

REIMBURSEMENT AGREEMENT FOR SEWER DESIGN SERVICES

THIS REIMBURSEMENT AGREEMENT (“Agreement”) is entered into as of this _____ day of _____ 2019 by the City of Del Rey Oaks, a California municipal corporation (“City”) and the Seaside County Sanitation District, a California special district (“SCSD”) (collectively, “Parties” and individually, “Party”).

RECITALS

A. Under the terms of the Fort Ord Base Reuse Plan, the Fort Ord Reuse Authority is obligated to provide certain traffic and transportation projects to mitigate the impacts attributed to the reuse of the former Fort Ord.

B. One such project is the South Boundary Road Improvements Project, which will relocate the existing South Boundary Road/General Jim Moore Boulevard intersection approximately 300 feet north of the existing intersection location, and realign a portion of South Boundary Road approximately 600 linear feet eastward from the realigned intersection. The project will reconstruct approximately 1.2 miles of South Boundary Road from the new intersection on General Jim Moore Boulevard to Rancho Saucito Road.

C. The City wishes to take advantage of the planned construction of the South Boundary Road Improvements Project and concurrently have an existing sewer line extended along South Boundary Road to parcels it owns on the former Fort Ord.

D. The City wishes to engage SCSD to design the sewer facilities to be extended along South Boundary Road concurrently with the road design to save design costs.

E. FORA has retained Whitson Engineers to prepare engineered plans, specifications, and cost estimate (PSEs) for the proposed South Boundary Road Improvements Project (South Boundary Road PSEs).

F. MCWD has retained Whitson Engineers to prepare PSEs for water utility upgrades to be incorporated with the South Boundary Road PSEs.

G. The SCSD proposes to retain Whitson Engineers to prepare PSEs for gravity sanitary sewer system to be incorporated with the South Boundary Road PSEs.

H. The City proposes to reimburse the SCSD for PSEs for the gravity sanitary sewer system.

I. The purpose of this Agreement is to clarify and define the terms of City’s reimbursement to the SCSD for its design services.

NOW THEREFORE, for and in consideration of the mutual covenants and agreements contained in this Agreement, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

AGREEMENT

1. SCOPE OF SERVICES. SCSD shall retain Whitson Engineers to prepare construction documents for the sewer facilities as a part of the FORA South Boundary Road Improvements Project PSEse.

2. REIMBURSEMENT. The City shall pay for services on a time and materials basis to reimburse the SCSD for services by Whitson Engineers. The total reimbursement by the City to SCSD shall not exceed fifty thousand dollars (\$50,000) without prior written approval.

3. TIME FOR PERFORMANCE. SCSD shall complete all services by March 1, 2021, unless necessary consultants/third parties to SCSD do not timely meet their obligations, in which case the time for performance will be extended as appropriate.

4. STANDARD OF CARE. The standard of care applicable to SCSD's services shall be the degree of skill and diligence ordinarily used by reputable professionals performing in the same or similar time and locality, and under the same or similar circumstances.

5. OWNERSHIP OF DOCUMENTS. All reports, drafts, maps, records, plans, documents and other writing produced (hereinafter "Documents"), prepared or caused to be prepared by SCSD pursuant to this Agreement shall become the exclusive property of SCSD.

6. ASSIGNMENT AND DELEGATION. This Agreement and any portion thereof shall not be assigned or transferred, nor shall any of the SCSD's duties be delegated, without the written consent of the City. Any attempt to assign or delegate this Agreement without the written consent of the City shall be void and of no force and effect. Consent by the City to one assignment shall not be deemed to be consent to any subsequent assignment.

