Malibu City Council
Environmental Sustainability Subcommittee
Special Meeting Agenda
Monday, October 14, 2019
4:00 P.M.
City Hall – Multipurpose Room
23825 Stuart Ranch Road

Councilmember Skylar Peak
Councilmember Jefferson Wagner

Call to Order

Approval of Agenda

Report on Posting of the Agenda – October 8, 2019

Public Comment This is the time for the public to comment on any items not appearing on this agenda. Each public speaker shall be allowed up to three (3) minutes for comments. The Subcommittee may not discuss or act on any matter not specifically identified on this agenda, pursuant to the Ralph M. Brown Act.

Discussion Items

1. Approval of Minutes – September 3, 2019

   Recommended Action: Approve the minutes of the Environmental Sustainability Subcommittee Special meeting of September 3, 2019.

   Staff contact: Administrative Analyst Rossine, 456-2489, ext. 274

2. Malibu Lagoon State Beach Coastal Geomorphology and Hydrology Study

   Recommended Action: 1) Discuss the results of the Request for Proposals (RFP) for Malibu Lagoon State Beach Coastal Geomorphology and Hydrology Study; and 2) Provide a recommendation to the City Council.

   Staff Contact: Environmental Sustainability Analyst Shen, 456-2489, ext. 376

Adjournment

I hereby certify under penalty of perjury, under the laws of the State of California, that the foregoing agenda was posted in accordance with the applicable legal requirements. Dated October 14, 2019.

Mary Linden, Executive Assistant
To: Mayor Wagner and Councilmember Peak
Prepared by: Mary Linden, Executive Assistant
Reviewed by: Andrew Sheldon, Acting Environmental Sustainability Director
Approved by: Reva Feldman, City Manager

Date prepared: October 2, 2019  Meeting date: October 14, 2019

Subject: Approval of Minutes – September 3, 2019

RECOMMENDED ACTION: Approve the minutes of the Environmental Sustainability Subcommittee Special meeting of September 3, 2019.

DISCUSSION: Staff has prepared draft minutes for the Environmental Sustainability Subcommittee Special meeting of September 3, 2019 and hereby submits the minutes to the Subcommittee for approval.

ATTACHMENTS: Draft Minutes of the September 3, 2019 Environmental Sustainability Subcommittee Special meeting
CALL TO ORDER

Mayor Wagner called the meeting to order at 1:03 p.m.

ROLL CALL

The following persons were recorded in attendance by the Recording Secretary:

PRESENT: Mayor Jefferson Wagner and Councilmember Skylar Peak

ALSO PRESENT: Acting Environmental Sustainability Director Andrew Sheldon; Environmental Sustainability Analyst Christine Shen; and Administrative Analyst Tracey Rossine

APPROVAL OF AGENDA

MOTION Councilmember Peak moved and Mayor Wagner seconded a motion to approve the agenda. The motion carried unanimously.

REPORT ON POSTING OF AGENDA

Administrative Analyst Rossine reported that the agenda for the meeting was properly posted on August 27, 2019.

STAFF UPDATES

Environmental Sustainability Director Andrew Sheldon provided an update on the Environmental Sustainability Department’s (ESD) activities related to Council priorities in the Fiscal Year 2019-2020 Work Plan. He stated staff was working with a landscaping expert and West Basin Municipal Water District (West Basin) on planning of two firescaping workshops to be held on September 10, 2019 and November 5, 2019. He stated he understands that some Councilmembers plan are planning to attend those workshops. He announced that West Basin Director Scott Houston would be attending. He stated ESD staff, with facilitation assistance from Pepperdine University’s Davenport Institute, was organizing resiliency listening sessions scheduled for October 29, 2019 and November 9, 2019. He stated incentives for using sustainable building materials for fire rebuild projects would be added to the Work Plan at mid-year. He stated utility undergrounding was added to the Work Plan, and a first quarter report would be presented in November. In response to Councilmember Peak, he stated the best plan found was in the City of Manhattan Beach. He stated the City of Agoura Hills had a plan, but it focused on
the streets as opposed to private property. He stated a grant application resolution related to the Coastal Vulnerability Assessment for a Local Coastal Program Amendment would be presented to the City Council on September 9. He stated the consultant agreement, to be reviewed by the Subcommittee today in Item 2, was scheduled to go to Council on September 23. He stated ESD staff met with State Parks and Los Angeles County Department of Beaches and Harbors to develop the Request for Proposals (RFP) for a consultant to assist with the Malibu Lagoon State Beach Geomorphology Study. He stated the RFP would close on September 6, with interviews scheduled on September 18. He stated staff recommendations would be presented to the Subcommittee in October. He announced that signage about the Dumpster Locking Ordinance had been printed and delivered in August to all food service establishments and grocery stores, and a revised draft ordinance would come back to the Subcommittee in November.

