



Council Agenda Report

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

Prepared by: Adrian Fernandez, Principal Planner

Reviewed by: Bonnie Blue, Planning Director

Approved by: Reva Feldman, City Manager

Date prepared: August 26, 2020

Meeting date: September 14, 2020

Subject: Agreements for the Malibu Inn Motel Project Initial Study

RECOMMENDED ACTION: 1) Authorize the City Manager to execute an Agreement with Wood Environmental and Infrastructure Solutions, Inc. (Consultant) for the preparation of an initial study for the proposed Malibu Inn Motel Project located immediately east of the Malibu Inn at 22959 Pacific Coast Highway (Project); and 2) Authorize the City Manager to execute a Developer Reimbursement Agreement with Surfrider Plaza, LLC (Developer).

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.

DISCUSSION: In 2009, the Developer submitted a coastal development permit and associated applications for the construction of an office building and retail space (also known as the Surfrider Plaza Project). The application met the definition of "Project" pursuant to the California Environment Quality Act (CEQA) and required the preparation of an initial study. Staff solicited bids and pursuant to Malibu Municipal Code (MMC) Section 2.56.070, the City Council considered and awarded an agreement to the Consultant for the preparation of the initial study and approved a reimbursement agreement for the associated cost. Subsequently, in 2018, the Developer decided to modify the commercial project.

In 2018, the Developer submitted revised plans and materials for the current Project, an application for the construction of a new motel and associated development. Staff has analyzed the application and determined that it still meets the definition of "Project"

pursuant to the CEQA and requires the preparation of an initial study. After numerous revisions during planning conformance review, the Project is now ready to proceed with the preparation of an initial study.

Pursuant to MMC Section 2.56.130 (Competitive Bidding – Exceptions), the City did not solicit a Request for Proposal for the services for the revised project. Due to the Consultant's experience, knowledge, and performance in preparing the initial study for the original project, it was determined that the use of a competitive bidding process would have been impractical and may not have resulted in lower cost to the City, and would have caused unnecessary delays for the Developer. As such, staff obtained a new bid from the original Consultant to prepare an initial study for the modified Project. These new agreements will replace the original agreements for the Surfrider Plaza Project. A refund was previously issued to the Developer for funds not used for the original Project.

Since the Consultant'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 total budget of \$42,648 includes a \$5,000 contingency fee, plus a City fee of 30 percent of the consultant's proposal in the amount of \$8,688 for the management and administration of the agreements . The total cost of \$42,648 would be paid by the Developer. The Developer Reimbursement Agreement sets forth provisions for the repayment of all costs associated with the preparation of the initial study between the City and Developer.

Staff recommends that the Council authorize the two agreements in order for the Project to move forward.

ATTACHMENTS:

1. Professional Services Agreement with Wood Environment and Infrastructure Solutions, Inc.
2. Developer Reimbursement Agreement with Surfrider Plaza, LLC

AGREEMENT FOR PROFESSIONAL SERVICES

This Agreement is made and entered into as of September 14, 2020 by and between the City of Malibu (hereinafter referred to as the "City"), and Wood Environment and Infrastructure Solutions, Inc. (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 to the preparation of an initial study for the Malibu Inn Motel Project located at 22959 Pacific Coast Highway.

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 September 14, 2020, and will remain in effect until services are completed as set forth in the Scope of Work 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 for a total amount not to exceed \$28,960.00, plus a \$5,000 contingency fee. 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.

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. Consultant shall, within twenty-four (24) hours, provide the City with any and all files upon request by the City.

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:	Bonnie Blue Planning Director City of Malibu 23825 Stuart Ranch Road Malibu, CA 90265-4861 TEL (310) 456-2489 x 258 FAX (310) 456-2760	CONSULTANT:	Matthew Buggert CEQA Project Manager Wood Environment & Infrastructure Solutions, Inc. 104 W Anapamu Street Suite 204a TEL (805) 962-0992 x 242 FAX (805) 966-1706
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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 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 AG

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.

This Agreement is executed on _____, 2020, at Malibu, California,
and effective as of September 14, 2020.

