



# Supplemental Council Agenda Report

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

Prepared by: Lilly Rudolph, Contract Planner

Reviewed by: Bonnie Blue, Planning Director

Approved by: Reva Feldman, City Manager

Date prepared: August 26, 2020 Meeting date: September 14, 2020

Subject: Agreement for the Sea View Hotel Project Initial Study

---

**RECOMMENDED ACTION:** Authorize the City Manager to execute a Developer Reimbursement Agreement with Grey Granite, LLC, Las Tunas Beach, LLC, and Sea View Terrace, LLC (Developer) for preparation of an initial study for the proposed Sea View Hotel Project at 22729 and 22741 Pacific Coast Highway (Project).

**FISCAL IMPACT:** There is no fiscal impact associated with approval of these agreements. The costs for the services are being paid from funds deposited by the Developer.

**WORK PLAN:** This project was not included in the Adopted Work Plan for Fiscal Year 2020-2021. This item is part of normal staff operations.

**DISCUSSION:** The Developer submitted a land use and zoning change, coastal development permit, development agreement and associated applications for the construction of a hotel on the subject parcels. The application meets the definition of "Project" pursuant to the California Environment Quality Act (CEQA) and requires the preparation of an initial study. After City Council provided direction to staff regarding public benefits of the Project, the Project is now ready to proceed with the preparation of an initial study.

The City has an agreement with Rincon Consultants for planning services including preparation of CEQA documents. Since the inception of the project, a Rincon contract planner has been assigned to the project and will be preparing the initial study. As such, pursuant to MMC Section 2.56.130 (Competitive Bidding – Exceptions), the City did not solicit a Request for Proposal for the services for the project given the Case Planner's

experience and knowledge of the project. It was determined that the use of a competitive bidding process would have been impractical, may not have resulted in lower cost to the City, and would have caused unnecessary delays for the Developer. As such, staff obtained a bid from Rincon Consultants, Inc. to prepare an initial study for the Project. A new agreement for Rincon Consultants is not necessary since the scope of work falls within the services of the existing agreement.

Since Rincon Consultants, Inc.'s bid exceeds \$25,000, this item is before the Council pursuant to MMC Section 2.56.070, which states that contracts or purchase orders for supplies or services involving a cost in excess of \$25,000 must be approved or awarded by the City Council.

In order to recuperate the cost of the preparation of the initial study, staff has prepared a Developer Reimbursement Agreement. The Developer Reimbursement Agreement calls for the developer to reimburse all the City's consultant costs in the preparation of the study, plus a City fee of 30 percent of the consultant's proposal for the management and administration of the agreement. The Developer Reimbursement Agreement between the City and Developer sets forth provisions for the deposit of funds by the Developer with the City that would be maintained to cover all costs associated with the preparation of the initial study.

Staff recommends that the Council authorize the agreement in order for the Project processing to move forward.

ATTACHMENT: Developer Reimbursement Agreement with Grey Granite, LLC, Las Tunas Beach, LLC, and Sea View Terrace, LLC

City of Malibu  
with  
Grey Granite, LLC, Las Tunas Beach, LLC, and Sea View Terrace, LLC  
**Developer Reimbursement Agreement**

Sea View Hotel Project  
22729 and 22741 Pacific Coast Highway, Malibu, CA  
Initial Study

This Agreement is made on this 14<sup>th</sup> day of September 2020, by and between the **City of Malibu**, a municipal corporation, 23825 Stuart Ranch Road, Malibu, California, 90265 (hereinafter referred to as the “CITY”), on the one hand, and **Grey Granite, LLC, Las Tunas Beach, LLC, and Sea View Terrace, LLC, 22741 Pacific Coast Highway, Suite 400, Malibu, California, 90265** (hereinafter referred to as the “DEVELOPER”), on the other hand.