Environmental Sustainability Director Andrew Sheldon stated ESD staff continued to work on non-Work Plan items, including a water softener ordinance, which would be presented to Council on September 9. He stated a staff update on other ESD sustainability activities, including resiliency and sustainability programs, Clean Bay Restaurants program, water conservation, watershed management, and solid waste enhancements, would come back to the Subcommittee in October or November. He announced the City would receive a platinum level Beacon Award for its sustainability efforts.

DISCUSSION ITEMS

ITEM 1 Approval of Minutes – May 13, 2019
Staff recommendation: Approve the minutes of the Environmental Sustainability Subcommittee Special meeting of May 13, 2019.

MOTION Councilmember Peak moved and Mayor Wagner seconded a motion to approve the minutes of the Environmental Sustainability Subcommittee Special meeting of May 13, 2019. The motion carried unanimously.

ITEM 2 Coastal Vulnerability Assessment
Recommended Action: Provide a recommendation to the City Council concerning the Coastal Vulnerability Assessment consultant.

Environmental Sustainability Analyst Christine Shen presented the report. She discussed the process for seeking a consultant for the Coastal Vulnerability Assessment, including issuing a Request for Proposals and interviewing responders. She stated the interview panel had concluded that Environmental Science Associates presented a stronger plan to communicate sensitive sea level rise information to the community.
MOTION Councilmember Peak moved and Mayor Wagner seconded a motion to recommend that the City Council authorize the execution of a professional services agreement with Environmental Science Associates (ESA) for consulting services related to the Coastal Vulnerability Assessment. The motion carried unanimously.

ADJOURNMENT

MOTION At 1:33 p.m., Councilmember Peak moved and Mayor Wagner seconded a motion to adjourn the meeting. The motion carried unanimously.

Approved and adopted by the Environmental Sustainability Subcommittee of the City of Malibu on_____, 2019.

______________________________
JEFFERSON WAGNER, Mayor

ATTEST:

______________________________
MARY LINDEN, Executive Assistant
Environmental Sustainability Subcommittee Agenda Report

To: Councilmember Peak and Councilmember Wagner
Prepared by: Christine Shen, Environmental Sustainability Analyst
Reviewed by: Andrew Sheldon, Acting Environmental Sustainability Director
Approved by: Reva Feldman, City Manager
Date prepared: September 24, 2019  Meeting date: October 14, 2019
Subject: Malibu Lagoon State Beach Coastal Geomorphology and Hydrology Study

RECOMMENDED ACTION: 1) Discuss the results of the Request for Proposals (RFP) for the Malibu Lagoon State Beach Coastal Geomorphology and Hydrology Study; and 2) Provide a recommendation to the City Council.

WORK PLAN: This study was included as Item 5n in the Adopted Work Plan for Fiscal Year 2019-2020.

DISCUSSION: As directed by the City Council on July 8, 2018, the City issued an RFP on July 19, 2019 for a consultant for the Malibu Lagoon State Beach Coastal Geomorphology and Hydrology Study (Attachment 1). The proposed work would include an existing and historical conditions assessment, coastal geomorphology and hydrology models, a coastal geomorphology study report, and stakeholder and community meetings. On September 5, 2019, the City received proposals from three firms: Environmental Science Associates (ESA), Integral Consulting Inc. (Integral), and Coastal Environments.

A selection committee consisting of representatives from the City, California State Parks, and County of Los Angeles Department of Beaches and Harbors was established to review the proposals. The selection committee thoroughly reviewed all the proposals submitted and invited the firms to participate in qualification interviews at City Hall on September 18, 2019.
Based on the qualifications and experience demonstrated in the RFP and the interview, the selection committee recommended Integral. Integral’s cost proposal to complete the study and all the associated work is $274,888.

Funding for this project was not included in the Adopted Budget for Fiscal Year 2019-2020. Staff has research potential grant opportunities, but at this time cannot identify any specific grants for which this study would be eligible. Some nonprofit and community groups have expressed interest in funding this initiative; however, the City has not yet received any outside funding for this project.

The Subcommittee is requested to provide a recommendation to the Council regarding how to proceed with this project and its funding.

ATTACHMENTS: Malibu Lagoon State Beach Coastal Geomorphology and Hydrology Study RFP
City of Malibu

Request for Proposal

Malibu Lagoon State Beach
Coastal Geomorphology and Hydrology Study

Date Issued: July 19, 2019
Date Due: September 5, 2019
Malibu Lagoon State Beach Coastal Geomorphology and Hydrology Study

1. Introduction

The City of Malibu is seeking proposals from qualified firms to develop a coastal geomorphology and hydrology model, and to prepare a study of sediment, erosion, and water resource management alternatives for public lands at Malibu Lagoon State Beach and the surrounding coastline.

1.1 City Information

The City of Malibu (City) is a coastal city located in the northwestern portion of Los Angeles County, California with a population of approximately 13,000. The City was incorporated in 1991, operates under the Council-Manager form of government and is considered a contract city. The five members of the City Council are elected at-large and serve staggered four-year terms, with the Mayor being selected from among the Councilmembers.