CITY OF MALIBU:

REVA FELDMAN, City Manager

ATTEST:

HEATHER GLASER, City Clerk
(seal)

CONSULTANT:


AARON GOLDSCHMIDT, Vice President
Environmental Planning Program Manager

APPROVED AS TO FORM:

THIS DOCUMENT HAS BEEN REVIEWED
BY THE CITY ATTORNEY'S OFFICE

CHRISTI HOGIN, City Attorney



Wood Environment & Infrastructure Solutions, Inc.
104 West Anapamu Street, Suite 204A
Santa Barbara, CA 93101
USA

T: +1 805 962 0992

www.woodplc.com

July 23, 2020

Mr. Adrian Fernandez
Principal Planner
City of Malibu
Planning Department
23825 Stuart Ranch Road
Malibu, CA 90265

Subject: **Professional Consulting Services to Prepare an Initial Study/Mitigated Negative Declaration for the Malibu Inn Motel Project**

Dear Mr. Fernandez:

Wood Environment & Infrastructure Solutions, Inc. (Wood) is pleased to submit this proposal to prepare a draft Initial Study (IS), Mitigated Negative Declaration (MND), and Mitigation Monitoring and Report Program (if required), for the Malibu Inn Motel Project. The Wood team would build upon the previous report assembled for the Malibu Surfrider Public Draft IS-MND previously proposed for project site. All submittals would be electronic in both Microsoft Word® and PDF versions (for inclusion of figures) and would address and incorporate changes from staff comments. We would complete this scope of work for **\$28,960** plus an additional \$5,000 contingency. Our Project Principal for this effort will be Mr. Dan Gira; Mr. Gira has more than 34 years of professional experience, including preparation of more than 55 Environmental Impact Reports and dozens of Mitigated Negative Declarations. Our Project Manager will be Mr. Matthew Buggert; Mr. Buggert has over 7 years in the environmental field and has prepared multiple recent initial studies for the City. The Wood team has recent experience within the City of Malibu, having prepared the Rancho Malibu Hotel Project EIR, Malibu Jewish Center & Synagogue Project IS-MND, and completed the Public Draft IS/MND for the previously proposed Surfrider Plaza project. Our project understanding, proposed scope and cost, and assumptions are detailed below.

Project Understanding

As understood, the revised project would include constructing a 7,703 square foot three-level motel with 20 lodging units, supported by 47 parking spaces (18 exterior and 29 underground spaces). The project would involve grading with 11,752 yards of cut under the structure, a rear yard retaining wall with tie-back stabilization/soldier piles, and terraces and landscaping on the rear-yard ascending slope. Wastewater would be accommodated via the installation of a new onsite wastewater treatment system (OWTS) beneath the front parking area consisting of a treatment tank system and a new 2,600 square foot leach field.

Proposed Scope and Cost

Task 1: Prepare Administrative Draft IS: \$16,683. This task would include a teleconference kickoff meeting with the project applicant and City staff and one (1) site visit to allow for update to and understanding of the existing setting. This scope includes preparation of a draft Project Description and one round of

EXHIBIT A

associated City comments. Preparation of a complete Administrative Draft IS would include an updated environmental existing setting, detailed project description and full project analysis, building upon the reports previously prepared for the City. This scope includes one (1) CalEEMod run to estimate air and greenhouse gas emissions for both construction and operational emissions based on the City-approved draft Project Description. As the traffic study has been approved by the City, this scope does not include preparation of a project traffic study or peer review of City approved traffic study. However, upon City request, our team could retain Associated Transportation Engineers to peer review of the applicant's traffic study if deemed appropriate as a modification to this proposal.

- *Schedule:* We will submit the draft Project Description within 3 weeks of the Notice to Proceed. We will submit the Administrative Draft IS to City staff within 3 weeks of receipt of City comments on the draft Project Description.

Task 2: Prepare Public Draft IS: \$5,949. This would include updates to the document and correspondence related to two rounds of staff comments (administrative and screencheck drafts) and document production/delivery.

- *Schedule:* We will submit the Screencheck Public Draft IS within 2 weeks of receipt of City comments on the Administrative Draft IS. We will submit the Public Draft IS in less than 1 week of receipt of City comments on the Screencheck Public Draft IS.

Task 3: Prepare Final IS: \$6,328. This would include responses to all agency/public comments received and to two rounds of staff comments (administrative and screencheck drafts) and attendance of one (1) public hearing.

