



# Council Agenda Report

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

Prepared by: Jenna Sobieray, Associate Civil Engineer

Reviewed by: Rob Duboux, Public Works Director

Approved by: Steve McClary, Interim City Manager

Date prepared: November 16, 2021 Meeting date: December 13, 2021

Subject: Professional Services Agreement with Kasraie Consulting

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**RECOMMENDED ACTION:** Authorize the Mayor to execute Professional Services Agreement with Kasraie Consulting for engineering design services for the Storm Drain Master Plan design in an amount not to exceed \$123,780.

**FISCAL IMPACT:** Funding for this agreement was included in the Adopted Budget for Fiscal Year 2021-2022 in Account No. 102-9221-5100 (Disaster Recovery CIP – Storm Drain Master Plan). The City received a grant from the Federal Emergency Management Agency (FEMA) Hazard Mitigation for this project. The City is responsible for 25% of the project costs under the grant program. Southern California Edison Woolsey Fire Settlement funds will be used to cover the City's portion.

**WORK PLAN:** This item was included as Item 2.I. in the Adopted Work Plan for Fiscal Year 2021-2022.

**DISCUSSION:** After the 2018 Woolsey Fire and the 2019 Storm Events, the City incurred severe damage to the storm drain infrastructure and suffered flooding in various locations in Malibu. In July 2019, the City applied to the FEMA Hazard Mitigation Grant Program to help fund a hydrology study that would identify all storm drains, culverts, debris basins, and other drainage structures within the City limits, and determine if there are any deficiencies within the storm drainage system. The study will be used to complete a new GIS layer of all City storm drain structures. The study will also provide recommendations to correct insufficient or damaged drainage facilities.

In April 2020, FEMA approved the City's grant application. The grant requires the City to complete the project by April 2022. Once this project is complete, the City will be able to apply for additional Hazardous Mitigation Grant Funding to assist with the construction costs to repair the top priority locations identified in study.

On August 17, 2021, the City issued a Request for Qualifications / Proposal (RFQ/P) for engineering design services for the Storm Drain Master Plan Project. On September 23, 2021, the City received seven (7) proposals for the project from the following firms:

- CWE
- Kasraie Consulting
- Michael Baker International
- National Plant Service
- Psomas
- Tetra Tech
- Woodward & Curran

Staff reviewed the proposals and determined that Kasraie Consulting is the most qualified consultant to provide engineering design service for the Storm Drain Master Plan Project. Kasraie Consulting has indicated that they can complete the Storm Drain Master Plan Project prior to the funding deadline.

ATTACHMENTS: Professional Services Agreement with Kasraie Consulting

## **AGREEMENT FOR PROFESSIONAL SERVICES**

This Agreement is made and entered into as of December 13, 2021 by and between the City of Malibu (hereinafter referred to as the "City"), and Kasraie Consulting (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 Storm Drain Master Plan.

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 December 13, 2021, and will remain in effect for a period of 3 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 \$123,780. 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 10<sup>th</sup> 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 negligence, recklessness or willful misconduct in the performance of work hereunder or its failure to comply with any of its obligations contained in this Agreement, except such loss or damage which is caused by the sole active negligence or willful misconduct of the City. The Consultant shall promptly pay any final judgment rendered against the City (and its officers, officials, employees and volunteers) with respect to claims

determined by a trier of fact to have been the result of the Consultant's negligent, reckless or willful misconduct. It is expressly understood and agreed that the foregoing provisions are intended to be as broad and inclusive as is permitted by the law of the State of California and will survive termination of this Agreement.

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

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

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

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

**6.9 Legal Construction.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**CITY:** Steve McClary  
Interim City Manager  
City of Malibu  
23825 Stuart Ranch Road  
Malibu, CA 90265-4861  
TEL (310) 456-2489 x 224  
FAX (310) 456-2760

**CONSULTANT:** Hassan Kasraie, PE  
President/Principal  
Kasraie Consulting  
3287 Island View Drive  
Ventura CA 93003  
TEL (805) 340-4744

**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 HK

**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 HK

This Agreement is executed on \_\_\_\_\_, 2020, at Malibu, California, and effective as of December 13, 2021.