The City covers approximately 21 miles along the coast and offers a full range of municipal services. The City has 83 full-time employees and 13.5 full-time equivalent part-time employees. The City’s seven (7) departments provide a number of in-house services, including management and administrative services, building safety, community services, environmental sustainability, planning, public works and engineering. Police and fire services are provided via contract with the County of Los Angeles (County). Other services, such as the City Attorney, water, street maintenance and garbage collection services are also provided via contract or by the County. The City’s Adopted Fiscal Year 2019-2020 General Fund Budget is $37.4 million and the City’s Overall Budget is $55.1 million.

The City is home to several popular public beaches all owned and operated by either the County Department of Beaches and Harbors (DBH) or the California Department of Parks and Recreation (DPR).

1.2 Malibu Lagoon State Beach

Malibu Lagoon State Beach is located where Malibu Creek meets the Pacific Ocean in the City of Malibu and is owned and operated by DPR. Malibu Lagoon State Beach includes the Adamson House, Malibu Lagoon and Malibu Pier. County DBH owns and operates Surfrider Beach.

Malibu Lagoon is a 31-acre shallow water embayment occurring at the terminus of the Malibu Creek Watershed, the second largest watershed draining into the Santa Monica Bay. Malibu Lagoon is a resting and feeding estuary for more than 200 species of migrating and native birds, including California least tern and western snowy plover, both federally-listed
endangered species. Federally endangered tidewater goby and southern steelhead trout also inhabit the lagoon, which receives year-round freshwater from sources upstream. Historically, the lagoon has periodically breached in a number of locations. Malibu Creek and Lagoon empty into the Pacific Ocean at Malibu Lagoon State Beach and Surfrider Beach, home to iconic surf breaks and popularized by surfing movies in the 1950s and 1960s. Surfrider Beach is a popular surfing and recreational destination operated by DBH that receives millions of visitors every year.

The Adamson House at Malibu Lagoon State Beach overlooks the Malibu Pier and Surfrider Beach. This Spanish colonial revival home was designed by Stiles O. Clements in 1929 for Merritt Huntley Adamson and Rhoda Rindge Adamson and is operated as a museum showcasing historical Malibu artifacts. The Adamson House is a California Historical Landmark and is also listed on the National Register of Historic Places. The Malibu Lagoon Museum, which adjoins the Adamson House, displays the history of the area from the days of the Chumash tribe, to the gentlemen ranchers, and finally to the birth of the surfing era. On the east side of Malibu Creek Bridge, the famous Malibu Pier allows for excellent saltwater fishing. On the west side of Malibu Creek Bridge, visitors will find picnic tables and a nature area, excellent for birdwatching and the study of a unique eco-system, one of few remaining examples in Southern California of a seasonally closed estuary (bar-built estuary).

In 2010, Surfrider Beach was declared the first-ever World Surfing Reserve by the non-governmental organization Save the Waves Coalition aimed at protecting global surf habitats. In 2018, a 160-acre area composed of public property, including the First Point, Second Point, and Third Point surf breaks, Malibu Pier, and portions of Surfrider Beach and Malibu Lagoon State Beach, was designated as the Malibu Historic District and listed on the National Register of Historic Places.

Currently, this area of eastern Malibu has three periods of California's cultural history represented in the National Register: the Chumash Humaliwo village site, Stiles O. Clements' Adamson House, and the Malibu Historic District.

1.3 Malibu Lagoon Restoration

In 2013, DPR completed an extensive restoration and enhancement project of Malibu Lagoon. The project involved excavation and reconfiguration of previously manufactured channels on 12 acres in the western half of the Lagoon and the subsequent planting of native wetland vegetation. Post-construction monitoring was conducted by The Bay Foundation in accordance with the “Malibu Lagoon Restoration and Enhancement Plan, Hydrologic and Biological Monitoring Plan” and the “Malibu Lagoon Plant Communities Restoration, Monitoring, and Reporting Plan,” which each specify hydrologic and biological monitoring
protocols and procedures for conducting monitoring before, during, and after the Project. Copies of the reports are available on The Bay Foundation website at: https://www.santamonicabay.org/explore/library/reports/.

1.4 Project Objective

In recent years, Surfrider Beach and the Adamson House property have experienced significant sand erosion. The specific cause of the sand erosion is unknown; however, the sand erosion has been particularly pronounced over the past year. As a result, the City is seeking proposals to develop a model to inform alternatives and management actions that address water resources, coastal erosion, sediment deposition and beach nourishment.

