



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, City Manager

Date prepared: October 3, 2022 Meeting date: November 14, 2022

Subject: Agreement with Super League Triathlon

RECOMMENDED ACTION: Consider authorizing the City Manager to execute a five-year Agreement with Super League Triathlon Inc. to host the Malibu Triathlon through September 2027; or Appoint an Ad-hoc committee consisting of no more than two council members and staff to review the City's Road Race Policy and the proposed agreement and return to City Council with a recommendation.

FISCAL IMPACT: There is no fiscal impact associated with the recommended action. Super League has offered to make an annual donation to the City beginning at \$25,000, and increasing by 5% each year of the Agreement towards City Recreation programs which will be added to Account No. 100-0000-3461-00 (Municipal Facility Use Fees).

WORK PLAN: This item was included as Item #7.j. in the Adopted Work Plan for Fiscal Year 2022-2023.

DISCUSSION: On December 11, 2012, the Council adopted City Council Policy #47 – Road Race Policy (Attachment 2). 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 August 12, 2013, the City entered into a 10-year Agreement with Michael Epstein Sports Productions Inc. (MESP) (Attachment 3) to host the Malibu Triathlon (Triathlon) through November 1, 2023. The Triathlon takes place annually in mid to late September and is one of two road races allowed under the City's Road Race Policy.

On April 12, 2017, the Council approved an Assignment of Agreement with MESP, transferring its interest in the Agreement to Malibu Triathlon Productions (MTP). The Assignment of Agreement allowed MTP to continue operating the Triathlon under the

same terms as the Agreement with MESP. On August 9, 2021, the Council approved a similar change following Super League Triathlon's (Super League) acquisition of MTP. Amendment No. 1 to the Agreement allowed Super League to continue operating the Triathlon under the original terms of the Agreement.

The Triathlon has operated successfully since 2013 while donating \$128,575 to City Recreation Programs under the terms of the Agreement. The Triathlon did not take place in 2020 due to COVID, and the 2022 donation is pending.

Year	Donation Amount	Year	Donation Amount
2013	\$10,000	2018	\$18,375
2014	\$11,675	2019	\$20,050
2015	\$13,350	2020	N/A – COVID
2016	\$15,025	2021	\$23,400
2017	\$16,700	2022	\$25,000*

*Payment pending

New Agreement

With the current Agreement set to expire on November 1, 2023, Super League is requesting a new five-year Agreement (Attachment 1), which would allow them to continue operating the event through October 2027. City staff and Super League began working on a new Agreement after a discrepancy between the expiration date and the donation payment table was discovered in the current Agreement. The current Agreement states that the Agreement expires on November 1, 2023; however, the donation payment table (Attachment 3, Page 5) indicates that 2022 was the 10th year of the Agreement. Considering the 2023 Triathlon is scheduled to take place in September 2023 before the expiration date, that would be considered the 11th race under the current Agreement.

The terms of the new Agreement are similar to the current Agreement, with increased insurance minimums and escalating annual donation amounts from Super League to the City beginning. The donation amount begins at \$25,000 in 2023 and increases by 5% annually through 2027.

Year	Donation Amount
2023	\$25,000
2024	\$26,250
2025	\$27,563
2026	\$28,947
2027	\$30,388

If approved, the new Agreement would be effective November 1, 2022, and supersede the current Agreement. Alternatively, if the Council chooses not to approve the Agreement, other options may be considered such as forming an Ad Hoc Committee to review the Road Race Policy and road race agreements. The Ad Hoc Committee could then make a recommendation to the Council at a future meeting.

ATTACHMENTS:

- 1) Proposed 2022 Agreement with Super League Triathlon Inc.
- 2) City Council Policy #47 - Road Race Policy
- 3) Original 2013 Agreement with Michael Epstein Sports Productions

**AGREEMENT BETWEEN THE CITY OF MALIBU
AND SUPER LEAGUE TRIATHLON INC**

This Agreement is made and entered into as of November 14, 2022, by and between the City of Malibu (hereinafter referred to as the "City"), and Super League Triathlon, Inc. (hereinafter referred to as "Super League").

The City and Super League 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. Super League is in the business of producing and conducting athletic events, specifically short course triathlons. Super League owns the Malibu Triathlon and raises over \$1,000,000 annually for Children's Hospital Los Angeles.

C. Super League 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 Super League have agreed that Super League shall produce and conduct a Triathlon Event (as defined herein) within Malibu city limits and outlying areas pursuant to the terms and conditions set forth in this Agreement.

NOW, THEREFORE, the City and Super League 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 Abbreviations and Definitions. The following abbreviations and definitions will be used for purposes of this Agreement:

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

1.2.2 "Additional City Services" means the following services coordinated and paid for by Super League for the Triathlon Event, as required by the City Temporary Use Permit, including: (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.

1.2.3 "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 Super League's Triathlon Event (as defined herein).

