

CITY MANAGER EMPLOYMENT AGREEMENT

BETWEEN

THE CITY OF DEL REY OAKS

AND

DANIAL PICK

This Employment Agreement (Agreement) is entered into as of the date executed, below, between the City of Del Rey Oaks (City) and Danial Pick (City Manager).

RECITALS

1. The City Manager has served as Interim City Manager since March 27, 2017.
2. This Agreement is entered into pursuant to the City's decision to hire Danial Pick as City Manager of the City of Del Rey Oaks on June 5, 2017. The terms of this Agreement supersede the previous agreement for Interim City Manager.

AGREEMENT

1. Employment.

This City Manager Employment Agreement (Agreement) is entered into by and between the CITY OF DEL REY OAKS (City) and DANIAL PICK (City Manager). Under this Agreement, the City offers, and City Manager accepts, employment as City Manager of the City. City Manager shall be an at-will employee, and serve at the pleasure of the City Council of Del Rey Oaks (City Council).

2. Duties.

City Manager shall perform those duties and have those responsibilities specified in Chapter 2.08 of the Del Rey Oaks Municipal Code and as assigned by the City Council from time to time, including, without limitation, those contained in the City Manager Annual Evaluation Plan, which are attached hereto as Exhibit "A," and shall be updated annually by the City in consultation with the City Manager. City Manager shall perform such other legally permissible and proper duties and functions consistent with the office of City Manager.

3. Devotion to City Business.

City Manager's position is full-time. City Manager shall not engage in any business, educational, professional, charitable, or other activities that would conflict or materially

interfere with performance of his City Manager duties, except as may be specifically authorized or requested by the City Council.

4. Term.

City Manager's employment will commence August 1, 2017 ("Effective Date"), and shall continue until July 31, 2022, or the date of earlier termination in accordance with provisions in this Agreement.

5. City Council Commitments.

A. Except for the purpose of inquiry, the City Council and its members shall deal with all subordinate City employees, officers, contractors, and consultants solely through the City Manager or the City Manager's designee, and neither the City Council nor any member thereof shall give direction to any subordinate of the City Manager, either publicly or privately.

B. No member of the City Council will order the appointment or removal of any person to any office or employment under the supervision and control of the City Manager.

C. Neither the City Council nor any of its members shall interfere with the execution of the powers and duties of the City Manager, as specified in the Municipal Code, this Agreement, or any other lawfully adopted and authorized document.

6. Termination of Employment and this Agreement: General Release: Severance.

A. City Manager serves at the pleasure of the City Council and nothing in this Agreement shall be interpreted to prevent, limit or otherwise interfere with the right of City to terminate the services of City Manager with or without cause. There is no express or implied promise to City Manager for any form of continued employment.

B. If the City terminates this Agreement (thereby terminating City Manager's employment) without cause, as determined by the affirmative votes of a majority of the members of the City Council at a regular or special meeting of the City Council, and if City Manager signs, delivers to the City Council, and does not revoke, the General Release Agreement ("Release Agreement") attached hereto as Exhibit B, City shall pay City Manager six (6) month's salary as a lump sum payment.

C. If City terminates this Agreement (thereby terminating City Manager's employment) with cause, as determined by the affirmative votes of a majority of the members of the City Council at a regular or special meeting of the City Council, City Manager shall not be entitled to any additional compensation or payment, including Severance, but shall be

entitled only to accrued Base Salary and vacation pay, and any other accrued and unused benefits according to their terms. ("Accrued Salary and Benefits").

D. As used in this Agreement, "cause" shall only mean any of the following:

Conviction of, or plea of guilty or nolo contendere to, any crime or offense (other than minor traffic violations or similar offenses) which, in the sole determination of the City Council, is likely to have a materially adverse impact on the City or the City Manager's reputation;

Failure of the City Manager to observe or perform any of his duties and obligations, if that failure continues for a period of thirty (30) business days from the date of his receipt of notice from the City Council specifying the acts or omissions deemed to amount to that failure;

Conviction of any crime involving an "abuse of office or position," as that term is defined in Government Code Section 53243.4, or of moral turpitude;

Commission of an act of moral turpitude. The City Council will not make a finding or determination about whether the City Manager has engaged in such conduct without first providing the City Manager a full, fair opportunity to rebut, defend and justify any such alleged act involving moral turpitude in an open or closed session, at the sole choice of the City Manager;

Repeated failure to carry out a directive or directives of the City Council, including failure to meet some or all of the duties set forth in Section 2 of this Agreement; and

Any grossly negligent action or inaction by City Manager that materially and adversely: (a) impedes or disrupts the operations of City or its organizational units; (b) is detrimental to employees or public safety; or (c) violates City's properly-established rules or procedures.