**Recitals**

A. DEVELOPER has requested that CITY process entitlements for the Sea View Hotel project “Project,” involving an overlay districts for the Malibu Municipal Code (MMC) and Local Coastal Program (LCP), zoning and land use changes to the General Plan, MMC and LCP maps, and coastal development permit and development agreement for the Sea View Hotel Project, an application for the remodel of an existing 13,000 square foot office building with a 9,500 square foot parking garage and construction of a 9,800 square foot addition and 3,500 square feet of subterranean space on the adjacent parcel to create a new +/- 39 room hotel with onsite guest restaurant and amenities, rooftop deck and pool, surface parking lot, grading, retaining walls, landscaping and a new onsite wastewater treatment system; including a General Plan map amendment to change the land use designation from Community Commercial to Commercial Visitor Serving, a Local Coastal Program amendment and zoning map amendment for a zone change from Community Commercial to Commercial Visitor Serving-2 (CV-2), a zoning text amendment for the creation of Sea View Hotel Overlay District, and a lot merger to merge two parcels at 22729 PCH and 22741 PCH (“Project”).

B. CITY requires that an Initial Study be prepared for and under the direction of CITY, but at DEVELOPER’s expense, for consideration in conjunction with the application as required by the California Environmental Quality Act (CEQA), Public Resources Code Sections 21000 et seq. and the State and local regulations promulgated pursuant thereto.

NOW, THEREFORE, the CITY and DEVELOPER mutually agree as follows:

1. **PAYMENT.** DEVELOPER agrees to pay CITY in full for all costs and expenses incurred pursuant to the contract between CITY and the consultant selected by CITY to prepare the necessary documents for DEVELOPER’s Project plus a 30% management and administration fee to compensate for all CITY staff costs incurred

in managing the contract with the CEQA Consultant. Upon execution of this Agreement, DEVELOPER shall deposit with CITY the sum of \$\_\_\_\_\_. Developer may withdraw its application at any time and the City will refund the unused portion of the deposit within 20 days of written notice of withdrawal of the application for approval of the Project.

In the event CITY determines, based on the actual expense incurred in preparation and review of the Initial Study, that its actual costs will exceed \$\_\_\_\_\_, DEVELOPER shall pay to CITY upon written demand in a lump sum the estimated cost of the excess. Work on the Initial Study shall be suspended until and unless said payment is made to CITY and in such event, DEVELOPER shall be responsible for all costs incurred as a result of the suspension of work. If payment is not made within 30 days of written demand by CITY, the applications for the project for which the Initial Study is being prepared shall be deemed withdrawn by DEVELOPER unless such time period is waived in writing by the City Manager.

After a final action is taken on the Project by the City or upon abandonment by DEVELOPER pursuant to Section 2 below, and satisfaction of all liabilities to CEQA Consultant and reimbursement of all CITY staff expense, CITY shall refund DEVELOPER any amount of DEVELOPER's payments which remain unexpended. If the deposit(s) is insufficient to meet CITY's obligations to CONSULTANT, DEVELOPER shall pay any remaining amounts due.

2. **ABANDONMENT OF PROJECT.** In the event DEVELOPER abandons the project prior to a final decision on the Initial Study by the City, and upon written request from DEVELOPER directed to the City Manager, CITY will suspend preparation of the Initial Study and evaluation of DEVELOPER's applications in order to avoid further expense.

3. **INDEPENDENT CONSULTANTS.**

3.1. During the existence of CITY's contract with its Consultant, and for a time period of one (1) year from final resolution of DEVELOPER's application, neither DEVELOPER, nor any of its representatives, agents or other persons acting in concert with DEVELOPER will enter into any financial or business relationship with CONSULTANT or any of its subconsultants or propose to enter into any future such relationship with any such entities or persons without written notice to and approval in writing by CITY.