1.2.4 "Concessions" means all concessions associated with the Triathlon Event (as defined herein) offered or provided for a fee within the Triathlon Event Facilities and during the Triathlon Event 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 Triathlon Event and during the Triathlon Event Period.

1.2.5 "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.

1.2.6 "Triathlon Course" means the staging and routes used by Super League for the Triathlon Event as approved through the City Temporary Use Permit Application Process.

1.2.7 "Triathlon Event" means Super League's event, an athletic racing event consisting of pre-event set up on Friday, conducting a Triathlon race on Saturday and Sunday, and post-event clean-up on Sunday.

1.2.8 "Triathlon Event 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 Super League for the purpose of staging the Triathlon Events.

1.2.9 "Triathlon Event Period" means from 8:00 a.m. on the Monday preceding the Triathlon Event until 5:00 pm on the Monday following the Triathlon Event.

1.2.10 "Ticket Sale Rights" means the right to sell tickets and otherwise charge for admission to, or for participation in, the Triathlon Event, and to sell tickets and otherwise charge for admission to, or for the use of the Triathlon Event Facilities in connection with Triathlon 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 November 1, 2022, and will remain in effect for a period of five (5) 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, Super League 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 SUPER LEAGUE. Super League warrants and represents to the City as follows:

4.1.1 Super League 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 Super League so as to duly authorize the officers set forth below to execute this Agreement and all documents contemplated hereby on behalf of Super League so as to fully and firmly bind Super League to the terms and provisions of this Agreement and such other documents.

4.1.3 Super League has the financial capability to and shall conduct a Triathlon Event in accordance with this Agreement.

4.1.4 Super League agrees to provide annual financial statements and accounting documentation associated with the Triathlon Event within fourteen (14) days if requested by the City.

4.2 Warranties and Representations by City. The City warrants and represents to Super League 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 TRIATHLON EVENT

5.1 Obligation to Conduct a Triathlon Event. Super League shall produce and conduct a two-day Triathlon Event on a consecutive Saturday and Sunday after Labor Day and before mid-October. Super League shall provide the City with written notice in the form of a City Temporary Use Permit Application no later than ninety (90) days prior to the first day of the Triathlon Event Period.

5.2 Triathlon Event. Triathlon Event shall be conducted on the Triathlon Course on Saturday and Sunday during the Triathlon Event Period and shall be held during daylight hours only. The Triathlon 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. Super League shall have the use of the Triathlon Event Facilities during the Triathlon Event Period for purposes of setup of the facilities and apparatus associated with the Triathlon Event provided, however, that access to the Triathlon Course will only be restricted during the time necessary to conduct the Triathlon Event. It is anticipated that all facilities and apparatus associated with the Triathlon Event will be set up and dismantled during the Triathlon Event Period. In the event Super

League requires additional time to dismantle the facilities and apparatus following the Triathlon Event, Super League shall be permitted such additional time beyond the Triathlon Event Period, so long as Super League has commenced the dismantling during the Triathlon Event Period and continues to proceed in a diligent manner to complete the dismantling. Super League shall provide the City with a schedule indicating the dates and location of setup and dismantling of the facilities and apparatus associated with the Triathlon Event, along with updates and changes thereto, as soon as is reasonably possible after the necessity for such updates and changes become known to Super League.

5.4 Clean-up and Restoration. Super League shall be responsible for cleaning up the Triathlon Course and Triathlon Event Facilities at the end of the Triathlon Event. Such clean-up shall include, without limitation, removal of litter and debris from City streets and the Triathlon Event Facilities.

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

5.6 Additional Municipal Services. Super League shall be responsible for the scheduling of and payment for all additional municipal services, as required by the City Temporary Use Permit. In certain circumstances, the City may facilitate the payment for additional municipal services to other federal, state or local governmental agencies. The City's role in these payments shall only be administrative only (*i.e.*, processing and ensuring the accuracy of the payments) and in no way constitutes the City's agreement or sign-off on any other services, plans or arrangements provided by other agencies. Thus, the City shall accept no other responsibility other than facilitating the payment and shall have no liability whatsoever from any claims related to Super League and additional municipal services. Super League shall pay the estimated costs and expenses for additional municipal services no later than sixty (60) days prior to the Triathlon Event. Super League shall pay any remaining costs for additional municipal services no later than sixty (60) days following the Triathlon Event.

5.7 Compliance with Laws and Related Matters. Super League, 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 Super League in any way related to or connected with the Triathlon Event unless specifically provided for in this Agreement.

5.9 Authorizations. Super League 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 Triathlon Event and perform all other activities in connection therewith.