The City is seeking a qualified consulting firm to develop a coastal geomorphology and hydrology model, and to prepare a study of sediment erosion and water resource management alternatives that will increase public land managers’ understanding and potential responses to the hydrology/sedimentation/geomorphic processes affecting Malibu Lagoon State Beach and the surrounding coastline. The model will provide new capabilities to evaluate the effectiveness of various alternative management actions for coastal resources at Malibu Lagoon State Beach. The selected firm will also prepare a Coastal Geomorphology and Hydrology Study. The primary objective to be served by the model and study is to develop management alternatives to address coastal erosion, sediment deposition, and beach nourishment at Malibu Lagoon State Beach and the nearby coastline. One or more preferred management alternatives could eventually be incorporated into a Lagoon Management Plan, which is not a part of this scope of work.

The City is located within the California coastal zone and, as such, is subject to the regulations of the City’s Local Coastal Program (LCP). The Malibu LCP was certified by the California Coastal Commission (CCC) in 2002. Section 9.32 of the LCP Land Use Plan states that the City can establish a Lagoon Management Plan through a Local Coastal Program Amendment (LCPA). All LCPAs must first be certified by the CCC before taking effect. In order for the City to develop a Lagoon Management Plan, DPR, DBH and the State Historic Preservation Officer would have to be consulted regarding any potential management techniques that might be proposed for Malibu Lagoon.

1.5 Minimum Firm Qualifications

The City is seeking a consulting firm (or team of consultants) who has:

- A working knowledge of the requirements of the California Coastal Act related to the preparation of LCP’s
• Experience with coastal geomorphology modeling to assess coastal erosion, sediment deposition and beach nourishment, including the ability to evaluate and recommend best available science
• Experience in assessing sea level rise and the effects of sea level rise in Southern California
• Experience in coastal geomorphology/engineering/hydrology
• A working knowledge of the City’s coastal development patterns and geography
• A working knowledge of local, state and federal laws that could be relevant to adaptation strategies
• Demonstrated experience in communicating highly technical information about shoreline dynamics, such as hydrology, sedimentation, and geomorphology, effectively to the public
• Demonstrated experience in conducting public workshops and community engagement
• A project principal who holds a current license as a Civil Engineer issued by the California Department of Consumer Affairs, Board of Professional Engineers, Land Surveyors, and Geologists
• Ecological and biological expertise, particularly with endangered species (fish and birds)

2. Scope of Work

The selected consultant shall develop modeling tools with capability to evaluate erosion, sediment, and water resource management techniques at Malibu Lagoon State Beach and the surrounding coastline, and prepare a coastal geomorphology and hydrology study to inform alternatives for potential management actions to address local coastal erosion, sediment deposition and beach nourishment. Project tasks and deliverables are described below. [Note: In the proposal, consultant may reorganize these tasks and deliverables to suit a preferred approach to performing the work.]

Task 1 – Existing and Historical Conditions Assessment

As a basis for developing the modeling tools, the consultant shall provide an assessment of existing and historical conditions, including: sediment transport and movement within the littoral cell; sediment movement restrictions along the coastline (e.g., jetties, seawalls); and upstream barriers. For the Existing Conditions Assessment, the consultant will:

• Study historical coastline, lagoon configurations, upcoast sediment input to the Malibu coastline littoral cell, and how those have changed over time
- Perform a watershed assessment of sources and sinks of various grades of sediment, and bathymetric surveys of the lagoon, inlet, and beach (open and closed berm conditions)
- Characterize linkages between the nearshore surf zone, the littoral sediment transport system, and creek, lagoon, and wetlands hydrology/geomorphology
- Analyze dynamic material balances for sediment deposition on the sand berm and nearshore, as well as scour at the lagoon shoreline and outlet
- Conduct an assessment of littoral sediment deposition to inform modeling of sand berm buildup from coastal processes
- Examine sediment transport and movement within the littoral cell
- Evaluate sediment movement restrictions along the coastline (e.g., jetties, seawalls) and upstream barriers (e.g., Rindge Dam)
- Evaluate the impact of the alignment of the Pacific Coast Highway bridge, Malibu Pier, and the placement of rip rap on the western edge of the creek north of the bridge
- Evaluate the impact of sea level rise under a range of scenarios
- Conduct a beach recession analysis in response to sea level rise
- Conduct a storm-induced beach erosion analysis
- Perform a coastal flood inundation analysis
- Conduct a traditional beach erosion and wave run-up hazard analysis

**Deliverables for Task 1**

- Memorandum on existing conditions and summary of wetland/lagoon complex explaining geologic characteristics, history of development, management practices, coastal setting, oceanographic conditions, and restoration efforts. This will include study area maps, shoreline dynamics, spatial gradients in longshore transport, historical and modern coastline and lagoon configuration change, and possible sediment source and sink sites. This document is to serve as an educational and outreach tool to help inform stakeholder engagement.