- *Schedule:* We will submit draft public comment responses to the City within 3 weeks of the close of comment period. We will submit the Screencheck Final IS within 2 weeks of receipt of City comments on the draft public comment responses. We will submit the Final IS package within 1 week of receipt of City comments on the Screencheck Final IS.

Assumptions

We have prepared a total fee estimate to complete the proposed scope of work for a not-to-exceed cost of **\$28,960**. Billing rates and associated staff hours can be delivered upon request. Costs are based on the following set of assumptions:

1. Electronic and/or hard copy versions of relevant project documents and available data, reports, and technical studies (e.g., available maps, GIS data, geotechnical studies, project plans, utilities assessment, etc.) will be provided in a timely manner to Wood. Delays in receipt of requested data or documents may cause a slip in schedule and an equitable adjustment in cost based on time and materials needed.
2. Substantive changes to the City reviewed and approved draft Project Description once drafting of the Initial Study has been initiated may cause a slip in schedule and require an equitable adjustment in cost based on time and materials needed.
3. Wood is not responsible for omission of data or analyses that are not provided or identified to Wood by the City, project engineering and design team, its representatives, or contractors.
4. Ongoing team meeting are anticipated to be held via teleconference. Wood will conduct (1) site visit and attend up to one (1) in-person meeting which is anticipated to be a meeting for document adoption. A member of Wood's management team will attend additional in-person meetings at a cost of \$1,000 per meeting.

5. No other technical study or field work is included, or payment of fees, including California Department of Fish and Wildlife (CDFW) fees, but can be included upon request.
6. We assume that cultural resource impact analysis would rely on available information. Since the site has been previously disturbed, we assume that potential for cultural resource impact is low and any potential impacts to cultural resources can be addressed with standard conditions of approval (e.g., construction monitoring, response to discovery of cultural resources, etc.). If potential significant effects are identified for cultural/historic resources, our Cultural Resource Specialists would be available to prepare additional analysis on a time and materials basis.
7. Wood will prepare teleconference and other meeting summaries.
8. This scope includes the preparation of responses for up to 30 discrete public documents on the Public Draft IS.
9. Surveys, detailed technical analyses, or special studies for are not included in this proposal.
10. All submittals will be electronically delivered. Physical copies such as printed documents or CDs may require an equitable adjustment to cost.
11. Project analysis will be based on site grading, engineering and design plans project by the project applicant or its contractors, existing reports, regional plans, and agency coordination. If the City requests additional technical studies for traffic, cultural, or biological resources, Wood can prepare a supplemental scope and budget for documentation and evaluation of the resources.
12. Wood assumes that the Project will be completed consistent with the agreed upon schedule. Delays of greater than two (2) months for any particular phase or task may lead to a change in costs or effort.
13. Wood reserves the right to move budgeted effort between Project Tasks described in the proposal.

City of Malibu
with
Surfrider Plaza, LLC

Developer Reimbursement Agreement

Malibu Inn Motel Project
22959 Pacific Coast Highway, Malibu, CA
Initial Study

This Agreement is made on this 14th 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") and **Surfrider Plaza, LLC, 9350 Wilshire Boulevard, Suite 300, Beverly Hills**, California, 90210 (hereinafter referred to as the "DEVELOPER").

Recitals

A. DEVELOPER has requested that CITY process a coastal development permit for the Malibu Inn Motel Project ("Project"), an application for the construction of a new 7,703 square foot motel above a new subterranean parking garage, surface parking lot, grading, retaining walls, landscaping and a new alternative onsite wastewater treatment system; including variances for non-exempt grading in excess of 1,000 cubic yards per acre of commercial development, construction on slopes steeper than 2.5 to 1, surface parking within the required front yard setback, and retaining walls in excess of six feet in height, a site plan review for a building height in excess of 18 feet, not to exceed 28 feet for a pitched roof, a conditional use permit for a new commercial development over 500 square feet and a motel in the Commercial-Visitor-Serving-One (CV-1) zoning district, and for a Joint Use Parking Agreement to share the parking spaces with the adjacent lot to the east.

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 (EXHIBIT A).