6.0 GENERAL TERMS.

6.1 Right to Conduct Triathlon Event. The City hereby grants to Super League the right to produce and conduct a Triathlon Event in accordance with the terms and conditions of this Agreement and City Council Policy No. 47 (Road Race Policy). Super League is responsible for applying for and securing all applicable governmental approvals/permits in a timely manner, prior to conducting any portion of the Triathlon Event or performing any setup activity related to the Triathlon Event and complying with the City's Road Race Policy. The City and Super League agree that the Triathlon 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 Triathlon Event shall not be deemed a breach of this Agreement, so long as such denial complies with applicable law and regulation. Super League 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 Triathlon 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 Triathlon Event participants shall be the sole responsibility of Super League.

6.2 Concession Rights. The City hereby grants Super League the right to operate, or to license (in whole or in part) to others, the Concessions associated with the Triathlon Event during the Triathlon Event Period. The City agrees not to hereafter extend any Concession rights to any person or entity other than Super League 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 Triathlon 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 Super League exclusive Ticket Sale Rights for the Triathlon Event.

6.4 Participation. The total number of participants for the Triathlon Event shall not exceed 5,750.

6.5 No Interest in Land. Super League 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. Super League agrees to donate the following annual minimum amount to the City's recreation programs, as directed by the City each year in the amounts shown in the following table no later than 60 calendar days after the final event date each year:

2023 - \$25,000

2026 - \$28,941

2024 - \$26,250

2027 - \$30,388

2025 - \$27,563

This Agreement and all of its terms, conditions, and provisions, is made and entered into for the sole protection and benefit of Super League 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 Exclusivity. The City will not authorize, without Super League's permission, any triathlon event consisting of participants swimming, biking and running, other than the Triathlon Event organized and conducted by Super League, sixty (60) days before the Triathlon Event or sixty (60) days after the Triathlon Event throughout the Term of this Agreement.

6.8 Termination. Either the City or Super League may terminate this Agreement, without cause, by giving the other party sixty (60) days written notice after the conclusion of the most recent Triathlon Event of such termination and the effective date thereof.

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

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

6.10 Non-Discrimination. Super League 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.

6.11 Insurance. Under this Agreement, Super League shall provide the following insurance documents to the City, no less than ten (10) days prior to Triathlon Event:

6.11.1 Commercial general liability insurance in an amount of at least \$2,000,000 per occurrence, \$4,000,000 general aggregate, for bodily injury, personal injury, and property damage. The policy must include contractual liability that has not been amended. Any endorsement restricting standard ISO "insured contract" language will not be accepted.

6.11.2 Automobile liability insurance in an amount of at least \$2,000,000

combined single limit for each accident covering bodily injury and property damage for all activities arising out of or in connection with Super League's facility use, including coverage for any owned, hired, non-owned, or rented vehicles.

6.11.3 Workers' compensation insurance as required by California law and Employers' Liability insurance in an amount of at least \$1,000,000. Super League shall submit to the City, along with a certificate of insurance, a waiver of subrogation and endorsement in favor of the City, its officers, agents, employees, and volunteers.

6.11.4 All Super League insurance policies, except Worker's Compensation, shall name the Indemnified Parties as additional insureds.

6.11.5 All policies shall provide that the City will be provided notice at least thirty (30) days prior to any cancellation, reduction or material change in coverage.

6.11.6 Super League shall provide the City with Certificates of Insurance on a standard ACORD form reflecting all required coverage. Prior to commencement of the Triathlon Event Period each year, Super League shall provide copies of current policies with all applicable endorsements.

6.11.7 All insurance policies shall be issued by an insurance company currently authorized by the Insurance Commissioner to transact businesses of insurance or is on the List of Approved Surplus Line Insurers in the State of California with an assigned policy holder's rating of A- "or higher" and Financial Size Category Class VII "or larger" in accordance with the latest addition of Best's Key Rating Guide unless otherwise approved by the City.

6.11.8 Super League will obtain insurance policies that waive all subrogation rights of its insurance carriers in favor of the Indemnified Parties. This provision is intended to waive fully, and for the benefit of the Indemnified Parties, any rights or claims which give rise to a right of subrogation in favor of any insurance carrier or Super League.

6.12 Indemnification. Super League 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 Super League's activities related to producing and conducting a Triathlon 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 Super League's legal counsel unacceptable, then Super League 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. Super League 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.

6.13 Compliance with Applicable Law. Super League 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.

6.14 Independent Contractor. This Agreement is by and between the City and Super League 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 Super League.

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

6.14.2 Super League shall not use the City Seal or present the Triathlon Event as a City-organized event without prior approval from the City.

6.15 Legal Construction.

6.15.1 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.

6.15.2 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.

6.15.3 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.

6.15.4 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.

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

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

6.17.1 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 Super League 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.

6.17.2 By Super League. Any one or more of the following shall be deemed a Default by Super League:

6.17.2.1 Failure of Super League 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 Super League 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 Super League commences to cure such Default within such thirty (30) day period and thereafter diligently and continuously proceeds to cure the Default.

6.17.2.2 Super League attempts to assign or transfer any interest in this Agreement without the express prior written consent of the City.