**Task 2 – Coastal Geomorphology and Hydrology Models**

The consultant shall develop a conceptual model and a computer-based mathematical model. For these models, the consultant will:

- Develop a conceptual model to characterize linkages between the nearshore surf zone, the littoral sediment transport system and creek, lagoon, and wetlands hydrology/geomorphology.
• Develop a computer-based model on existing shoreline dynamics to understand the coastal processes impacting Malibu Lagoon State Beach and analyze the impact of various sediment, erosion, and water resource management alternatives.
• Provide a computer-based mathematical model based on robust material balance equations and documented in a user manual.
• Deliver a computer-based model deliverable capable of running on a personal computer and capable of being transferred to other personal computers.

Deliverables for Task 2

• Conceptual Model – Memorandum
• Computer-Based Mathematical Model – Documentation and User Manual
• Computer-Based Mathematical Model Software

Task 3 – Coastal Geomorphology Study Report

In order to translate the modeling technical documentation into a work product that has practical application for public land managers, the consultant shall prepare a study report that describes the capabilities of the computer-based model to simulate existing conditions, as well as system behavior under alternative scenarios such as no action, soft engineering measures, or hard engineering measures. The consultant will:

• Simulate fresh water and tidal drainage, sediment transport, and both in-stream and littoral deposition with respect to existing conditions, potential modifications to Malibu Lagoon bed, bank, berm, and mechanical or hardscape alterations, and climate variability
• Develop short-term and long-term alternatives and management actions that address coastal erosion, sediment deposition and beach nourishment
• Analyze effects of all potential sediment, erosion, and water resource alternatives on endangered wildlife (fish, birds)
• Evaluate whether beach sediment deposition regimes could benefit from regular and controlled lagoon breaching

Deliverables for Task 3

• Draft Malibu Lagoon State Beach Coastal Morphology and Hydrology Study Report
• Final Malibu Lagoon State Beach Coastal Morphology and Hydrology Study Report
Task 4 – Stakeholder and Community Meetings

The consultant shall coordinate stakeholder engagement activities, including presentations to stakeholders and the City Council. The consultant will:

- Coordinate with DPR, DBH, and the State Historic Preservation Officer on management alternatives analysis
- Prepare and present scoping, findings, and recommendations at a Community Stakeholder meetings/workshops

Deliverables for Task 4

- Public Agency Stakeholder Meetings
  o Materials for Public Agency meetings.
  o Report on outcomes of Public Agency meetings
- Community Stakeholder Meetings
  o Materials for Community Stakeholder meetings/workshops
  o Report on outcomes of Community Stakeholder meetings/workshops
- Presentation to City Council and/or Council Subcommittees
  o Draft and final presentation materials

3. Instructions

3.1 Proposal Requirements

Proposals should not include any materials to be returned to the consultant and should be a concise statement. Each proposal must include the following information:

1. Organization, Credentials and Experience
   a. Provide a summary of the consultant’s qualifications, credentials and related past experience
   b. Describe the size of your consulting firm; indicate the principal, consultant official, project manager, as well as all other personnel who will be assigned to the work
   c. Provide a list of three (3) of the consultant’s similar clients, including the names, titles, addresses, and telephone numbers of the appropriate persons who the City can contact

2. Understanding of and Approach to the Scope of Work
   a. Provide a narrative of the consultant’s understanding of the Scope of Work and a proposal to perform the work
b. Describe the consultant’s approach to the Scope of Work

3. Professional Services Agreement
The selected provider must use and comply with the terms and conditions of the City’s standard Professional Services Agreement as provided in Attachment 1 of this RFP.

4. Compliance
A written statement that the Consultant shall comply with the California Labor Code pursuant to said regulations entitled: Federal Labor Standards provisions; Federal Prevailing Wage Decision; and State of California Prevailing Wage Rates, respectively.

5. Litigation
Firms are required to list past, current, or pending litigation resulting from professional services rendered over the past five (5) years. If a court or an arbitrator rendered a decision, state the results.

6. References
Provide a minimum of three (3) references for current or recent projects or work assignments within the last five (5) years of similar scope and content.

7. Fees
Under separate cover, provide a rate proposal for the project based on the proposed scope of work. The rate proposal shall include hourly rates for all personnel and identify the hours and costs per task.

8. Timeline
The City intends to award a professional service agreement for a base term of two (2) years.

3.2 Submittal Procedure

Clarifications: The City will respond to requests for clarification to the Request for Proposals in written RFP Addendum(s) as needed. Inquiries should be directed by email only to trossine@malibucity.org. No verbal requests will be accepted. All requests for clarification must be received by Thursday, August 29, 2019.

Submittal Deadline
Submit six (6) printed and bound copies and one (1) electronic copy of the proposal to:
Tracey Rossine, Administrative Analyst
City of Malibu
23825 Stuart Ranch Road, Malibu, CA 90265

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City of Malibu
Coastal Geomorphology RFP
All Proposals are due no later than 4:00 p.m. on Thursday, September 5, 2019.

The City reserves the right to extend the deadline or accept a late submittal with good cause shown.

