



Council Agenda Report

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

Prepared by: Yolanda Bundy, Environmental Sustainability Director

Approved by: Steve McClary, Interim City Manager

Date prepared: April 6, 2022 Meeting date: April 25, 2022

Subject: Professional Services Agreement for Dark Sky Outreach and Implementation Consulting Services

RECOMMENDED ACTION: Authorize the Mayor to execute a professional services agreement with Design Services, Inc. dba Benya Burnett Consultancy to provide Dark Sky Outreach and Implementation consulting services.

FISCAL IMPACT: No additional appropriation is required. Funding for this project in the amount of \$60,000 was included in the Mid-Year Amendment to the Adopted Budget for Fiscal Year 2021-2022 in Account No. 101-2004-5100 (Building Safety Professional Services).

WORK PLAN: This item was included as Item #5I in the Adopted Work Plan for Fiscal Year 2021-2022.

DISCUSSION: By October 15, 2022, commercial, residential, and institutional properties' exterior lighting must comply with the City's Dark Sky code to protect Malibu's environment and community quality of life from light pollution. Title 17 (Zoning) of the Malibu Municipal Code, Chapter 17.41 regulates outdoor lighting through the addition of comprehensive, citywide outdoor lighting standards.

On February 14, 2022, a Request for Proposals (RFP) for a contract consultant for a highly qualified firm experienced in lighting, new code implementation, and outreach to assist with the implementation of the Malibu Dark Sky Ordinance was released. The RFP listed the following tasks:

Task 1 – Streamline Development Process

- Review and evaluate how the City's development process could be streamlined for processing Dark Sky applications

- Update the City's applications and forms for Dark Sky

Task 2- Public Outreach and Training

- Create a Community Outreach Plan that includes outreach strategies and timelines for educating commercial, institutional, and residential property owners.
- Create educational outreach tools such as flyers and handouts for commercial, institutional, and residential properties.
- Recommend edits for the City's Dark Sky website to improve the community's understanding of the Dark Sky requirements and steps to compliance.
- Conduct at least two (2) public workshops to educate commercial, institutional, and residential parcel owners on how to meet Dark Sky compliance.
- Make presentations to City Council, the community, and other agencies as requested by the Planning or Environmental Sustainability Director.
- Answer questions from the public.

Additionally, the RFP required applicants to enumerate the firm's capabilities and experience in providing these requested services. The City received a proposal from one (1) firm, Design Services, Inc. dba Benya Burnett Consultancy.

In November of 2021, the City entered into an agreement with Benya-Burnett Consultancy to review the five outstanding gas station applications for feasible alternatives to comply with the trespass requirements. Based on the quality of the current RFP package, and the quality of service currently provided, staff suggests authorizing the Mayor to execute an agreement with Design Services, Inc. dba Benya Burnett Consultancy.

ALTERNATIVES: Do not select Benya Burnett Consultancy and release a new RFP, or give other direction to staff.

ATTACHMENTS:

1. Professional Services Agreement for Design Services, Inc. dba Benya Burnett Consultancy

AGREEMENT FOR PROFESSIONAL SERVICES

This Agreement is made and entered into as of April 25, 2022 by and between the City of Malibu (hereinafter referred to as the "City"), and Design Services, Inc. dba Benya Burnett Consultancy (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 prepare the materials necessary for establishing the permit requirements for the Dark Sky Ordinance and conduct presentations.

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 April 25, 2022, and will remain in effect for a period of two (2) 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 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 on-call services rendered and costs incurred pursuant to this Agreement in accordance with the Scope of Work's fee and cost schedule (Exhibit B). The cost of services shall not exceed a total amount of \$60,000. No additional compensation shall be paid for any other expenses incurred, unless first approved by the City Manager, or 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	CONSULTANT:	Design Services, Inc.
	Interim City Manager		dba Benya Burnett Consultancy
	City of Malibu		Deborah Burnett
	23825 Stuart Ranch Road		President
	Malibu, CA 90265-4861		501 Fillmore Court
	TEL (310) 456-2489 x 224		Davis, CA 95616
	FAX (310) 456-2760		TEL (615) 351-8337

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 _____

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 DBA

This Agreement is executed on 4/6, 2022, at Malibu, California,
and effective as of April 25, 2022.

CITY OF MALIBU:

PAUL GRISANTI, Mayor

ATTEST:

KELSEY PETTIJOHN, City Clerk
(seal)

CONSULTANT

Design Services, Inc.

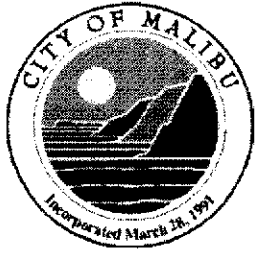
dba Benya Burnett Consultancy

DEBORAH BURNETT, President

APPROVED AS TO FORM:

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

JOHN COTTI, Interim City Attorney



City of Malibu

23825 Stuart Ranch Road · Malibu, California · 90265-4861
Phone (310) 456-2489 · Fax (310) 456-3356 · www.malibucity.org

EXHIBIT A - Scope of Work

Consultant shall provide cost proposal for each on-call task. Approval or authorization is required prior to starting the work as agreed upon by both parties.

Task 1 – Streamline Development Process

- Review and evaluate how the City's development process could be streamlined for processing Dark Sky applications
- Update the City's applications and forms for Dark Sky
- Provide training for City staff upon request.

Deliverables:

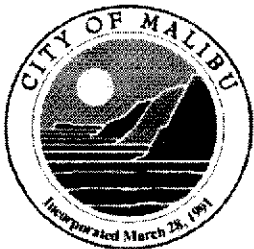
- Memo on streamlined development procedure by June 1, 2022
- Procedures for City staff to process Dark Sky applications by June 1, 2022
- Recommendations on City applications and forms by June 1, 2022

Task 2- Public Outreach and Training

- Create a Community Outreach Plan that includes outreach strategies and timelines for educating commercial, institutional, and residential property owners.
- Create educational outreach tools such as flyers and handouts for commercial, institutional, and residential properties.
- Recommend edits for the City's Dark Sky website to improve the community's understanding of the Dark Sky requirements and steps to compliance.
- Conduct at least two (2) public workshops to educate commercial, institutional, and residential parcel owners on how to meet Dark Sky compliance.
- Make presentations to City Council, the community, and other agencies.
- Answer questions from the public.
- Provide training for City staff upon request.

Deliverables:

- Community Outreach Plan (included in proposal submitted March 11, 2022)
- Outreach tools by July 1, 2022
- Recommendations for website update by June 1, 2022
- Public Workshops in summer 2022
 - o Materials and presentation, memo on outcome of public workshops
- Presentation to City Council, City Planning Commission, and/or Council Committees
 - o Draft and final presentation materials



City of Malibu

23825 Stuart Ranch Road · Malibu, California · 90265-4861
Phone (310) 456-2489 · Fax (310) 456-3356 · www.malibucity.org

EXHIBIT B - Compensation for Services

The City shall pay the Consultant for its professional on-call services rendered and costs incurred pursuant to this Agreement in accordance with the Scope of Work's fee and cost schedule. No additional compensation shall be paid for any other expenses incurred, unless first approved by the City Manager, or designee.

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.

Professional Services:

Fees for professional services are based on an hourly rate.

City personnel approved expenses to be reimbursed at cost plus 10%.

Professional Staff	Hourly Rate
Principal	\$300

Consultant shall provide cost proposal for each on-call task. Approval or authorization is required prior to starting the work as agreed upon by both parties.