

**CITY OF DEL REY OAKS**  
**AGREEMENT FOR CITY ENGINEER SERVICES**

**THIS AGREEMENT** (“Agreement”), dated January 1, 2019 by and between the CITY OF DEL REY OAKS, a municipal corporation, (hereinafter “City”), and NEILL ENGINEERS CORP. OF Carmel, California, (hereinafter “Consultant”), each of which is referred to herein as a “party,” and collectively referred to herein as the “parties”.

**RECITALS**

**WHEREAS**, the City wishes to engage Consultant to perform the City Engineer services required by this Agreement as City does not have the capability to perform such work;

**WHEREAS**, Consultant is customarily engaged in the business of providing engineering services, currently provides such services to the City, and is willing to continue to render such services on the following terms and conditions; and

**WHEREAS**, Consultant represents it is specially trained, experienced, and competent to perform the services required by this Agreement.

**AGREEMENT**

**NOW, THEREFORE**, in consideration of the terms and conditions herein contained, the parties hereby covenant and agree as follows:

**1. SERVICES**

**Scope of Services.** Consultant shall, in its professional discretion and in the best interest of the City perform the following:

- Provide consultation and advice in assisting City Staff with review and preparation of engineering reports when requested.
- Assist with review of plan submittals when requested.
- Review Parcel Maps for technical accuracy.
- Render advice to the City Staff concerning grades and elevations when requested.
- Provide additional engineering services needed by City to discharge its obligation to provide a full range of municipal services.
- Attend City meetings as needed.

If the City determines the services set forth in any written invoice have not been performed in accordance with the terms of this Agreement, the City shall not be responsible for payment until the services have been satisfactorily performed.

**2. COMPENSATION**

The City agrees to pay and Consultant agrees to accept as full and fair consideration for the performance of this Agreement \$300.00 every three months as a retainer fee. Fees for additional Engineering Services requested by the City will be based on the Consultant’s current fee schedule rates attached hereto as

Exhibit "A" and incorporated herein by this reference. If the City determines the services set forth in any written invoice have not been performed in accordance with the terms of this Agreement, the City shall not be responsible for payment until the services have been satisfactorily performed.

### 3. AGREEMENT TERM

A. **Term.** The work under this Agreement shall commence on January 1, 2019. This Agreement may be terminated without cause upon thirty 30 days' written notice by either party.

B. **Timely Work.** Consultant shall perform all services in a timely fashion. Failure to perform shall be deemed a material breach of this Agreement, and the City may terminate this Agreement with no further liability hereunder, or may authorize, in writing, an extension of time to the Agreement.

### 4. INDEPENDENT CONTRACTOR

#### A. **Independent Contractor.**

Consultant is an independent contractor. This Agreement does not create the relationship of employer and employee, a partnership, or a joint venture. No offer or obligation of permanent employment with the City or particular City department or agency is intended in any manner, and Consultant shall not become entitled by virtue of this Agreement to receive from the City any form of employee benefits including but not limited to sick leave, vacation, retirement benefits, workers' compensation coverage, insurance or disability benefits. Consultant shall be solely liable for and obligated to pay directly all applicable taxes, including federal and state income taxes and social security, arising out of Consultant's performance of services under this Agreement. In connection therewith, Consultant shall defend, indemnify and hold the City harmless from any and all liability, which the City may incur due to Consultant's failure to pay such taxes.

B. **Not an Employee or Agent of the City.** Nothing in this Agreement shall be interpreted so as to render the City the agent, employer, or partner of Consultant, or the employer of anyone working for or subcontracted by Consultant, and Consultant must not do anything that would result in anyone working for or subcontracted by Consultant being considered an employee of the City. Consultant is not, and must not claim to be, an agent of the City.

### 5. REPRESENTATIVES AND COMMUNICATIONS

A. **City's Representative.** The City appoints the individual named below as the City's contact person for the purposes of this Agreement.

Name: Danial Pick  
Title: City Manager  
Address: 650 Canyon Del Rey Blvd. Del Rey Oaks, CA 93940  
Telephone: 831- 394-8511

B. **Consultant's Representative.** Consultant appoints the person named below as its contact person for the purposes of this Agreement.

Name: Sherman Low  
Title: Consulting Engineer, Neill Engineers Corp.  
Address: Mission and Fifth-Box LL  
Telephone: 831-624-2110

C. **Communications and Notices.** Any notice, report, or other document that either party may be required or may wish to give to the other must be in writing, unless otherwise provided for, and shall be deemed to be validly given to and received by the addressee, if delivered personally, on the date of such personal delivery, if delivered by email, on the date of transmission, or if by mail, seven (7) calendar days after posting.

## 6. INDEMNIFICATION

Consultant shall indemnify, defend and hold harmless City, to the extent allowed by law, against any and all third-party liability for claims, demands, costs or judgements (direct, indirect, incidental or consequential) involving bodily injury, personal injury, death, property damage or other costs and expenses (including reasonable attorneys' fees, costs and expenses) arising or resulting from the acts or omissions carried out pursuant to the obligations of this Agreement.