Repeated and protracted unexcused absences from City Manager's office and duties.

E. The Parties waive the provisions of Del Rey Oaks Municipal Code section 2.08.100D.1 and D.2. The Parties agree the City Manager may not be terminated without cause within ninety (90) days before or after any City municipal election.

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F. If, during the term of this Agreement the City Manager dies, City Manager's estate shall receive Accrued Salary and Benefits, but shall not be entitled to any additional compensation or payment, including Severance.

G. City Manager may resign from his employment at any time, upon giving forty five (45) days written notice to the City Council. In the event of resignation, City Manager shall not be entitled to any additional compensation or payment, including Severance, but shall be entitled only to accrued Base Salary and vacation pay, and any other accrued and unused benefits according to their terms. ("Accrued Salary and Benefits").

7. Base Salary and Performance Evaluations.

A. The City Manager's annual Salary shall be \$180,000. City Manager's salary shall be retroactive to July 1, 2017. The City Council shall evaluate City Manager's performance annually in July and may, at its sole discretion, provide salary increases to City Manager. City Manager's performance shall be based on the City Manager Annual Evaluation Plan, attached hereto as Exhibit "A." The City and City Manager shall cooperatively update the City Manager Annual Evaluation Plan by June 1 of each year. .

B. Whenever a cost of living adjustment or other non-merit based salary increase is provided to other management employees, the City Council shall consider whether it is reasonable and appropriate to grant a similar increase to the City Manager's Base Salary upon the written request of the City Manager.

C. City Manager's Base Salary adjustments approved by the City Council from time to time pursuant to this Agreement shall not require an amendment to this Agreement to be effective. Such may be set forth in an annual salary resolution or minute action approved by the City Council and ratified by resolution.

D. If the City reduces the Base Salary or any other financial benefit of the City Manager in a percentage that is greater than the average reduction of all managers, such action shall constitute a termination of this Agreement without Cause under Section 6.B. of this Agreement, and City Manager shall be entitled to Severance.

8. Benefits.

A. Deferred Compensation. City agrees to provide a Section 457 deferred compensation program which will be administered by CalPERS, but shall make no payment into such program for City Manager's benefit.

B. Pension. City agrees to enroll City Manager as a member of the Public Employees Retirement System (PERS) in the PERS plan in which it participates on behalf of other City employees. City Manager is a "PEPRA" member of PERS, in that he qualifies for

the 2% at 62 formula. City Manager's PERS benefits are consistent with City policy under the CALPERS plan. City Manager shall pay the entire 'employee' share (6.25%) of the mandatory contribution and the City shall pay the employer's mandatory contribution (6.55%).

C. City shall provide no retiree health coverage to the City Manager.

D. Health and Medical Benefits Insurance. The City shall not provide the City Manager with health, dental and vision coverage.

E. Life Insurance and Accidental Death/Dismemberment. The City shall not provide the City Manager with life insurance or accidental death/ dismemberment insurance benefits.

F. Drug Testing. The City Manager may be randomly drug tested consistent with that performed on sworn public safety employees.

G. Use of City Vehicle. City Manager's duties require him to be available and to respond to the demands of City business at all times and outside of regular business hours, including weekends. The City shall provide the City Manager with an automobile allowance of four hundred and fifty dollars (\$450) per month. This allowance is intended, in part, to reimburse City Manager for travel within forty (40) miles of the City. All other travel shall be reimbursed at Internal Revenue Service mileage rates.

H. No Housing Allowance. City shall not pay City Manager a housing allowance.

I. Equipment. City Manager will use a cell phone provided by the City, with monthly cellular fees paid by the City. City shall not pay for the purchase, installation, and maintenance of compatible computer equipment (hardware, software and internet access) for City Manager at his residence. City will provide a City owned laptop computer to City Manager.

