

Council Agenda Report

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

Prepared by: Adrian Fernandez, Assistant Planner *af*

Reviewed by: Joyce Parker-Bozylinski, AICP, Planning Manager *JPB*
Victor Peterson, Community Development Director

Approved by: Jim Thorsen, City Manager *JT*

Date prepared: October 21, 2010 Meeting date: November 8, 2009

Subject: Amendments to the Agreements for the 21000 and 21100 Seaboard Road Project

RECOMMENDED ACTION: 1) Authorize the City Manager to execute Amendment No. 1 to Agreement with Rincon Consultants, Inc. ("the Consultant") for the preparation of an Environmental Impact Report (EIR) for the 21000 and 21100 Seaboard Road Lot Line Adjustment and Coastal Development Permit Project ("the Project") (Attachment 1); and 2) authorize the City Manager to execute Amendment No. 1 to the Developer Reimbursement Agreement with the Breitman Residence Trust, dated 10/1/03 ("the Applicant") (Attachment 2).

FISCAL IMPACTS: The services rendered by the Consultant will be reimbursed by the applicant. An additional 30 percent is added to the total project budget to cover costs for the City staff management and administration, which is also paid by the applicant. It is anticipated that there will be no fiscal impact to the General Fund.

DISCUSSION: On March 22, 2010, the City entered into an agreement for the Consultant to prepare an EIR for the Project in the amount of \$45,500. At this time, the Consultant is requesting an amendment to the agreement to address new issues raised during the Public Scoping Meeting for the Draft EIR and to update the initial study to include reasonably foreseeable development of the other three parcels that are part of the proposed lot line adjustment and the three surrounding parcels (Assessor's Parcel Nos. 4450-022-052, 4450-022-046 and 4450-023-002) which would benefit from the proposed improvements to Seaboard Road.

The total amendment request is for \$10,390, bringing the total Consultant agreement amount from \$45,500 to \$55,890. The Developer Reimbursement Agreement will be amended to include the Consultant amendment (\$10,390) and the City's 30 percent management and administration fee will be added (\$3,117). The total amendment to the Development Reimbursement Agreement is \$13,507, bringing the total agreement amount to \$72,657.

The Development Reimbursement Agreement includes a payment plan to ensure that the City has the necessary funds to pay the Consultant as project tasks are completed. Upon execution of the agreement, the applicant was responsible to deposit the sum of \$20,150 and to make five additional deposits of \$7,800 by the 10th of each month. The applicant deposited \$20,150, which has been sufficient to cover all consultant and City administrative fees to date, however, the remaining payments have not been made. As a result, the payment plan requires an amendment to accommodate the Consultant amendment request and to reconcile the outstanding payments. The applicant has agreed to make a lump sum payment of \$15,451 in order to ensure that the City has sufficient funds to proceed. The remaining amount will be divided into four payments instead of the original five as the completion date of the EIR has now been shortened given the work already completed by the Consultant.

Staff recommends that the Council authorize the amendments to the two agreements in order for this project to move forward.

STAFF FOLLOW-UP: Upon City Council approval, staff will execute the amendments to the Professional Services Agreement and Developer Reimbursement Agreement.

ATTACHMENTS:

1. Amendment to the Professional Services Agreement
2. Amendment to the Developer Reimbursement Agreement

AMENDMENT NO. 1 TO AGREEMENT

THIS AMENDMENT NO. 1 TO AGREEMENT is made and entered in the City of Malibu on this _____ day of _____ 2010, by and between the CITY OF MALIBU, (herein after referred to as "City"), and Rincon Consultants, Inc. (hereinafter referred to as "Consultant").

The City and the Contractor agree as follows:

RECITALS

A. On March 22, 2010, the City entered into an agreement (the "Agreement") with the Consultant for the preparation of an Environmental Impact Report ("EIR") for the project known as the 21000 and 21100 Seaboard Road Lot Line Adjustment and Coastal Development Permit Project (herein after referred to as "Project") in the amount of \$45,500.

B. The Consultant submitted a request to amend the Agreement, dated September 17, 2010, attached hereto as Exhibit A, to amend the Scope of Work and compensation in the amount of \$10,390.

C. The Parties have agreed to amend the compensation under Agreement such that the total Agreement compensation will be \$55,890, including compensation already paid to the Consultant.

NOW THEREFORE, in consideration of their mutual promises, obligations and covenants hereinafter contained, the parties hereto agree as follows:

1. The scope of services is hereby amended as set forth in Exhibit A attached hereto.
2. Paragraph 4.0 of the Agreement is amended to replace "not to exceed \$45,500" with "not to exceed \$55,890."
3. All terms and conditions of the Agreement not amended by this Amendment No. 1 remain in full force and effect.