6.17.2.3 Super League makes a voluntary assignment for the benefit of its creditors.

6.17.2.4 Super League 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.

6.18 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 Triathlon Event.

6.19 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.

6.20 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 Triathlon Event 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 Triathlon Event Facilities or portion thereof. If the Triathlon Course is unavailable due to circumstances beyond the City's control, the Parties shall mutually agree in writing on a revised Triathlon Course approved through the City Temporary Use Permit Application Process.

6.21 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.

6.22 Entire Agreement. This Agreement constitutes the whole agreement between the City and Super League, 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 Super League.

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

CITY: Steve McClary
City Manager
City of Malibu
23825 Stuart Ranch Road
Malibu, CA 90265-4861
TEL (310) 456-2489 x 224
FAX (310) 456-2760

SUPER Michael Dhulst
LEAGUE: Chief Executive Officer
Super League Triathlon Inc.
312 Arizona Avenue
Santa Monica, CA 90401

6.24 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 _____, 2022, at Malibu, California,
and effective as of November 14, 2022.

CITY OF MALIBU:

STEVE MCCLARY, City Manager

ATTEST:

KELSEY PETTIJOHN, City Clerk
(seal)


SUPER LEAGUE HOLDINGS:

MICHAEL DHULST, Chief Executive Officer

APPROVED AS TO FORM:

THIS DOCUMENT HAS BEEN REVIEWED
BY THE CITY ATTORNEY'S OFFICE _____
TREVOR RUSIN, Interim City Attorney



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
MICHAEL EPSTEIN SPORTS PRODUCTIONS, INC.

THIS AGREEMENT ("Agreement") is made and entered into this 12th day of August 2013 ("Execution Date"), by and between the City of Malibu, California, a municipal corporation (the "City"), and Michael Epstein Sports Productions, Inc., a California Corporation ("MESP") (the City and MESP each individually referred to herein as "Party" or collectively as the "Parties");

The City and the Consultant 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. MESP is in the business of producing and conducting sporting events, specifically, running events and triathlons.
- C. The City and MESP have agreed that MESP shall produce and conduct a Triathlon Event (as defined herein) within Malibu city limits and outlying areas pursuant to the terms and conditions set forth in this Agreement.

NOW, THEREFORE, in consideration of the covenants here in contained and other good and valuable consideration, the City and the MESP each 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:
 - A. The abbreviations of the Parties set forth in the Preamble will be used for purposes of this Agreement.

- B. "City Services" means the following services provided by the City for a fee during the Triathlon 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.
- C. "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 MESP's Triathlon Event (as defined herein).
- D. "Concessions" means all concessions associated with the Triathlon Event (as defined herein) offered or provided for a fee within the Triathlon Event Facilities and during the Triathlon Event Period, including, without limitation: (1) 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 Triathlon Event and during the Triathlon Event Period.
- E. "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.
- F. "Triathlon Course" means the staging and route(s) used by MESP for the Triathlon Event. A description of the Triathlon Course is attached to and made part of this Agreement as Exhibit A.
- G. "Triathlon Event" means MESP's event, an athletic racing event consisting of participants swimming, biking and running a race of a designated distance or races of various designated distances to be held in September, commencing in the year.
- H. "Triathlon Event 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 MESP for the purpose of staging the Triathlon Event (south of Pacific Coast Highway between lifeguard tower 12 and the western boundary of Zuma Beach and Parking Lot).
- I. "Triathlon Event Period" means from 8:00 a.m. on the Monday preceding the Triathlon Event until 5:00 p.m. on the Monday following the Triathlon Event.
- J. "Ticket Sale Rights" means the right to sell tickets and otherwise charge for admission to, or for participation in, the Triathlon Event, and to sell tickets and otherwise charge for admission to, or for use of, the Triathlon Event Facilities in connection with Triathlon Event, excluding the right to sell tickets to the general public that are solely for parking.

2.0 WARRANTIES AND REPRESENTATIONS

2.1 Warranties and Representations by MESP. MESP warrants and represents to the City as follows:

- A. MESP is a for-profit corporation, duly formed, presently existing and in good standing under the laws of the State of California.
- B. All appropriate action exists or has been accomplished by MESP so as to duly authorize the officers set forth below to execute this Agreement and all documents contemplated hereby on behalf of MESP so as to fully and firmly bind MESP to the terms and provisions of this Agreement and such other documents.
- C. MESP has the financial capability to and shall conduct a Triathlon Event in accordance with this Agreement.

2.2 Warranties and Representations by City. The City warrants and represents to MESP as follows:

- A. The City is a municipality organized and existing under the laws of the State of California.
- B. 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.