**Response Preparations:** No reimbursement will be made by the City for costs incurred in the preparation of the response to this Request for Proposals. Submitted materials will not be returned and become the property of the City of Malibu.

**Right to Reject Submittals:** Submission of proposals indicates acceptance by the firm of the conditions contained in this request for proposals unless clearly and specifically noted in the submittal and confirmed in the agreement between the City of Malibu and the firm selected. The City of Malibu reserves the right without prejudice to reject any or all submittals.
AGREEMENT FOR PROFESSIONAL SERVICES

This Agreement is made and entered into as of [date] by and between the City of Malibu (hereinafter referred to as the "City"), and ___________ (hereinafter referred to as "Consultant").

The City and the Consultant agree as follows:

RECITALS

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

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

C. The Consultant warrants to the City that it has the qualifications, experience and facilities to perform properly and timely the services under this Agreement.

D. The City desires to contract with the Consultant to perform the services as described in Exhibit A of this Agreement.

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

1.0 SCOPE OF THE CONSULTANT’S SERVICES. The Consultant agrees to provide the services and perform the tasks set forth in the Scope of Work, attached to and made part of this Agreement, except that, to the extent that any provision in Exhibit A conflicts with this Agreement, the provisions of this Agreement govern. The Scope of Work may be amended from time to time by way of a written directive from the City.

2.0 TERM OF AGREEMENT. This Agreement will become effective on [date], and will remain in effect for a period of ____ 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 her designee, for the purposes of this Agreement, is the agent for the City; whenever approval or authorization is required, Consultant understands that the City Manager, or her designee, has the authority to provide that approval or authorization.

4.0 COMPENSATION FOR SERVICES. The City shall pay the Consultant for its professional services rendered and costs incurred pursuant to this Agreement in accordance with the Scope of Work’s fee and cost schedule. The cost of services shall be $_____ per month, for a total amount not to exceed $_______. No additional compensation shall be paid for any other expenses incurred, unless first approved by the City Manager, or her designee.
4.1 The Consultant shall submit to the City, by no later than the 10th day of each month, its bill for services itemizing the fees and costs incurred during the previous month. The City shall pay the Consultant all uncontested amounts set forth in the Consultant’s bill within 30 days after it is received.

5.0 CONFLICT OF INTEREST. The Consultant represents that it presently has no interest and shall not acquire any interest, direct or indirect, in any real property located in the City which may be affected by the services to be performed by the Consultant under this Agreement. The Consultant further represents that in performance of this Agreement, no person having any such interest shall be employed by it.

5.1 The Consultant represents that no City employee or official has a material financial interest in the Consultant’s business. During the term of this Agreement and/or as a result of being awarded this contract, the Consultant shall not offer, encourage or accept any financial interest in the Consultant’s business by any City employee or official.

5.2 If a portion of the Consultant’s services called for under this Agreement shall ultimately be paid for by reimbursement from and through an agreement with a developer of any land within the City or with a City franchisee, the Consultant warrants that it has not performed any work for such developer/franchisee within the last 12 months, and shall not negotiate, offer or accept any contract or request to perform services for that identified developer/franchisee during the term of this Agreement.

6.0 GENERAL TERMS AND CONDITIONS.

6.1 Termination. Either the City Manager or the Consultant may terminate this Agreement, without cause, by giving the other party ten (10) days written notice of such termination and the effective date thereof.

6.1.1 In the event of such termination, all finished or unfinished documents, reports, photographs, films, charts, data, studies, surveys, drawings, models, maps, or other documentation prepared by or in the possession of the Consultant under this Agreement shall be returned to the City. If the City terminates this Agreement without cause, the Consultant shall prepare and shall be entitled to receive compensation pursuant to a close-out bill for services rendered and fees incurred pursuant to this Agreement through the notice of termination. If the Consultant terminates this Agreement without cause, the Consultant shall be paid only for those services completed in a manner satisfactory to the City.

6.1.2 If the Consultant or the City fail to fulfill in a timely and proper manner its obligations under this Agreement, or if the Consultant or the City violate any of the covenants, agreements, or stipulations of this Agreement, the Consultant 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. The Consultant shall be entitled to receive compensation in accordance with the terms of this Agreement for any work satisfactorily completed hereunder. Notwithstanding the foregoing, the Consultants 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 off-set anticipated damages.
6.2 Non-Assignability. The Consultant shall not assign or transfer any interest in this Agreement without the express prior written consent of the City.

6.3 Non-Discrimination. The Consultant shall not discriminate as to race, creed, gender, color, national origin or sexual orientation in the performance of its services and duties pursuant to this Agreement, and will comply with all applicable laws, ordinances and codes of the Federal, State, County and City governments.