This Agreement is executed on this _____ day of _____, 2010, at Malibu, California, and effective as of November 8, 2010.

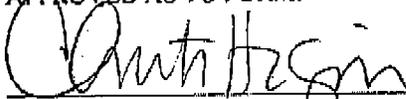
CITY OF MALIBU:

JIM THORSEN, City Manager

ATTEST:

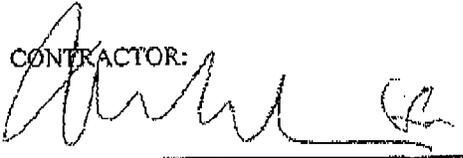
LISA POPE, City Clerk

APPROVED AS TO FORM:



CHRISTI HOGIN, City Attorney

CONTRACTOR:



By: Duane Vander Pluym
Title: Vice President



Rincon Consultants, Inc.
180 North Ashwood Avenue
Ventura, California 93003

605 644 4455
FAX 644 4240

info@rinconconsultants.com
www.rinconconsultants.com

September 17, 2010
Job Number 09-65170

Adrian Fernandez
City of Malibu
23815 Stuart Ranch Road
Malibu, California 90265

Subject: Scope Amendment Request
Seaboard Road Project

Dear Mr. Fernandez:

This letter is in response to requested scope changes to address issues stemming from scoping comments and project changes for the 21100 Seaboard Road Project. The following is Rincon's updated scope items and budgets.

1. Initial Study. Rincon proposes to update the City-prepared Initial Study/Negative Declaration for the project dated May 22, 2008. Rincon will review all of the issue areas contained therein and update the discussions in light of project changes. The Initial Study will be attached to the EIR as an Appendix. The budget for this task is **\$3,520**.

2. Biological Studies. The biological peer review that was part of our scope dated December 24, 2009, was completed prior to the identification of the project changes. Additional hours requested will be used to update and confirm biological resources information. The budget for this task is **\$1,340**.

3. Administrative EIR. In response to comments regarding Coastal Act compliance and variances required for the project, we recommend adding a Land Use and Planning section to the EIR. This section will examine the above-mentioned project issues in light of Malibu's Local Coastal Program (LCP). The budget to complete this task is **\$1,400**.

4. Final EIR. Based on the nature of the comments received during the scoping period, it is anticipated that additional hours will be needed to adequately address comments on the Draft EIR from interested parties and public agencies. We estimate that we will need an additional **\$4,130** for this task.

The total budget amendment request is **\$10,390**. Please see the attached spreadsheet for a breakdown of costs by task. When added to the original budget of **\$45,500**, the revised budget would be **\$55,890**.

We appreciate the opportunity to continue to work with the City of Malibu on this project. Please let us know if you have questions about this correspondence.



Sincerely,
RINCON CONSULTANTS, INC.

Joe Power, AICP
Principal

Mark Neumeister, LEED AP
Environmental Planner

enclosure



City of Malibu
21100 Seaboard Road Lot Line Adjustment & CDP EIR
Scope Amendment Cost Estimate

Tasks	Cost	Hours	Rincon Consultants			
			Principal \$175/hour	Analyst \$105/hour	Graphics \$75/hour	Clerical \$55/hour
1. Revise Initial Study	\$3,520	32	4	24	4	
2. Update Biology Peer Review	\$1,340	12	2	8	2	
3. ADEIR - Land Use and Planning Section	\$1,400	12	2	10		
4. FEIR - Additional Responses to Comments	\$4,130	34	8	26		
Subtotal Rincon Labor	\$10,390	90	16	68	6	0
<i>Original Budget</i>	<i>\$45,500</i>					
New Total Budget	\$55,890					

AMENDMENT NO. 1 TO AGREEMENT

THIS AMENDMENT NO. 1 TO AGREEMENT is made and entered in the City of Malibu on this ___ day of _____ 2010, by and between the CITY OF MALIBU, (herein after referred to as "City"), and, **Diane Breitman, Trustee of The Breitman Residence Trust Dated 10/1/03 (Breitman Trust)** (hereinafter referred to as "Developer").

The City and the Developer agree as follows:

RECITALS

A. On March 22, 2010, the City entered into an agreement with Rincon Consultants, Inc. (hereinafter referred to as the "Consultant"), for the preparation of an Environmental Impact Report (EIR) for the project known as the 21000 & 21100 Seaboard Road Lot Line Adjustment and Coastal Development Permit Project EIR (herein after referred to as "Project"), in the amount of \$45,500.

