



# Council Agenda Report

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

Prepared by: Elizabeth Shavelson, Deputy City Manager

Reviewed by: Joseph Toney, Assistant City Manager

Approved by: Steve McClary, City Manager

Date prepared: July 26, 2022

Meeting date: August 8, 2022

Subject: Professional Services Agreement with CliffordMoss LLC

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**RECOMMENDED ACTION:** If the Council adopts a resolution calling for the placement of a Transactions and Use Tax (TUT) measure on the ballot for the November 8, 2022 General Municipal Election: 1) Authorize the City Manager to execute the Professional Services Agreement with CliffordMoss LLC to develop informational materials to educate Malibu residents regarding the proposed local general TUT; and 2) Appropriate \$24,900 from the General Fund Undesignated Reserve.

**FISCAL IMPACT:** Funding in the amount of \$24,900, for educational outreach related to the proposed ballot measure was not included in the Adopted Budget for Fiscal Year 2022-2023. An appropriation of \$24,900, from the General Fund Undesignated Reserve to Account No. 100-7003-5100-00 (City Manager Professional Services) is needed to fund consultant services for informational materials.

**WORK PLAN:** This item was included as item #6.c. in the Adopted Work Plan for Fiscal Year 2022-2023.

**DISCUSSION:** On July 11, 2022, the Council received a report on a potential TUT and directed staff to bring back resolutions to submit the question to the voters, setting priorities for arguments and rebuttals and directing the City Attorney to prepare an impartial analysis. In addition, the Council also directed staff to bring back an item to hire a consultant to educate Malibu residents regarding the ballot question as staff currently does not have capacity for our standard informational outreach on such topics of interest to the community.

Due to the timing of the election and the limited scope of services requested, staff solicited informal bids from three consultant firms that specialize in this work. Staff reviewed the proposals and recommends that the Council authorize the City Manager to execute a professional services agreement with CliffordMoss LLC if Council adopts a resolution calling for the placement of a Transactions and Use Tax (TUT) measure on the ballot for the November 8, 2022 General Municipal Election. If Council does not adopt a resolution calling for the placement of a Transactions and Use Tax (TUT) measure on the ballot, the agreement will not be executed, and no funds will be appropriated for this purpose.

The proposed scope of work includes the preparation of information-only communications materials such as fact sheets, answers to frequently asked questions, and talking points. The scope also includes optional work products including direct mail, design work and social media graphics. This work would normally be performed by City staff; however, given staff's current workload and the tasks identified in the City's Adopted Work Plan for Fiscal Year 2022-2023 additional support and expertise in this area is needed.

The communication materials produced by the consultant will be for educational purposes only and are not allowed to include any advocacy. The materials will only be used to supply voters with information in a neutral and non-biased manner to aid the public in becoming educated about the measure. All materials will be approved by City staff before distribution.

ATTACHMENTS: Professional Services Agreement with CliffordMoss LLC

## AGREEMENT FOR PROFESSIONAL SERVICES

This Agreement is made and entered into as of August 9, 2022 by and between the City of Malibu (hereinafter referred to as the "City"), and CliffordMoss LLC (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 public information for a City ballot measure on the November 8, 2022 ballot.
- 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 August 9, 2022, and will remain in effect until September 30, 2022 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 (Exhibit A). The cost of services shall be for a total amount not to exceed \$24,900. 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, Consultant shall immediately cease services outlined in the Scope of Work and 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 Consultant 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; Subcontracting.** The Consultant shall not assign or transfer any interest in this Agreement without the express prior written consent of the City. Consultant shall not contract with any other entity to perform the services required without written approval of City. If Consultant is permitted to subcontract any part of this Agreement, Consultant shall be responsible to City for the acts and omission of its subcontractor as it is for persons directly employed. Nothing contained in this Agreement shall create any contractual relationship between any subcontractor and City. All persons engaged in the work will be considered employees of Consultant.

**6.3 Non-Discrimination.** The Consultant shall not discriminate as to race, creed, gender, color, national origin or sexual orientation in the performance of its services and duties pursuant to this Agreement, and will comply with all applicable laws, ordinances and codes of the Federal, State, County and City governments.

**6.4 Insurance.** The Consultant shall submit to the City certificates indicating compliance with the following minimum insurance requirements no less than one (1) day prior to beginning of performance under this Agreement:

(a) Workers Compensation Insurance as required by law. The Consultant shall require all subcontractors similarly to provide such compensation insurance for their respective employees.