J. Business and Professional Expenses. City recognizes that City Manager may incur expenses of a non-personal, job-related nature that are reasonably necessary to City Manager's service to City. City shall furnish the City Manager with a City credit card in order to pay such expenses. City Manager shall present monthly statements to the City for payment. All charges must be supported by documentation meeting City's normal requirements. City agrees to pay the professional dues and subscriptions on behalf of City Manager which are necessary for City Manager's continuation or full participation in international, national, regional, state, or local associations and organizations necessary and desirable for City Managers continued professional participation, growth and advancement, or for the good of the City, in an amount not to exceed Three Thousand Five Hundred Dollars (\$3,500.00) per year.

K. City agrees to pay City Manager's travel and subsistence expenses for official travel, meetings, and occasions reasonably necessary to continue City Manager's professional development, and for City Manager's reasonable participation in necessary official and other functions for the City; including, but not limited to, national, regional, state, and local conferences, and governmental groups and committees on which City Manager serves as a member. Notwithstanding the above, the City Council shall have discretion to determine the number of conferences and meetings for which the City will reimburse City Manager for attending each year.

L. Educational Incentive Program. Within a reasonable period, City Manager will obtain ICMA certification, at City's expense, in an amount not to exceed three thousand dollars (\$3,000). City Manager shall not receive additional Educational Incentive.

M. Vacation, Sick, Administrative, and Bereavement Leave.

Vacation Leave. City Manager shall receive fifteen (15) days of paid vacation leave on the Effective Date of this Agreement, and fifteen (15) days of paid vacation leave on each August 1 thereafter during the term of this Agreement. City Manager is encouraged to use available paid vacation time for rest, relaxation, and personal pursuits. In the event that available vacation is not used during the year in which it was received, City Manager may carry unused paid vacation time forward to the next year. However, if the total amount of unused vacation time reaches a "cap" of twenty five (25) days, further vacation will not be provided until City Manager uses paid vacation time and brings the available amount below the cap.

Upon termination of employment, City Manager will be paid for unused vacation time that has been earned through the last day of work at the City Manager's rate of pay at termination, up to a maximum of twenty five (25) days' vacation pay.

Sick Leave. City Manager shall be deemed to have accrued ten (10) days of paid sick leave on the date of the commencement of his employment. Thereafter, City Manager shall accrue sick leave at the rate of ten (10) days per year starting August 1, 2018. If City Manager does not use all ten (10) days of paid sick leave by July 30, the unused hours will not carry over to the following year. Unused paid sick leave benefits will not be paid to City Manager upon separation of employment.

Administrative Leave. City Manager shall be deemed to have accrued 80 hours of Administrative Leave on the date of commencement of employment. Thereafter, the City shall grant City Manager 80 hours of Administrative Leave on July 1 of each year commencing July 1, 2018. Administrative Leave shall not accrue or roll over from year to year and shall have no cash value and may not be cashed out during or at the end of City Manager's tenure with the City. Administrative leave of more than three (3) days shall be communicated to Council before being taken.

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Bereavement Leave. City Manager shall be entitled to three (3) days bereavement leave. Bereavement Leave shall not accrue or roll over from year to year and shall have no cash value and may not be cashed out during or at the end of City Manager's tenure with the City.

N. Holidays. Consistent with other City employees, City Manager shall receive paid holidays annually as approved by City Council (currently 12 days).

9. Abuse of Office or Position.

For the purposes of this Agreement, "abuse of office or position" shall be defined as in California Government Code Section 53243.4. Notwithstanding any other provision in this Agreement and in accordance with California Government Code Sections 3511.1, 3511.2, 53243, 53243.1 and 53243.2, the following limitations apply to City's obligations to City Manager:

- i) In the event City Manager is placed on paid leave pending an investigation, City Manager shall reimburse such pay to City if he is subsequently convicted of a crime that constitutes "abuse of office or position."
- ii) In the event City pays for City Manager's legal criminal defense, he shall fully reimburse such funds to the City if he is subsequently convicted of a crime that constitutes "abuse of office or position."
- iii) If this contract is terminated, any cash settlement related to the termination that City Manager may receive from City must be full reimbursed to City if he is subsequently convicted of a crime that constitutes an "abuse of office or position."