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 Wood Environment and Infrastructure Solutions, Inc. (the Initial Study 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 \$28,960.00, plus a \$5,000.00 contingency fee, and a thirty percent management and administration fee in the

amount of \$8,688.00, based on the Consultant proposal, to compensate for all CITY staff costs incurred in managing the contract with CONSULTANT. Upon execution of this Agreement, DEVELOPER shall deposit with CITY the sum of \$42,648.00. The total deposit amount \$42,648.00 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 Initial Study, that its actual costs will exceed \$42,648.00, DEVELOPER shall pay to CITY upon 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 Initial Study by the Planning Commission (or City Council as applicable), 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. **ABANDONMENT OF PROJECT.** In the event DEVELOPER abandons the project prior to a final decision on the Initial Study by the Planning Commission (or City Council as applicable), and upon written request from DEVELOPER directed to the City Manager of CITY, 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 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 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
Bonnie Blue, Planning Director
23825 Stuart Ranch Road
Malibu, CA 90265-4861
(310) 456-2489, ext. 258

DEVELOPER:

Surfrider Plaza, LLC
Attention: Steven Hakim
9350 Wilshire Boulevard, Suite 300
Beverly Hills, CA 90210
(310) 393-5800
Steven@Hakimholdings.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 14th day of September 2020.

DEVELOPER: SURFRIDER PLAZA, LLC

By: 

STEVEN HAKIM, Member
Surfrider Plaza, LLC

CITY OF MALIBU:

Reva Feldman, City Manager

ATTEST:

Heather Glaser, City Clerk

APPROVED AS TO FORM:

THIS DOCUMENT HAS BEEN REVIEWED
BY THE CITY ATTORNEY'S OFFICE

CHRISTI HOGIN, City Attorney



Wood Environment & Infrastructure Solutions, Inc.
104 West Anapamu Street, Suite 204A
Santa Barbara, CA 93101
USA

T: +1 805 962 0992

www.woodplc.com

July 23, 2020

Mr. Adrian Fernandez
Principal Planner
City of Malibu
Planning Department
23825 Stuart Ranch Road
Malibu, CA 90265

Subject: **Professional Consulting Services to Prepare an Initial Study/Mitigated Negative Declaration for the Malibu Inn Motel Project**

Dear Mr. Fernandez:

Wood Environment & Infrastructure Solutions, Inc. (Wood) is pleased to submit this proposal to prepare a draft Initial Study (IS), Mitigated Negative Declaration (MND), and Mitigation Monitoring and Report Program (if required), for the Malibu Inn Motel Project. The Wood team would build upon the previous report assembled for the Malibu Surfrider Public Draft IS-MND previously proposed for project site. All submittals would be electronic in both Microsoft Word® and PDF versions (for inclusion of figures) and would address and incorporate changes from staff comments. We would complete this scope of work for **\$28,960** plus an additional \$5,000 contingency. Our Project Principal for this effort will be Mr. Dan Gira; Mr. Gira has more than 34 years of professional experience, including preparation of more than 55 Environmental Impact Reports and dozens of Mitigated Negative Declarations. Our Project Manager will be Mr. Matthew Buggert; Mr. Buggert has over 7 years in the environmental field and has prepared multiple recent initial studies for the City. The Wood team has recent experience within the City of Malibu, having prepared the Rancho Malibu Hotel Project EIR, Malibu Jewish Center & Synagogue Project IS-MND, and completed the Public Draft IS/MND for the previously proposed Surfrider Plaza project. Our project understanding, proposed scope and cost, and assumptions are detailed below.

Project Understanding

As understood, the revised project would include constructing a 7,703 square foot three-level motel with 20 lodging units, supported by 47 parking spaces (18 exterior and 29 underground spaces). The project would involve grading with 11,752 yards of cut under the structure, a rear yard retaining wall with tie-back stabilization/soldier piles, and terraces and landscaping on the rear-yard ascending slope. Wastewater would be accommodated via the installation of a new onsite wastewater treatment system (OWTS) beneath the front parking area consisting of a treatment tank system and a new 2,600 square foot leach field.