3.0 GENERAL TERMS

3.1 Right to Conduct Triathlon Event. The City hereby grants to MESP the right to produce and conduct a Triathlon Event in accordance with the terms and conditions of this Agreement and City Council Policy No. 47 (Road Race Policy). MESP is responsible for timely applying for and securing all applicable governmental approvals/permits prior to conducting any portion of the Triathlon Event or performing any setup activity related to the Triathlon Event in any given year and complying with City's Road Race Policy. The City and MESP agree that the Triathlon Event is one of the two road race events which are entitled to seek a City Temporary Use Permit during 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 Triathlon Event in any year shall not be deemed a breach of this Agreement, so long as such denial complies with applicable law and regulation. MESP 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 Triathlon 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 Triathlon Event participants shall be the sole responsibility of MESP.

- 3.2 Concession Rights. The City hereby grants MESP the right to operate, or to license (in whole or in part) to others, the Concessions associated with the Triathlon Event during the Triathlon Event Period. The City agrees not to hereafter extend any Concession rights to any person or entity other than MESP 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, provided, however, the City shall have the right, should it desire, to operate at its sole cost, a Concession at the Triathlon Event. Further provided, the City shall also be permitted at its sole cost to operate an informational booth from which Concessions are not sold. 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 at their regular business premises during the Triathlon Event, or parties with which it has contracted to provide Concessions at any City-owned property or facility.
- 3.3 Ticket Sale Rights and City Rights. The City hereby grants to MESP exclusive Ticket Sale Rights for the Triathlon Event.
- 3.4 Participation. The total number of registered participants shall not exceed 5,750 for each Triathlon Event.
- 3.5 No Interest in Land. MESP 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.
- 3.6 Annual Donation. During the term of the Agreement, MESP agrees to donate annually to the City's recreation programs as shown in the following table:

- 3.6.1 Year 1 will begin at \$10,000 with subsequent years increasing by \$1,675 annually to \$25,000 in Year 10.

Years	Years	Years	Option Years
1 \$10,000	4 \$15,025	7 \$20,050	11 \$25,000
2 \$11,675	5 \$16,700	8 \$21,725	12 \$25,000
3 \$13,350	6 \$18,375	9 \$23,400	13 \$25,000
		10 \$25,000	

This Article 3.6 shall not be construed to limit MESP from completing and returning to the City a Temporary Use Permit Application.

- 3.7 Exclusivity. The City will not authorize, without MESP's written permission, any triathlon event consisting of participants swimming, biking and running, other than the Triathlon Event organized and conducted by MESP, sixty (60) days before the Triathlon Event and sixty (60) days after the Triathlon Event throughout the Term of this Agreement.

4.0 TERM AND EXTENSION

- 4.1 Term and Extension. This Agreement shall commence on the Execution Date and expire at midnight on November 1, 2023, unless earlier terminated as provided for herein. This Agreement may be extended under the same terms and conditions for three (3) additional one-year periods from the date of expiration, provided that both Parties mutually agree in writing to such extension, which is subject to City Council approval. Failure of the Parties to mutually agree to the terms or provisions of referenced and incorporated Exhibits shall result in a frustration of this Agreement, and such occurrence shall relieve the Parties, each of its mutual obligations, from that point forward, except for obligations expressly intended to survive termination of the Agreement. References in this Agreement to "Term" shall include the initial term and all agreed-upon extensions thereof.

5.0 SCHEDULING AND CONDUCTING A TRIATHLON EVENT

- 5.1 Obligation to Conduct a Triathlon Event. MESP shall produce and conduct a two-day Triathlon Event on a Saturday and Sunday annually, commencing in the year 2013, said dates to be determined by MESP no later than March 1 of each year and will be on the dates set forth in Exhibit B or within two weeks of such dates, excluding Labor Day weekends. MESP shall provide the City with written notice in the form of a City Temporary Use Permit Application no later than March 1 of each year during the Term of this Agreement, advising the City whether or not it will stage the Triathlon Event for the succeeding year and, if so, specifying the exact date of the Triathlon Event and a schedule of such events.

