



Request for Proposals for Wireless Communications Facilities Application Reviews

Date Issued: March 28, 2023

Proposals must be received no later than 4:00 p.m. on Friday, April 28, 2023 via email at the following address:

City of Malibu
Attn: Tyler Eaton, Senior Planner
teaton@malibucity.org

INTRODUCTION

The City of Malibu Planning Department is seeking proposals from a qualified consulting firm to provide expert, technical, regulatory consultation, application review, and other assistance with wireless communications facility applications. The contract shall be for a minimum of two years.

The City of Malibu intends to award a contract to a firm that will meet our qualification criteria and has successfully performed similar services in the past. The successful firm will be required to enter into a contract with the City for the services requested in this Request for Proposals (RFP) within a reasonable time after award. A firm submitting a proposal must be prepared to use the City's standard contract form rather than its own contract form. A Model Contract is attached to this RFP.

BACKGROUND

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 people. 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. They serve staggered four-year terms, with the Mayor being selected from among the Council Members.

The City covers approximately 21 miles along the coast and offers a full range of municipal services. The City has an equivalent of 88.67 full-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 Los Angeles County. Other services such as the City Attorney, water, street maintenance and garbage collection services are also provided via contract or by Los Angeles County. The City's Adopted Fiscal Year 2022-2023 totals \$93.4 million and includes General Fund annual expenditures for ongoing City operations of \$47.8 million.

The Planning Department assists the community in planning for the future and managing development consistent with the community vision, while meeting City regulatory obligations. Staff provides a wide range of professional advice and services to the public, applicants, outside agencies, the Planning Commission, and the City Council. The Planning Department provides current and long-range planning, biological services, and code enforcement, as well as a robust public information and records management program. In addition to these services, the Planning Department is responsible for the conformance review of wireless communications facility applications to the Malibu Municipal Code and the Local Coastal Program and state and federal regulations.

SCOPE OF WORK

The selected consultant shall perform work under the direction of the Planning Director, to provide technical and regulatory advice to City staff concerning applications for wireless communications facilities as follows:

A. Application Review

1. Wireless Communications Facility Application Reviews

At the City's request, the consultant shall review wireless communications facility applications and provide the City with a written analysis as described below:

2. Memorandum/Memoranda Content

a. Incomplete Memorandum:

Upon receipt of an application by the consultant directly from the City, the consultant will evaluate and identify whether any items that are required in the City's wireless communications facility application are not completed by the applicant. If there are incomplete items, the consultant will send the City an "Incomplete Memorandum" by email or an attachment to an email within:

- i. five (5) calendar days for an initial review of a wireless application that is submitted by the applicant; and
- ii. five (5) calendar days for a resubmittal review of a wireless communications facility application that was deemed incomplete.

b. Project Memorandum:

Once an application is determined by the City or deemed by law to be complete, the consultant shall:

- i. identify the regulatory classification under which the project should be processed (i.e., Section 6409(a); Small Wireless Facility; major modification; new site; etc.);
- ii. discuss design matters, if any, that may reduce the potential impacts of the proposed facility;
- iii. evaluate time, place, and manner considerations for wireless communications facilities located in the public right-of-way;

iv. assess the facility's compliance with radio frequency exposure requirements established by the Federal Communications Commission;

v. assess the facility's compliance with safety requirements established by the California Public Utility Code and Southern California Edison; and

vi. determine any other wireless site-related issues that the consultant, in its experience and opinion, believes to be relevant or helpful to the City's review of the wireless application.

B. Attendance of Meetings

As requested by the City, the consultant will attend in-person meetings and public hearings.

C. General Consulting Services

At the City's request, the consultant shall provide the City with general consulting services.

THE PROPOSAL

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 company's qualifications, credentials and related past experience.
- b. Describe the size of the company, and indicate the principal, company official(s) and other personnel who will be assigned to work on behalf of the City. Provide resumes, biographies and information on the key personnel who will be assigned to this work.

2. Understanding of the Scope of Work

Provide a narrative of the company's understanding of the Scope of Work and detailed proposal to meet the City's goals and priorities.

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

Provide 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; State of California Prevailing Wage Rates, and the City of Malibu's Minimum Wage Ordinance respectively.

5. Litigation

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

6. Fees.

Provide a cost proposal based on a percentage of fees collected for completion of the scope of work. The City of Malibu typically collects 30% of the total fees for service.

7. Timeline

Contract will be awarded for services to begin July 1, 2023.

PROPOSAL PROCEDURE

Clarifications: The City will respond to requests for clarification to the RFP in written Addendum(s) as needed. Inquiries should be directed by email only to teaton@malibucity.org. No verbal requests will be accepted. All requests for clarification must be received by 5:30 p.m. on Monday, April 17, 2023.

Proposal Deadline: Submit an electronic copy of the complete proposal to:

Tyler Eaton, Senior Planner
City of Malibu Planning Department
23825 Stuart Ranch Road
Malibu, CA 90265
teaton@malibucity.org

All proposals are due no later than **4:00 p.m. on Friday, April 28, 2023**. The City reserves the right to extend the deadline or accept a late submittal with good cause shown.

Evaluation Criteria: Proposals will be evaluated based primarily on proposal quality, experience, and performance in oral interviews (if necessary).

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

The City reserves the right to select consultants without interviews however, shortlisted firms **may** be invited to meet with the selection committee. The presentation portion of the interview will be limited to no more than 10 minutes, with up to another 30 minutes set aside for questions and answers. The presenters must include the personnel who will be engaged in the project.

Right to Reject Proposals: Submission of a proposal indicates acceptance by the firm of the conditions contained in this request for proposal unless clearly and specifically noted in the proposal submitted 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 proposals.

ATTACHMENTS: Sample Professional Services Agreement

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 to provide expert, technical, regulatory consultation, application review, and other assistance with wireless communication facility applications.

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 two 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 his 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 his 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 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 his 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.

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

CONSULTANT:

6.20 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.

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

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 _____, at Malibu, California, and effective as of [date].

CITY OF MALIBU:

BRUCE SILVERSTEIN, Mayor

ATTEST:

KELSEY PETTIJOHN, City Clerk
(seal)

CONSULTANT:

By: _____

APPROVED AS TO FORM:

TREVOR RUSIN, Interim City Attorney