CITY OF MALIBU:

\_\_\_\_\_  
PAUL GRISANTI, Mayor

ATTEST:

\_\_\_\_\_  
KELSEY PETTIJOHN, City Clerk  
(seal)

CONSULTANT:

HASSAN KASRAIE  
By: Hassan Kasraie, President/Principal

APPROVED AS TO FORM:

THIS DOCUMENT HAS BEEN REVIEWED  
BY THE CITY ATTORNEY'S OFFICE \_\_\_\_\_  
JOHN COTTI, Interim City Attorney

# EXHIBIT A

## SCOPE OF WORK

The Consultant shall provide all professional services described herein below.

### **Task 1 – Data Collection, Topographic Survey and GIS Maps**

#### **1.1 Data Collection**

The Consultant shall collect and review relevant data to support the project. The consultant shall obtain available records from the City and request additional utility information from those utility companies. Consultant shall also seek additional as-built documents from the County, State, or other governmental agencies.

##### *Deliverables:*

- *Utility request and maps*
- *Relevant as-built documents*

#### **1.2 Topographic Survey and GIS Maps**

If needed, the Consultant shall prepare a topographic survey for the elevation and design of the project. The Consultant shall also prepare project location maps and relevant data to place on the City's GIS platform.

##### *Deliverables:*

- *Topographic survey including all AutoCAD*
- *GIS project data and maps*

#### **1.3 Storm Drain Needs and Deficiencies Analysis**

The Consultant shall prepare an analysis complete with hydraulic and hydrologic calculations identifying needs in each watershed in the City. The Consultant shall also prepare project location maps and relevant data to place on the City's GIS platform.

##### *Deliverables:*

- *Calculations, analysis, and other visual documentation to demonstrate the needs identified in the report.*
- *GIS project data and location maps*
- *FEMA documentation as needed for Advanced Assistance Grant*

## **Task 2 – Project Management, Quality Control/Quality Assurance, and FEMA Documentation**

### **2.1 Project Progress Reports and Schedule**

Schedule, status reports, and budget updates will be provided monthly. Monthly project status reports will be used to communicate progress on the project, upcoming work activities, and to identify and resolve project issues. CONSULTANT will furnish monthly progress reports to the City. These reports will include:

- Progress Report - A narrative progress report of specific accomplishments during the reporting period, project decision log, and work scheduled for the next reporting period.
- Cost Report - A report that shows the current period and accumulated expenditures to date by subtask, the approved not to exceed fee, remaining fee, percent completion, and a comparison of the latter two to show variation.
- Schedule Summary - The summary will include a description of known or possible impacts on the schedule, a presentation of deliverable submittal dates and a one-month table of upcoming events (e.g., meetings and deliverables). The schedule summary will be updated monthly.
- Invoices - Invoices by task, showing hourly expenditures to the subtask level (e.g., Subtask 2.1) and by individual.

#### **Deliverables:**

- Project Progress Reports and Schedule updates (hard copies with invoice and/or electronic copies via email)

### **2.2 Project Status Meetings**

The Consultant shall prepare and conduct project status meetings with the City at regular intervals throughout the project.

#### **Deliverables:**

- Meeting agendas, materials, and meeting notes
- Action item list

### **2.3 Project Management**

The Consultant shall provide project management to lead and coordinate project team, communicate information, perform the work, produce deliverables, and to control project costs and schedule performance.

#### **Deliverables:**

- None

## 2.4 Quality Control / Quality Assurance

The Consultant will implement its quality assurance and quality control program, which includes a senior level review of project deliverables.

The QA/QC program will identify the major project deliverables at the beginning of the project and notifications will be sent out to the team ahead of deliverables to schedule QC reviews. The project manager will schedule reviews and make sure reviews are completed. Upon completion of QC reviews, the technical manager and task leaders will review the comments and determine appropriate revisions and responses to comments. The technical manager will then conduct a follow up meeting to “close the loop” with the QC reviewer and obtain approval of comment resolutions. The project manager will oversee the QA/QC process and will resolve any conflicting comments between the QC reviewer, technical manager, and independent reviewers performing work.