10. Indemnification.

- A. City shall defend, hold harmless and indemnify City Manager against any tort, professional liability claim or demand, or other legal action, whether groundless or otherwise, arising out of an alleged act or omission occurring in the performance of City Manager's duties as City Manager. If City compromises or settles any such claim or suit, City shall pay the amount of any settlement, or if the claim results in a judgment against City Manager, City shall pay any such judgment. This indemnification does not apply to any act, action or omission arising out of the gross negligence, willful misconduct on the part of City Manager, or acts of City Manager outside the scope of his duties.
- B. The provisions of Section 6 C and D, and Section 9, however, shall prevail over this Section 10 should any conflict should arise.

11. Notices.

Any notices to be given hereunder by either party to the other in writing may be effected either by personal delivery, mail, or email. Mailed notices shall be addressed to the parties as set forth below, but each party may change his/her/its address by written notice given in accordance with this Section. Notices delivered personally or by email will be deemed communicated as of actual receipt. Mailed notices will be deemed communicated and received as of three (3) calendar days following the date of mailing.

CITY:
City of Del Rey Oaks
650 Canyon Del Rey Road
Del Rey Oaks, CA 93940

CITY MANAGER:
Danial (Dino) Pick
Address on file.

12. Agreement Supersedes Provision in Municipal Code.

It is intended that the provisions of this Agreement relating to employment or termination shall be the exclusive procedure used by the parties, and is intended to supersede any inconsistent provisions of the City's Municipal Code

13. Attorney's Fees.

Attorney's Fees. In the event either party to this Agreement brings a judicial proceeding to enforce or interpret any provision of this agreement, the prevailing party shall be entitled to recover reasonable attorney's fees and related expenses and costs, including but not limited to court costs, expert witness fees and expenses, and accountant fees and expenses. Recovery of these fees and costs shall be as additional costs awarded to the prevailing party, and shall not require initiation of a separate legal proceeding.

14. Dispute Resolution.

In the event of a dispute arising out of the performance of this Agreement, both parties agree to make good faith efforts to informally resolve the dispute. If an informal settlement cannot be reached, the parties agree to mediate any disagreements in good faith. The parties shall split equally the costs of mediation. Should either party determine a dispute cannot be resolved in mediation, it is agreed that the dispute may be resolved in a court of law competent to hear the matter.

15. Entire Agreement.

This Agreement represents the entire agreement between the parties and supersedes any and all other agreements, either oral or in writing, between the parties with respect to the

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employment of City Manager by City, and contains all of the covenants and agreements between the parties with respect to that employment. Each party to this Agreement acknowledges that no representations, inducements, promises, or agreements, oral or otherwise, have been made by either party, or by anyone acting on behalf of either party, which are not embodied herein, and that no other employment agreement, statement, or promise not contained in this Agreement shall be valid or binding upon either party.

16. Modifications.

Any modifications to this Agreement shall be effective only if in writing and signed by both of the parties hereto.

17. Effect of Waiver.

The failure of either party to insist upon strict compliance with any of the terms, covenants, or conditions of this Agreement by the other party shall not be deemed a waiver of that, or any other, term, covenant, or condition, nor shall any waiver or relinquishment of any right or power at any one time or times be deemed a waiver or relinquishment of that right or power for all or any other times.

18. Partial Invalidity.

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

19. Section Headings.

All section headings in this Agreement are for the convenience of reference and are not intended to define or limit the scope of any provision of this Agreement.

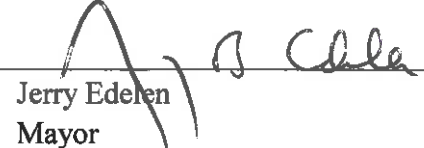
20. Governing Law.

This Agreement shall be governed by and construed in accordance with the laws of the State of California.


[Signatures follow on next page.]

This Agreement is entered into this 26th day of July, 2017.

City of Del Rey Oaks

By: 
Jerry Edelen
Mayor

Date: 7/26/17

By: 
Dino Pick
City Manager

Date: July 26, 2017