- 5.2 Triathlon Event. The Triathlon Event shall be conducted on the Triathlon Course on Saturday and Sunday during the Triathlon Event Period and shall be held during daylight hours only. The Triathlon 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. MESP shall have the use of the Triathlon Event Facilities during the Triathlon Event Period for purposes of set-up of the facilities and apparatus associated with the Triathlon Event provided, however, that access to the Triathlon Course will only be restricted during the time necessary to conduct the Triathlon Event. It is anticipated that all facilities and apparatus associated with the Triathlon Event will be set up and dismantled during the Triathlon Event Period. In the event MESP requires additional time to dismantle the facilities and apparatus following the Triathlon Event, MESP shall be permitted such additional time beyond the Triathlon Event Period, so long as MESP has commenced the dismantling during the Triathlon Event Period and continues to proceed in a diligent manner to complete the dismantling. MESP shall provide the City with a schedule indicating the dates and location of set-up and dismantling of the facilities and apparatus associated with the Triathlon Event, along with updates and changes thereto, as soon as is reasonably possible after the necessity for such updates and changes become known to MESP.
- 5.4 Clean-up and Restoration. MESP shall be responsible for cleaning up the Triathlon Event Course and Triathlon Event Facilities at the end of the Triathlon Event. Such clean-up shall include, without limitation, removal of litter and debris from City streets and the Triathlon Event Facilities.
- 5.5 Conditions of Triathlon Event Facilities. MESP shall be responsible to promptly return the Triathlon Event Facilities to the condition they were in immediately prior to the Triathlon Event, reasonable wear and tear excepted. MESP shall be responsible for repairing any damage to the Triathlon Event Facilities occurring during the Triathlon Event by acts or omissions of MESP, its patrons or concessionaires.
- 5.6 City Services. The City shall provide City Services for the Triathlon Event. The estimated costs and expenses for City Services, as required in the City Temporary Use Permit, shall be determined in each year. Once determined, the estimated costs and expenses for City Services for each year shall be made part of this Agreement. MESP shall pay the estimated costs and expenses for City Services to the City no later than sixty (60) days prior to the Triathlon Event.
- 5.7 Compliance with Laws and Related Matters. MESP, 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 MESP in any way related to or connected with the Triathlon Event unless specifically provided for in this Agreement.

5.9 Authorizations. MESP 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 Triathlon Event and perform all other activities in connection therewith.

6.0 DEFENSE OF CLAIMS, INDEMINIFICATION, AND INSURANCE

6.1 Indemnification. MESP 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 MESP's activities hereunder (including the activities of its officers, employees, agents, volunteers and authorized concessionaires) 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. MESP shall promptly pay any final judgment rendered against the City (and its officers, officials, employees, agents 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.

6.2 Insurance Coverage.

A. Under this Agreement, MESP shall provide the following insurance documents to the City:

1. Commercial general liability insurance in an amount of at least \$2,000,000 per occurrence, \$2,000,000 aggregate in occurrences form. This policy shall include coverage for: (1) personal injury or death or property damage or destruction; (2) fire legal liability in the minimum amount of \$100,000; and (3) contractual liability under this Agreement.
2. Automobile liability insurance in the amount of \$2,000,000 combined single limit covering all owned, hired and non-owned vehicles.
3. Workers' Compensation insurance as required by California law and Employers' Liability insurance in an amount of at least \$100,000 each accident, \$100,000 per employee and \$500,000 for all diseases.

- B. All MESP insurance policies, except Worker's Compensation, shall name the Indemnified Parties as additional insureds.
- C. All policies shall provide that the City will be provided notice at least thirty (30) days prior to any cancellation, reduction or material change in coverage.
- D. MESP shall provide the City with Certificates of Insurance on a standard ACORD form reflecting all required coverage. Prior to commencement of the Triathlon Event Period each year, MESP shall provide copies of current policies with all applicable endorsements.
- E. All insurance required shall be provided by responsible insurers licensed in the State of California and rated at least "A-" in the then current edition of Best's Insurance Guide or similar rating service approved by the City.
- F. MESP will obtain insurance policies that waive all subrogation rights of its insurance carriers in favor of the Indemnified Parties. This provision is intended to waive fully, and for the benefit of the Indemnified Parties, any rights or claims which give rise to a right of subrogation in favor of any insurance carrier or MESP.

7.0 DEFAULT AND REMEDIES

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

- A. 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 MESP 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.
- B. By MESP. Any one or more of the following shall be deemed a Default by MESP:
 - 1. Failure of MESP 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 MESP 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 MESP commences to cure such Default within

such thirty (30) day period and thereafter diligently and continuously proceeds to cure the Default.

2. A principal of MESP shall be adjudicated guilty of committing a felony and all rights of appeals have expired.
3. MESP makes a voluntary assignment for the benefit of its creditors.
4. MESP 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.

7.2 Remedies. 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 Triathlon Event.

7.3 Termination. Notwithstanding anything contained in Section 7.2 above to the contrary, the applicable Parties shall have the right to terminate this Agreement by written notice to the other Party as follows:

- A. By City. The City may terminate this Agreement with thirty (30) days written notice to MESP in the event of any Default by MESP.
- B. By MESP. MESP may terminate this Agreement with thirty (30) days written notice to the City in the event of any Default by City.

8.0 MISCELLANEOUS

8.1 Notices.

- A. Any and all notices to be given to MESP under this Agreement or required by law to be given to MESP may be given or served by certified or registered letter deposited in the U.S. Mail with postage prepaid, overnight courier or facsimile addressed to:

Michael Epstein Sports Productions
29395 Agoura Road, Suite 102
Agoura Hills, California 91301
Attn: Michael Epstein, Owner

- B. Any and all notices to be given to the City under this Agreement or required by law to be given to the City may be given or served by certified or registered letter deposited in the U.S. Mail with postage prepaid, overnight courier or facsimile addressed to:

City of Malibu
23825 Stuart Ranch Road
Malibu, California 90265
Attn: Jim Thorsen, City Manager

- C. All notices shall be deemed given or served upon deposit in the U.S. Mail, postage prepaid. Any party may change its address for the giving of notice pursuant to notice given in accordance with the provisions of this Article 8.1, which notice shall be effective seven days after being deposited in the U.S. Mail, postage prepaid.