(b) Comprehensive general and automobile liability insurance protecting the Consultant in amounts not less than \$1,000,000 for personal injury to any one person, \$1,000,000 for injuries arising out of one occurrence, and \$500,000 for property damages or a combined single limit of \$1,000,000. Each such policy of insurance shall:

1) Be issued by a financially responsible insurance company or companies admitted and authorized to do business in the State of California or which is approved in writing by City.

2) Name and list as additional insured the City, its officers and employees.

3) Specify its acts as primary insurance.

4) Contain a clause substantially in the following words: "It is hereby understood and agreed that this policy shall not be canceled nor materially changed except upon thirty (30) days prior written notice to the City of such cancellation or material change."

5) Cover the operations of the Consultant pursuant to the terms of this Agreement.

**6.5 Indemnification.** Consultant shall indemnify, defend with counsel

approved by City, and hold harmless City, its officers, officials, employees and volunteers from and against all liability, loss, damage, expense, cost (including without limitation reasonable attorneys' fees, expert fees and all other costs and fees of litigation) of every nature arising out of or in connection with Consultant's performance of work hereunder or its failure to comply with any of its obligations contained in this Agreement, regardless of City's passive negligence, but excepting such loss or damage which is caused by the sole active negligence or willful misconduct of the City. Should City in its sole discretion find Consultant's legal counsel unacceptable, then Consultant shall reimburse the City its costs of defense, including without limitation reasonable attorneys' fees, expert fees and all other costs and fees of litigation. The Consultant shall promptly pay any final judgment rendered against the City (and its officers, officials, employees and volunteers) covered by this indemnity obligation. It is expressly understood and agreed that the foregoing provisions are intended to be as broad and inclusive as is permitted by the law of the State of California and will survive termination of this Agreement.

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

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

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

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

## **6.9 Legal Construction.**

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

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

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

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

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

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

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

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

**6.14 Waiver; Remedies Cumulative.** Failure by a party to insist upon the

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

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

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

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

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

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

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

**CONSULTANT:** Bonnie Moss  
 Principal  
 CliffordMoss  
 5111 Telegraph Suite 307  
 Oakland, CA 94609  
 TEL (510) 907-3195

**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 Agreement, agreements ancillary to this Agreement, and related documents to be entered into in connection with this Agreement 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 \_\_\_\_\_

This Agreement is executed on August 8, 2022 at Malibu, California, and effective as of August 9, 2022.

CITY OF MALIBU:

\_\_\_\_\_  
STEVE MCCLARY, City Manager

ATTEST:

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

CONSULTANT:



By: BONNIE MOSS, Principal

APPROVED AS TO FORM:

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

## Exhibit A

### City of Malibu – CliffordMoss 2022 INFORMATION-ONLY COMMUNICATIONS PROJECT SCOPE

Public Information for a City ballot measure on the November 2022 ballot.

Timeline: August 9 – September 30, 2022

#### IF a ballot measure is placed on the ballot by Council vote

##### Final Ballot Measure Preparation & Communications Services\*

- Review available background material and confer with City Leaders.
- Recommend an information-only communications program and timeline to help inform Malibu residents and the public on the City's November 2022 ballot measure.
- Prepare City **information-only** communications work products (e.g. **factual, information-only** fact sheets, FAQs, talking points, etc.).
- Collaborate with City staff to produce City-requested direct mail, online digital graphics, or other information only materials/tools.
- Provide ongoing project-related information-only communications counsel as needed.
- Be available to City contacts for ongoing counsel regarding their November 2022 ballot measure (e.g. via email, zoom, phone, etc.).

**Contractor's services do not include legal or financial advice or counsel of any kind.**

- \* Provider strives for a "teaming/thought partnership" relationship with City in these processes. The work is collaborative and iterative. Provider usually prepares drafts (with input from City) for team review/editing. It is not uncommon for drafts to go back and forth between Provider and City before City gives final approval for internal or external use.

#### Fees and Budget

**CliffordMoss Fee: \$15,000 FLAT FEE**

**Consultant Expenses: Not to Exceed (NTE) \$200** for pre-approved travel only as needed.

##### Ballot Measure Public

**Information Program Costs: Up to \$9,700** for direct mail and/or design work and/or social media design files.