## 7. INSURANCE

Consultant shall submit and maintain in full force all insurance as described herein. Without altering or limiting Consultant's duty to indemnify, Consultant shall maintain in effect throughout the term of this Agreement a policy or policies of insurance with the following minimum limits of liability:

A. Commercial General Liability Insurance including but not limited to premises, personal injuries, bodily injuries, property damage, products, and completed operations, with a combined single limit of not less than \$1,000,000 per occurrence and \$2,000,000 in the aggregate.

B. Professional Liability Insurance with limits of not less than \$1,000,000 per occurrence or claim and \$2,000,000 in the aggregate. Consultant will either maintain or cause to be maintained professional liability coverage in full force or obtain extended reporting (tail) coverage (with the same liability limits) for at least three years following the City's acceptance of the work.

C. Automobile Liability Insurance covering all automobiles, including owned, leased, non-owned, and hired automobiles, used in providing services under this Agreement, with a combined single limit of not less than \$1,000,000 per occurrence.

D. Workers' Compensation Insurance. If Consultant employs others in the performance of this Agreement, Consultant shall maintain Workers' Compensation insurance in accordance with California Labor Code section 3700 and with a minimum of \$1,000,000 per occurrence.

E. Other Insurance Requirements:

- i. All insurance required under this Agreement must be written by an insurance company admitted to do business in California with a current A.M. Best rating of no less than A:VI, or an insurance company with a current A.M. Best rating of no less than A:VII.
- ii. Each insurance policy required by this Agreement shall state that coverage shall not be canceled, except with notice to the City.
- iii. Any insurance or self-insurance maintained by the City shall be excess to the Consultant's insurance and shall not contribute with it.
- iv. Prior to the start of work under this Agreement, Consultant shall file certificates of insurance and endorsements evidencing the coverage required by this Agreement with the City. Consultant shall file a new or amended certificate of insurance promptly after any

change is made in any insurance policy which would alter the information on the certificate then on file.

- v. Neither the insurance requirements hereunder, nor acceptance or approval of Consultant's insurance, nor whether any claims are covered under any insurance, shall in any way modify or change Consultant's obligations under the indemnification clause in this Agreement, which shall continue in full force and effect. All coverage available to the Consultant as named insured shall also be available and applicable to the additional insured. Notwithstanding the insurance requirements contained herein, Consultant is financially liable for its indemnity obligations under this Agreement.
- vi. The City Manager shall have the right to modify these requirements, including coverages and limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances.

## 8. PERFORMANCE STANDARDS

A. Consultant warrants that Consultant and Consultant's employees performing services under this Agreement are specially trained and experienced to perform the services described herein.

B. Consultant and its employees shall perform all services in a safe and skillful manner consistent with the highest standards of care, diligence and skill ordinarily exercised by professionals in similar fields. All services performed under this Agreement that are required by law to be performed or supervised by licensed personnel shall be performed in accordance with such licensing requirements.

C. Consultant shall furnish, at its own expense, all materials, equipment and personnel necessary to carry out the terms of this Agreement, except as otherwise specified in this Agreement. Consultant shall not use the City premises, property (including equipment, instruments, or supplies) or personnel for any purpose other than in the performance of its obligations under this Agreement.

D. Consultant agrees to perform all work under this Agreement to the satisfaction of City and as specified herein. The City Manager or his or her designee shall perform an evaluation of the work. If the quality of work is not satisfactory, City in its discretion may meet with Consultant to review the quality of work and resolve the matters of concern.

## 9. CITY INFORMATION AND RESOURCES

A. **City Resources.** The City acknowledges that Consultant's ability to provide services in accordance with this Agreement may be dependent on the City providing available information and resources in a prompt and timely manner as reasonably required by Consultant. To the extent that the City fails to provide City resources, Consultant shall not be liable for any resulting delay in services, but in no event shall such delay or failure to provide City resources constitute a breach of this Agreement by the City, nor shall Consultant be entitled to extra compensation for same.

B. **Obligations of Consultant.** No reviews, approvals, or inspections carried out or supplied by the City shall derogate from the duties and obligations of Consultant, and all responsibility related to performance of services shall be and remain with Consultant.

## 10. OWNERSHIP AND USE OF MATERIALS

A. **Ownership of the Materials.** All data, studies, reports, calculations, field notes, sketches, designs, drawings, plans, specifications, cost estimates, manuals, correspondence, agendas, minutes, notes, audio-visual materials, photographs, models, software data, computer software (if purchased on

the City's behalf) and other documents or products produced by Consultant under this Agreement (collectively, "the Materials") are and shall remain the property of the City even though Consultant or another party may have physical possession of them or a portion thereof. Consultant hereby waives, in favor of the City, any moral rights Consultant, its employees, vendors, successors or assignees may have in the Materials. Consultant agrees that all copyrights, which arise from creation of the work or services pursuant to this Agreement, shall be vested in the City and waives and relinquishes all claims to copyright or intellectual property rights in favor of the City.

