidate who may voluntarily resign during the first year of his/her employment. This same commitment applies if the client finds it necessary to terminate or to request the resignation of the selected individual in the first year for any reason. In either case, we invoice a client only for out-of-pocket expenses incurred in identifying a replacement.