6.4 Insurance. The Consultant shall submit to the City certificates indicating compliance with the following minimum insurance requirements no less than one (1) day prior to beginning of performance under this Agreement:

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

(b) Comprehensive general and automobile liability insurance protecting the Consultant in amounts not less than $1,000,000 for personal injury to any one person, $1,000,000 for injuries arising out of one occurrence, and $500,000 for property damages or a combined single limit of $1,000,000. Each such policy of insurance shall:

1) Be issued by a financially responsible insurance company or companies admitted and authorized to do business in the State of California or which is approved in writing by City.

2) Name and list as additional insured the City, its officers and employees.

3) Specify its acts as primary insurance.

4) Contain a clause substantially in the following words: "It is hereby understood and agreed that this policy shall not be canceled nor materially changed except upon thirty (30) days prior written notice to the City of such cancellation or material change."

5) Cover the operations of the Consultant pursuant to the terms of this Agreement.

6.5 Indemnification. Consultant shall indemnify, defend with counsel approved by City, and hold harmless City, its officers, officials, employees and volunteers from and against all liability, loss, damage, expense, cost (including without limitation reasonable attorneys fees, expert fees and all other costs and fees of litigation) of every nature arising out of or in connection with Consultant's performance of work hereunder or its failure to comply with any of its obligations contained in this Agreement, regardless of City's passive negligence, but excepting such loss or damage which is caused by the sole active negligence or willful misconduct of the City. Should City in its sole discretion find Consultant’s legal counsel unacceptable, then Consultant shall reimburse the City its costs of defense, including without
limitation reasonable attorneys fees, expert fees and all other costs and fees of litigation. The Consultant shall promptly pay any final judgment rendered against the City (and its officers, officials, employees and volunteers) covered by this indemnity obligation. It is expressly understood and agreed that the foregoing provisions are intended to be as broad and inclusive as is permitted by the law of the State of California and will survive termination of this Agreement.

OR FOR AGREEMENTS WITH DESIGN PROFESSIONALS (architect, landscape architect, professional engineer, or land surveyor — See Civil Code Section 2782.8) USE THE FOLLOWING:

6.5 Indemnification. Consultant shall indemnify, defend with counsel approved by City, and hold harmless City, its officers, officials, employees and volunteers from and against all liability, loss, damage, expense, cost (including without limitation reasonable attorneys fees, expert fees and all other costs and fees of litigation) of every nature arising out of or in connection with Consultant's negligence, recklessness or willful misconduct in the performance of work hereunder or its failure to comply with any of its obligations contained in this Agreement, except such loss or damage which is caused by the sole active negligence or willful misconduct of the City. The Consultant shall promptly pay any final judgment rendered against the City (and its officers, officials, employees and volunteers) with respect to claims determined by a trier of fact to have been the result of the Consultant's negligent, reckless or willful misconduct. 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.

6.6 Compliance with Applicable Law. The Consultant and the City shall comply with all applicable laws, ordinances and codes of the federal, state, county and city governments, including, without limitation, Malibu Municipal Code Chapter 5.36 Minimum Wage.

6.7 Independent Contractor. This Agreement is by and between the City and the Consultant and is not intended, and shall not be construed, to create the relationship of agency, servant, employee, partnership, joint venture or association, as between the City and the Consultant.

6.7.1. The Consultant shall be an independent contractor, and shall have no power to incur any debt or obligation for or on behalf of the City. Neither the City nor any of its officers or employees shall have any control over the conduct of the Consultant, or any of the Consultant's employees, except as herein set forth, and the Consultant expressly warrants not to, at any time or in any manner, represent that it, or any of its agents, servants or employees are in any manner employees of the City, it being distinctly understood that the Consultant is and shall at all times remain to the City a wholly independent contractor and the Consultant's obligations to the City are solely such as are prescribed by this Agreement.

6.8 Copyright. No reports, maps or other documents produced in whole or in part under this Agreement shall be the subject of an application for copyright by or on behalf of the Consultant.

6.9 Legal Construction.
(a) This Agreement is made and entered into in the State of California and shall in all respects be interpreted, enforced and governed under the laws of the State of California.

(b) This Agreement shall be construed without regard to the identity of the persons who drafted its various provisions. Each and every provision of this Agreement shall be construed as though each of the parties participated equally in the drafting of same, and any rule of construction that a document is to be construed against the drafting party shall not be applicable to this Agreement.

(c) The article and section, captions and headings herein have been inserted for convenience only, and shall not be considered or referred to in resolving questions of interpretation or construction.

(d) Whenever in this Agreement the context may so require, the masculine gender shall be deemed to refer to and include the feminine and neuter, and the singular shall refer to and include the plural.

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

6.11 Final Payment Acceptance Constitutes Release. The acceptance by the Consultant of the final payment made under this Agreement shall operate as and be a release of the City from all claims and liabilities for compensation to the Consultant for anything done, furnished or relating to the Consultant's work or services. Acceptance of payment shall be any negotiation of the City's check or the failure to make a written extra compensation claim within ten (10) calendar days of the receipt of that check. However, approval or payment by the City shall not constitute, nor be deemed, a release of the responsibility and liability of the Consultant, its employees, sub-consultants and agents for the accuracy and competency of the information provided and/or work performed; nor shall such approval or payment be deemed to be an assumption of such responsibility or liability by the City for any defect or error in the work prepared by the Consultant, its employees, sub-consultants and agents.