B. **Delivery and Use of the Materials.** All Materials shall be transferred and delivered by Consultant to the City without further compensation following the expiration or sooner termination of this Agreement, provided that the City may, at any time prior to the expiration or earlier termination of this Agreement, give written notice to Consultant requesting delivery by Consultant to the City of all or any part of the Materials in which event Consultant shall forthwith comply with such request. The Materials created electronically must be submitted in a format and medium acceptable to the City. The Materials may be used by the City in any manner for the intended purpose or as part of its operations associated with the Materials.

## **11. DISPUTE RESOLUTION**

The City Manager and Consultant shall make reasonable efforts to resolve any dispute by amicable negotiations and shall provide frank, candid, and timely disclosure of all relevant facts, information, and documents to facilitate negotiations.

If all or any portion of a Dispute cannot be resolved by good faith negotiations as set forth above within thirty (30) days either party may, by notice to the other party, submit the dispute for formal mediation to a mediator selected mutually by the parties. The cost of the mediation (including fees of mediators) shall be borne equally by the parties, and each party shall bear its own costs of participating in mediation. The mediation shall take place within the Monterey County.

Should either party not be satisfied with the outcome of the mediation, the matter may be submitted to a court of competent jurisdiction.

All claims by Consultant against the City for money or damages must comply with the Government Claims Act (California Government Code Sections 810-996.6).

## **12. TERMINATION OF AGREEMENT FOR CAUSE**

The City reserves the right to immediately terminate this Agreement, in whole or in part, if Consultant defaults or fails to deliver the services in accordance with the terms and conditions of this Agreement. Such termination shall be in writing, shall set forth the effective date of termination, and may be issued without any prior notice.

Without limitation, Consultant is in default of its obligations contained in this Agreement if Consultant:

- Fails to perform the required services within the term and/or in the manner provided under this Agreement;
- Fails to observe or comply with the City's reasonable instructions;
- Otherwise violates any provision of this Agreement.

### 13. LEGAL ACTION / VENUE

Should either party to this Agreement bring legal action against the other, the validity, interpretation and performance of this Agreement shall be controlled by and construed under the laws of the State of California. Venue for any such action relating to this Agreement shall be in the Monterey County Superior Court.

### 14. MISCELLANEOUS PROVISIONS

A. **Non-discrimination.** During the performance of this Agreement, Consultant shall not unlawfully discriminate against any person because of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or military and veteran status, either in Consultant's employment practices or in the furnishing of services to recipients.

B. **Acceptance of Services Not a Release.** Acceptance by the City of services to be performed under this Agreement does not operate as a release of Consultant from professional responsibility for the services performed.

C. **Headings.** The headings appearing herein shall not be deemed to govern, limit, modify, or in any manner affect the scope, meaning or intent of the provisions of this Agreement. The headings are for convenience only.

D. **Entire Agreement.** This Agreement constitute the entire agreement between the parties hereto with respect to the terms, conditions, and services and supersedes any and all prior proposals, understandings, communications, representations and agreements, whether oral or written. Any amendment to this Agreement will be effective only if it is in writing signed by both parties hereto and shall prevail over any other provision of this Agreement in the event of inconsistency between them.

E. **Counterparts.** This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, and may be signed in counterparts, but all of which together shall constitute one and the same Agreement.

F. **Multiple Copies of Agreement.** Multiple copies of this Agreement may be executed, but the parties agree that the Agreement on file in the office of the City's City Clerk is the version of the Agreement that shall take precedence should any difference exist among counterparts of this Agreement.

G. **Authority.** Any individual executing this Agreement on behalf of the City or Consultant represents and warrants hereby that he or she has the requisite authority to enter into this Agreement on behalf of such party and bind the party to the terms and conditions of this Agreement.

H. **Severability.** If any of the provisions contained in this Agreement are held illegal, invalid or unenforceable, the enforceability of the remaining provisions shall not be impaired thereby. Limitations of liability and indemnities shall survive termination of the Agreement for any cause. If a part of the Agreement is valid, all valid parts that are severable from the invalid part remain in effect. If a part of this Agreement is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

I. **Non-exclusive Agreement.** This Agreement is non-exclusive and both the City and Consultant expressly reserve the right to enter into agreements with other Consultants for the same or similar services, or may have its own employees perform the same or similar services.

J. **Assignment of Interest.** The duties under this Agreement shall not be assignable, delegable, or transferable without the prior written consent of the City. Any such purported assignment, delegation, or transfer shall constitute a material breach of this Agreement upon which the City may terminate this Agreement and be entitled to damages.

K. **Laws.** Consultant agrees that in the performance of this Agreement it will reasonably comply with all applicable federal, state and local laws and regulations. This Agreement shall be governed by and construed in accordance with the laws of the State of California and the City of Del Rey Oaks.

IN WITNESS WHEREOF, the parties enter into this Agreement on the day and year first above written in Del Rey Oaks, California.

CITY OF DEL REY OAKS

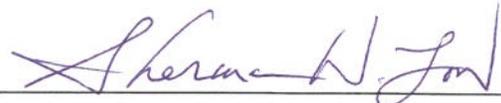


Danial D. Pick,  
City Manager

Date

3/6/19

CONSULTANT



Sherman Low, Consulting Engineer  
Neill Engineers Corp.

Date

3/6/19