- 8.2 Assignment. MESP shall not assign this Agreement, or any part thereof, without first obtaining the written consent of the City, which consent may be withheld by City at its sole discretion. In order for the City to consider an assignment, MESP shall request the assignment in writing and provide sufficient evidence that the new corporation or entity has experience operating triathlon events similar to the Triathlon Event, has the financial net worth which equals or exceeds that of MESP, and possesses the staffing and know-how to comply with this Agreement. The City shall have the right to terminate this Agreement if the assignee fails to conduct the Triathlon Events in a manner that is consistent with how MESP conducts the Triathlon Events. Any assignment of this Agreement contrary to this Article 8.2, whether voluntary or involuntary, shall be void and shall confer no rights upon an assignee.
- 8.3 No Waiver. No provision of this Agreement will be deemed waived by either Party unless expressly waived in writing signed by the waiving Party. No waiver shall be implied by delay or any other act or omission of either Party. No waiver by either Party or any provision of this Agreement shall be deemed a waiver of such provision with respect to any subsequent matter relating to such provision, and the City's consent respecting any action by MESP shall not constitute a waiver of the requirement for obtaining the City's consent respecting any subsequent action.
- 8.4 Severability. In the event that any portion of this Agreement shall be held to be invalid for any reason, such invalidity shall not affect the remaining portions of this Agreement and the same shall remain in full force and effect.

- 8.5 Applicable Law and Venue. This Agreement shall be deemed to have been executed, delivered and performed in the State of California and it shall be governed by and interpreted in accordance with the laws of the State of California. Venue for any action shall be in Los Angeles County.
- 8.6 Parties in Interest. All agreements made and entered into in connection with the transactions contemplated here shall be binding upon and shall inure to the benefit of the Parties hereto, their successors and assigns.
- 8.7 Captions. Captions are for convenience only and shall not control or affect the meaning or construction of any of the provisions of this Agreement.
- 8.8 Relationship of Parties. This Agreement does not in any way constitute MESP as the agent, employee or legal representative of the City for any purpose whatsoever. MESP is in all respects an independent contractor and nothing contained in this Agreement shall create or be construed as creating a partnership or joint venture between the City and MESP. The City shall in no way be responsible for any debts incurred by MESP.
- 8.9 Nondiscrimination. MESP shall not illegally discriminate against anyone in the use of the Triathlon Event Facilities or the conduct of the Triathlon Event.
- 8.10 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 Triathlon Event 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 Triathlon Event Facilities or portion thereof. If the Triathlon 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.
- 8.11 Consent and Action by the City.
- A. For purposes of this Agreement, any required written permission, consent, acceptance, approval or agreement ("Approval") by the City means the Approval of the City Manager or his authorized designee, unless otherwise set forth in this Agreement or unless otherwise required to be exercised by City Council pursuant to City or other applicable Laws.

B. For purposes of this Agreement, any right of the City to take any action permitted, allowed or required by this Agreement may be exercised by the City Manager or his authorized designee, unless otherwise set forth in this Agreement or unless otherwise required to be exercised by City Council pursuant to City or other applicable Laws.


8.12 No Third Party Beneficiaries. Persons or entities not a party to this Agreement may not claim any benefit hereunder or as third party beneficiaries hereto.

8.13 Entire Agreement. This Agreement and the documents to be delivered hereunder constitute the entire agreement between the Parties pertaining to the subject matters covered hereby and there are no oral representations, arrangements or understandings between or among the Parties relating to the subject matters of this Agreement. No change to this Agreement will be valid unless made by a written amendment duly executed by the Parties.


8.14 Survival. All obligations (including indemnity and payment obligations) or rights of any party arising during or attributable to the period prior to expiration or earlier termination of this Agreement shall survive such expiration or earlier termination.

This Agreement is executed on this 13th day of August, 2013, at Malibu, California, and effective as of August 12, 2013.

CITY OF MALIBU:


JIM THORSEN, City Manager

ATTEST:


LISA POPE, City Clerk
(seal)

MICHAEL EPSTEIN SPORTS
PRODUCTIONS, INC.