6.12 Corrections. In addition to the above indemnification obligations, the Consultant shall correct, at its expense, all errors in the work which may be disclosed during the City's review of the Consultant's report or plans. Should the Consultant fail to make such correction in a reasonably timely manner, such correction shall be made by the City, and the cost thereof shall be charged to the Consultant.

6.13 Files. All files of the Consultant pertaining to the City shall be and remain the property of the City. The Consultant will control the physical location of such files during the term of this Agreement and shall be entitled to retain copies of such files upon termination of this Agreement.

6.14 Waiver; Remedies Cumulative. Failure by a party to insist upon the performance of any of the provisions of this Agreement by the other party, irrespective of the
length of time for which such failure continues, shall not constitute a waiver of such party's right to demand compliance by such other party in the future. No waiver by a party of a default or breach of the other party shall be effective or binding upon such party unless made in writing by such party, and no such waiver shall be implied from any omissions by a party to take any action with respect to such default or breach. No express written waiver of a specified default or breach shall affect any other default or breach, or cover any other period of time, other than any default or breach and/or period of time specified. All of the remedies permitted or available to a party under this Agreement, or at law or in equity, shall be cumulative and alternative, and invocation of any such right or remedy shall not constitute a waiver or election of remedies with respect to any other permitted or available right of remedy.

6.15 Mitigation of Damages. In all such situations arising out of this Agreement, the parties shall attempt to avoid and minimize the damages resulting from the conduct of the other party.

6.16 Partial Invalidity. If any provision in this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions will nevertheless continue in full force without being impaired or invalidated in any way.

6.17 Attorneys' Fees. The parties hereto acknowledge and agree that each will bear his/her or its own costs, expenses and attorneys' fees arising out of and/or connected with the negotiation, drafting and execution of the Agreement, and all matters arising out of or connected therewith except that, in the event any action is brought by any party hereto to enforce this Agreement, the prevailing party in such action shall be entitled to reasonable attorneys' fees and costs in addition to all other relief to which that party or those parties may be entitled.

6.18 Entire Agreement. This Agreement constitutes the whole agreement between the City and the Consultant, and neither party has made any representations to the other except as expressly contained herein. Neither party, in executing or performing this Agreement, is relying upon any statement or information not contained in this Agreement. Any changes or modifications to this Agreement must be made in writing appropriately executed by both the City and the Consultant.

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

CITY: Reva Feldman
   City Manager
   City of Malibu
   23825 Stuart Ranch Road
   Malibu, CA 90265-4861
   TEL (310) 456-2489 x 226
   FAX (310) 456-2760

CONSULTANT: City Manager
   Consultant
   City of Malibu
   23825 Stuart Ranch Road
   Malibu, CA 90265-4861
   TEL (310) 456-2489 x 226
   FAX (310) 456-2760

6.20 Warranty of Authorized Signatories. 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.

7.0 GENERAL TERMS AND CONDITIONS. (City and Consultant initials required at EITHER 7.1 or 7.2)

7.1 Disclosure Required. By their respective initials next to this paragraph, City and Consultant hereby acknowledge that Consultant is a “consultant” for the purposes of the California Political Reform Act because Consultant’s duties would require him or her to make one or more of the governmental decisions set forth in Fair Political Practices Commission Regulation 18700.3(a) or otherwise serves in a staff capacity for which disclosure would otherwise be required were Consultant employed by the City. Consultant hereby acknowledges his or her assuming-office, annual, and leaving-office financial reporting obligations under the California Political Reform Act and the City’s Conflict of Interest Code and agrees to comply with those obligations at his or her expense. Prior to consultant commencing services hereunder, the City’s Manager shall prepare and deliver to consultant a memorandum detailing the extent of Consultant’s disclosure obligations in accordance with the City’s Conflict of Interest Code.

City Initials
Consultant Initials

7.2 Disclosure not Required. By their initials next to this paragraph, City and Consultant hereby acknowledge that Consultant is not a “consultant” for the purpose of the California Political Reform Act because Consultant’s duties and responsibilities are not within the scope of the definition of consultant in Fair Political Practice Commission Regulation 18700.3(a) and is otherwise not serving in staff capacity in accordance with the City’s Conflict of Interest Code.

City Initials
Consultant Initials

This Agreement is executed on _____________, 2018, at Malibu, California, and effective as of [date].

CITY OF MALIBU:

______________________________
REVA FELDMAN, City Manager

ATTEST:

HEATHER GLASER, City Clerk
(seal)

CONSULTANT:

______________________________
By:

APPROVED AS TO FORM:

______________________________
CHRISTI HOGIN, City Attorney