Proposed Scope and Cost

Task 1: Prepare Administrative Draft IS: \$16,683. This task would include a teleconference kickoff meeting with the project applicant and City staff and one (1) site visit to allow for update to and understanding of the existing setting. This scope includes preparation of a draft Project Description and one round of

EXHIBIT A

associated City comments. Preparation of a complete Administrative Draft IS would include an updated environmental existing setting, detailed project description and full project analysis, building upon the reports previously prepared for the City. This scope includes one (1) CalEEMod run to estimate air and greenhouse gas emissions for both construction and operational emissions based on the City-approved draft Project Description. As the traffic study has been approved by the City, this scope does not include preparation of a project traffic study or peer review of City approved traffic study. However, upon City request, our team could retain Associated Transportation Engineers to peer review of the applicant's traffic study if deemed appropriate as a modification to this proposal.

- *Schedule:* We will submit the draft Project Description within 3 weeks of the Notice to Proceed. We will submit the Administrative Draft IS to City staff within 3 weeks of receipt of City comments on the draft Project Description.

Task 2; Prepare Public Draft IS: \$5,949. This would include updates to the document and correspondence related to two rounds of staff comments (administrative and screencheck drafts) and document production/delivery.

- *Schedule:* We will submit the Screencheck Public Draft IS within 2 weeks of receipt of City comments on the Administrative Draft IS. We will submit the Public Draft IS in less than 1 week of receipt of City comments on the Screencheck Public Draft IS.

Task 3; Prepare Final IS: \$6,328. This would include responses to all agency/public comments received and to two rounds of staff comments (administrative and screencheck drafts) and attendance of one (1) public hearing.

- *Schedule:* We will submit draft public comment responses to the City within 3 weeks of the close of comment period. We will submit the Screencheck Final IS within 2 weeks of receipt of City comments on the draft public comment responses. We will submit the Final IS package within 1 week of receipt of City comments on the Screencheck Final IS.

Assumptions

We have prepared a total fee estimate to complete the proposed scope of work for a not-to-exceed cost of **\$28,960**. Billing rates and associated staff hours can be delivered upon request. Costs are based on the following set of assumptions:

1. Electronic and/or hard copy versions of relevant project documents and available data, reports, and technical studies (e.g., available maps, GIS data, geotechnical studies, project plans, utilities assessment, etc.) will be provided in a timely manner to Wood. Delays in receipt of requested data or documents may cause a slip in schedule and an equitable adjustment in cost based on time and materials needed.
2. Substantive changes to the City reviewed and approved draft Project Description once drafting of the Initial Study has been initiated may cause a slip in schedule and require an equitable adjustment in cost based on time and materials needed.
3. Wood is not responsible for omission of data or analyses that are not provided or identified to Wood by the City, project engineering and design team, its representatives, or contractors.
4. Ongoing team meeting are anticipated to be held via teleconference. Wood will conduct (1) site visit and attend up to one (1) in-person meeting which is anticipated to be a meeting for document adoption. A member of Wood's management team will attend additional in-person meetings at a cost of \$1,000 per meeting.

5. No other technical study or field work is included, or payment of fees, including California Department of Fish and Wildlife (CDFW) fees, but can be included upon request.
6. We assume that cultural resource impact analysis would rely on available information. Since the site has been previously disturbed, we assume that potential for cultural resource impact is low and any potential impacts to cultural resources can be addressed with standard conditions of approval (e.g., construction monitoring, response to discovery of cultural resources, etc.). If potential significant effects are identified for cultural/historic resources, our Cultural Resource Specialists would be available to prepare additional analysis on a time and materials basis.
7. Wood will prepare teleconference and other meeting summaries.
8. This scope includes the preparation of responses for up to 30 discrete public documents on the Public Draft IS.
9. Surveys, detailed technical analyses, or special studies for are not included in this proposal.
10. All submittals will be electronically delivered. Physical copies such as printed documents or CDs may require an equitable adjustment to cost.
11. Project analysis will be based on site grading, engineering and design plans project by the project applicant or its contractors, existing reports, regional plans, and agency coordination. If the City requests additional technical studies for traffic, cultural, or biological resources, Wood can prepare a supplemental scope and budget for documentation and evaluation of the resources.
12. Wood assumes that the Project will be completed consistent with the agreed upon schedule. Delays of greater than two (2) months for any particular phase or task may lead to a change in costs or effort.
13. Wood reserves the right to move budgeted effort between Project Tasks described in the proposal.