B. On March 22, 2010, the City and Developer entered into a Developer Reimbursement Agreement pursuant to which Developer agreed to reimburse the City for the cost of Consultant's services incurred in connection with the Project, together with the costs associated with City staff's administration, management and oversight of the environmental review process for the Project. The Developer Reimbursement Agreement was in the amount of \$59,150, which included the anticipated cost of the Consultant's services for the preparation of the EIR, plus a thirty percent management and administration fee to cover the City's actual cost of administering, managing and overseeing the environmental review process for the Project.

C. The Consultant submitted a request, dated September 17, 2010, to amend the Scope of Work and agreement amount in the amount of \$10,390, bringing the total Consultant agreement amount to \$55,890. The proposal is attached hereto as Exhibit A.

D. Upon execution of the Developer Reimbursement Agreement, the Developer was obligated to deposit the sum of \$20,150 with the City and to make five additional deposits of \$7,800 each by the 10th of each succeeding month. The applicant deposited the initial \$20,150; however, none the subsequent payments were made. The Developer has agreed to make a lump sum payment of \$15,451 upon execution of this Amendment No. 1 to Agreement. The remaining amount due will be divided into four payments to be paid over the succeeding four months.

E. The Parties have agreed to amend the Developer Reimbursement Agreement to include the additional amount of \$10,390 necessary for the Consultant to prepare an adequate environmental document, and to include the City's management and administration fee in the amount of \$3,117, bringing the total Reimbursement Agreement to \$72,657. In addition, the Parties have agreed to amend the Payment terms of the Agreement.

NOW THEREFORE, in consideration of their mutual promises, obligations and covenants hereinafter contained, the parties hereto agree as follows:

1. Section 1 of the Agreement is amended to read as follows:

1. **PAYMENT.** DEVELOPER agrees to pay CITY in full for all costs and expenses incurred pursuant to the contract between CITY and Rincon Consultants, Inc., the

Amendment No 1 to Developer Reimbursement Agreement

*Seaboard EIR*Page 2 of 3

EIR consultant (hereinafter referred to as the "CONSULTANT"), selected by CITY to prepare the necessary documents for DEVELOPER's project. DEVELOPER agrees to pay CITY in full for all CONSULTANT personnel (full-time, part-time and contract positions). The City estimates that the cost will be approximately \$55,890 (Exhibit A), plus thirty (30) percent management and administration fee to compensate for all CITY staff costs incurred in managing the contract with CONSULTANT in the amount of \$16,767. Upon execution of the Agreement, the DEVELOPER deposited with CITY the sum of \$20,150. Upon execution of Amendment No. 1 to Agreement the DEVELOPER shall deposit with City the sum of \$15,451. Four additional deposits of \$9,264 shall be made by the 10th of each month (or the following business day, should the 10th fall on a weekend or holiday) until the balance is paid in full. The total deposit amount \$72,657 represents CITY's best estimate of DEVELOPER's ultimate obligations hereunder.

In the event CITY determines, based on the actual expense incurred in preparation and review of the EIR, that its actual costs will exceed \$72,657, DEVELOPER shall pay to CITY upon demand in a lump sum the estimated cost of the excess. Work on the EIR 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 the City, the applications for the project for which the EIR is being prepared shall be deemed withdrawn by the DEVELOPER unless such time period is waived in writing by the City Manager.

After a final action is taken on the EIR by the City Council or upon abandonment by DEVELOPER pursuant to Section 2 below, and satisfaction of all liabilities to 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. All terms and conditions of the Agreement not amended by this Amendment No. 1 remain in full force and effect.

This Agreement is executed on this ____ day of _____, 2010, at Malibu, California..

CITY OF MALIBU

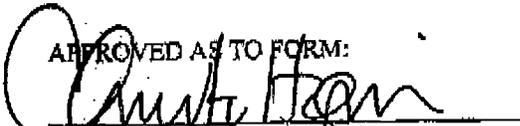
 JIM THORSEN, City Manager

ATTEST:

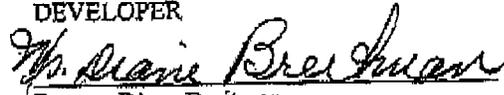
 LISA POPE, City Clerk
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Amendment No 1 to Developer Reimbursement Agreement
Seaboard EIR
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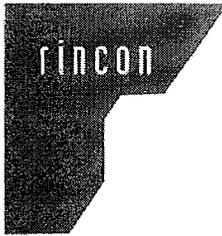
APPROVED AS TO FORM:


CHRISTI HOGIN, City Attorney

DEVELOPER



By: Diane Breitman
Title: Trustee of The Breitman Residence
Trust Dated 10/1/03 (Breitman Trust)



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September 17, 2010
Job Number 09-65170

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City of Malibu
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