- 3.2. DEVELOPER hereby acknowledges and agrees as follows:
    - 3.2.1. CITY has sole discretion to select which of its employees are assigned to work on DEVELOPER's application.
    - 3.2.2. CITY has sole discretion to determine which persons CITY will hire as employees and contractors to work on DEVELOPER's application.
    - 3.2.3. CITY has sole discretion to direct the work and evaluate the performance of the employees and contractors whom the CITY hires to work on DEVELOPER's application and CITY retains the right to terminate or replace at any time any employee or contractor who is assigned to work on DEVELOPER's application.
    - 3.2.4. CITY has sole discretion to determine the amount of compensation paid to employees and contractors hired by CITY to work on DEVELOPER's application.
    - 3.2.5. CITY, not DEVELOPER, shall pay employees and contractors hired or assigned by CITY to work on DEVELOPER's application from a CITY account under the exclusive control of CITY.
  - 3.3. CITY and DEVELOPER hereby acknowledge and agree that processing of DEVELOPER's application is not contingent on the hiring of any specific contractors.
  - 3.4. CITY and DEVELOPER hereby acknowledge and agree that DEVELOPER's duty to reimburse CITY is not contingent upon CITY's approval or disapproval of the proposed project or upon the result of any action of CITY.
  - 3.5. Neither DEVELOPER, nor its officers, employees or agents, shall communicate with the City's Consultant during the term of this agreement without prior approval of CITY. CITY shall instruct Consultant not to communicate with DEVELOPER or its agents without consent of CITY.
4. **INTERPRETATION.** This agreement is deemed to have been prepared by all of the parties hereto, and any uncertainty or ambiguity herein shall not be interpreted against the drafter, but rather, if such ambiguity or uncertainty exists, shall be interpreted according to the applicable rules of interpretation of contract under the law of the State of California.

5. **ASSIGNMENT.** This Agreement shall not be assigned in whole or in part, without the prior written consent of CITY.
6. **NOTICE.** All notices permitted or required under this Agreement shall be in writing and shall be deemed made when delivered to the applicable party's representative, as provided in this Agreement. Additionally, such notices may be given to the respective parties at the following addresses, or at such other addresses as the parties may provide in writing for this purpose.

Such notices shall be deemed made when personally delivered or when mailed forty-eight (48) hours after deposit in the U.S. mail, first-class postage prepaid and addressed to the party at its applicable address.

**CITY:**

CITY OF MALIBU

Richard Mollica, Assistant Planning Director  
23825 Stuart Ranch Road  
Malibu, CA 90265-4861  
(310) 456-2489, ext. 346

**DEVELOPER:**

Grey Granite, LLC  
Sea View Terrace, LLC  
Las Tunas Beach, LLC  
Attention: Norman Haynie  
22741 Pacific Coast Highway, Suite 400  
Malibu, CA 90265  
(310) 456-5515  
norm@blueonyxdesign.com

7. **GOVERNING LAW/VENUE.** This Agreement shall be governed by the laws of the State of California and the exclusive venue for all disputes arising hereunder shall be the Superior Court for the County of Los Angeles.
8. **ENTIRE AGREEMENT; MODIFICATION.** This Agreement represents the entire integrated Agreement between CITY and DEVELOPER, and supersedes any and all other agreements, either oral or written, between the parties, and contains all the covenants and agreements between the parties. Each party to this Agreement acknowledges that no representations, inducements, promises or agreements, oral or otherwise, have been made by any party, or anyone acting on behalf of any party, which is not embodied herein. Any agreement, statement or promise not contained in the Agreement, and any modification to the Agreement, will be effective only if signed by both parties.

9. **EXECUTION.** This Agreement may be executed in several counterparts, each of which shall constitute one and the same instrument and shall become binding upon the parties when at least one copy hereof shall have been signed by both parties hereto. In approving this Agreement, it shall not be necessary to produce or account for more than one such counterpart.
10. **AUTHORITY TO ENTER AGREEMENT.** The DEVELOPER has all requisite power and authority to conduct its business and to execute, deliver and perform this Agreement. Each party warrants that the individuals who have signed this Agreement have the legal power, right and authority to make this Agreement and to bind each respective party.

IN WITNESS WHEREOF, the parties have executed this Agreement the 14<sup>th</sup> day of September 2020.

DEVELOPER: GREY GRANITE, LLC  
LAS TUNAS BEACH, LLC, SEA VIEW  
TERRACE, LLC

By: \_\_\_\_\_  
NORMAN HAYNIE, Manager

CITY OF MALIBU:

\_\_\_\_\_  
REVA FELDMAN, City Manager

ATTEST:

\_\_\_\_\_  
HEATHER GLASER, City Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
CHRISTI HOGIN, City Attorney