### Deliverables:

- None

## 2.5 FEMA Documentation

This project is being funded by FEMA Advanced Assistance Grant Program and requires specific documentation throughout the projects. The Consultant will assist the City with quarterly reports, invoicing, and other required documentation requested by FEMA.

### Deliverables:

- Quarterly reports, invoicing and other required FEMA documentation
- Advanced Assistance Grant supporting documentation
- HMGP Grant application with supporting documentation and calculations acquired during Task 1

## **Task 3 – Final Storm Drain Master Plan Report**

### 3.1 90% Inventory and Analysis Submittal

At the completion of the Data Collection and Preliminary needs analysis and receiving comments from the City, the Consultant shall prepare the 90% final report submittal package. This submittal package shall contain a complete hydrology calculation for the recommended improvements, as well as cost estimates for all projects.

### 3.2 100% Master Plan Report Submittal

The 100% submittal package shall contain a complete set of revised plans, specifications, cost estimates and a detailed comment response document that specially addresses all comments from the 90% Master Plan Report Submittal.

### 3.3 Final Submittal

The Consultant shall incorporate all appropriate comments from the City's review into final report, analysis, and cost estimates. The final submittal shall be stamped and signed by a licensed professional engineer.

#### Deliverables:

- 90%, 100% and Final Master Plan Report
- 90%, 100% and Final Cost Estimates
- 100% Final Inventory, Future Project Needs and GIS data

# EXHIBIT "B"

CITY OF MALIBU Storm Drain Master Plan Cost Proposal 11/1/2021								
Task ID	Task Description	Totals	Principal	Senior Engineer	Water Resource Engineer	Tech Specialist	Direct Expenses	Subtotal
	<i>Approved Billing Rates</i>		<i>\$200</i>	<i>\$145</i>	<i>\$130</i>	<i>\$100</i>		
<b>1</b>	<b>Data Collection, Topographic Survey and GIS Maps</b>	797	28	72	312	385	\$4,000	<b>\$99,100</b>
1.1	Desktop Review	50	4	6	40	0	\$0	\$6,870
	Field Collection/Photo Inspection	421	4	16	16	385	\$0	\$43,700
1.2	Topographic Survey and GIS Maps	0						
	Topographic Data Acquisition, Processing, and Supplementary Survey	56	4	4	48	0	\$4,000	\$11,620
	GIS Project Data and Maps	56	4	4	48	0	\$0	\$7,620
1.3	Storm Drain Needs and Deficiencies Analysis	8			8			
	Determination of Drainage Design Criteria	6	4	2	0	0	\$0	\$1,090
	Hydrology	96	4	20	72		\$0	\$13,060
	Hydraulics	104	4	20	80		\$0	\$14,100
<b>2</b>	<b>Project Management, Quality Control/Quality Assurance, and FEMA Documentation</b>	68	52	16	0	0	0	<b>\$12,720</b>
2.1	Project Progress Reports and Schedule	6	6	0	0	0	\$0	\$1,200
2.2	Project Status Meetings	10	10	0	0	0	\$0	\$2,000
2.3	Project Management	10	10	0	0	0	\$0	\$2,000
2.4	Quality Control/Quality Assurance	26	10	16	0	0	\$0	\$4,320
2.5	FEMA Documentation	16	16	0	0	0	\$0	\$3,200
<b>3</b>	<b>Final Stormdrain Masterplan Report</b>	80	18	20	42	0	\$0	<b>\$11,960</b>
3.1	90% Inventory and Analysis Submittal	34	6	8	20	0	\$0	\$4,960
3.2	100% Masterplan Report Submittal	26	6	8	12	0	\$0	\$3,920
3.3	Final Submittal	20	6	4	10	0	\$0	\$3,080
	<b>Task Totals</b>	<b>945</b>	<b>98</b>	<b>108</b>	<b>354</b>	<b>385</b>	<b>\$4,000</b>	<b>\$123,780</b>