By: MICHAEL EPSTEIN, Owner

APPROVED AS TO FORM:

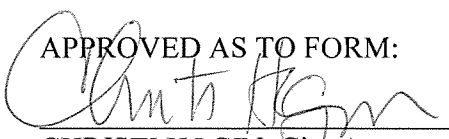
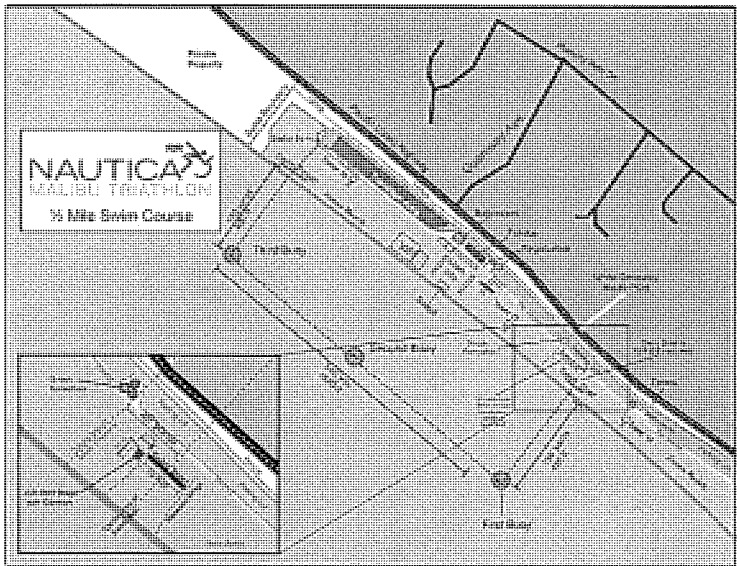
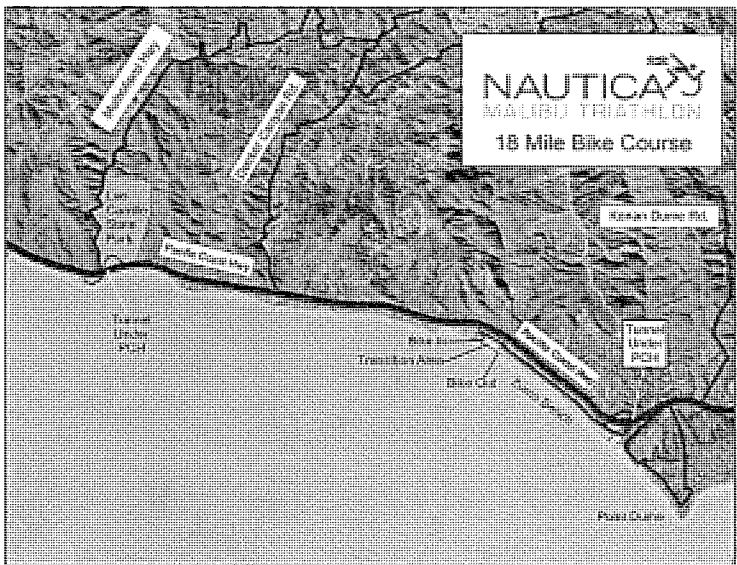

CHRISTI HOGIN, City Attorney

Exhibit A

Swimming Course:



Bike Course:



Running Course:

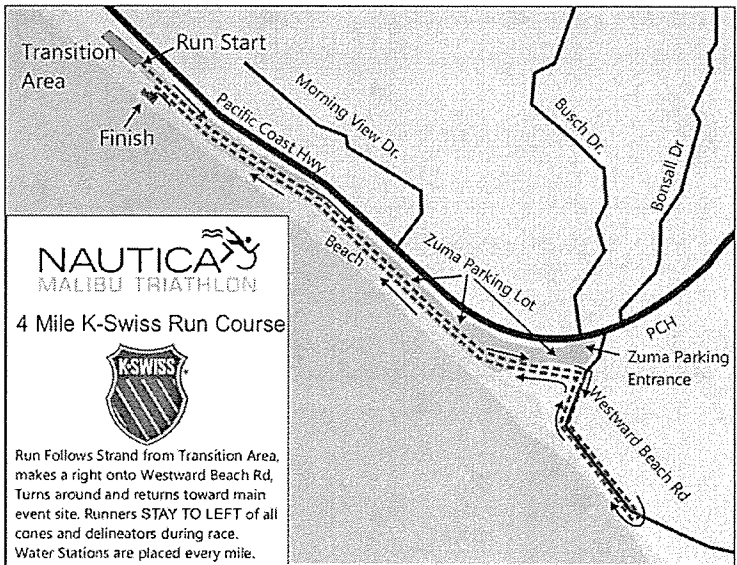


EXHIBIT B

Nautica Malibu Triathlon

Proposed Event Dates

Term of Agreement

2013 September 7 – 8

2014 September 13 - 14

2015 September 19 – 20

2016 September 17 – 18

2017 September 16 – 17

2018 September 15 – 16

2019 September 14 – 15

2020 September 12 – 13

2021 September 18 – 19

2022 September 17 – 18

2023 September 9 – 10

Option Years

2024 September 14 – 15

2025 September 13 – 14

2026 September 19 – 20