7. NOTICES. Any notice to either Party shall be in writing and given by delivering the notice in person or by sending the notice by registered or certified mail or express mail, return receipt requested with postage prepaid, to the Party's mailing address, or transmitted by facsimile equipment If receipt is acknowledged. The respective mailing addresses and contact information of the Parties are, until changed, the following:

For City:
City of Del Rey Oaks
Attn: City Manager
650 Canyon Del Rey
Del Rey Oaks, CA 94561

For SCSD:
Seaside Count Sanitation District
Attn: District Clerk
440 Harcourt Avenue
Seaside, CA 93955

8. INDEMNIFICATION. SCSD shall indemnify, defend, and hold harmless the City (including its elected officials, officers, agents, volunteers, and employees) from and against any and all claims, demands, damages, liabilities, costs, and expenses (including court costs and attorneys' fees) arising out of, pertaining to, or relating to SCSD's performance of, or failure to perform, services under this Agreement or failure to comply with any obligations contained in this Agreement, except such loss or damage which is caused by the sole active negligence or willful misconduct of the City.

9. INDEMNIFICATION. City shall indemnify, defend, and hold harmless the SCSD (including its elected officials, officers, agents, volunteers, and employees) from and against any

and all claims, demands, damages, liabilities, costs, and expenses (including court costs and attorneys' fees) arising out of, pertaining to, or relating to City's performance of, or failure to perform, services under this Agreement or failure to comply with any obligations contained in this Agreement, except such loss or damage which is caused by the sole active negligence or willful misconduct of the SCSD.

10. FURTHER ASSURANCES. Each Party covenants, on behalf of itself and its successors and assigns, to take all actions and do all things, and to execute, with acknowledgment or affidavit if required, any and all documents, instruments and writings as may be necessary or proper to achieve the purposes and objectives of the Agreement.

11. BINDING ON SUCCESSORS AND ASSIGNS. This Agreement shall be binding on and inure to the benefit of the respective heirs, successors and assigns of the Parties to this Agreement.

12. RECITALS. All of the facts and background information set forth in the RECITALS, above, are incorporated into this Agreement and constitute a part hereof.

13. GENERAL PROVISIONS.

a. Time of Essence. Time is of the essence for this Agreement.

b. Compliance with all Laws. SCSD shall at its own cost and expense comply with all statutes, ordinances, regulations and requirements of all governmental entities, including federal, state, or local, whether now in force or hereinafter enacted. In addition, all work prepared by SCSD shall conform to applicable local, state, and federal laws, rules, regulations and permit requirements.

c. California Environmental Quality Act. District has not determined whether the requirements of Title 14, California Code of Regulations (CCR, Title 14), Chapter 3 "CEQA Guidelines" are applicable. City is aware that if the project is subject to CEQA requirements, then City would have to prepare and file applicable documents.

d. Waiver. A waiver by either Party of any breach, of any term, covenant or condition contained herein shall not be deemed to be a waiver of any subsequent breach of the same or any other term, covenant or condition contained herein, whether of the same or a different character.

e. Integrated Contract. This Agreement represents the full and complete understanding of every kind or nature whatsoever between the Parties hereto, and all preliminary negotiations and agreements of whatsoever kind or nature are merged herein. No verbal agreement or implied covenant shall be held to vary the provisions herein.

f. Conflicts or Inconsistencies. In the event there are any conflicts or inconsistencies between this Agreement and the Scope of Services or any other attachments attached hereto, the terms of this Agreement shall govern.

g. Interpretation. This Agreement has been reviewed and revised by legal counsel for both Parties and no presumption or rule that ambiguities shall be construed against the drafting Party shall apply to the interpretation or enforcement of the Agreement.

h. Amendments. This Agreement may be modified or amended only by a written document executed by both SCSD and City and approved as to form by the City Attorney.

i. Severability. If any term or portion of this Agreement is held to be invalid, illegal, or otherwise unenforceable by a court of competent jurisdiction, the remaining provisions of this Agreement shall continue in full force and effect.

j. Controlling Law and Venue. The laws of the State of California shall govern this Agreement and all matters relating to it and any action brought relating to this Agreement shall be adjudicated in a court of competent jurisdiction in the County of Monterey, State of California.

k. No Attorney's Fees. In the event of any dispute or legal action arising under this Agreement, the prevailing Party shall not be entitled to attorney's fees.

l. Counterparts. This Agreement may be executed in two (2) or more counterparts, each of which shall be deemed an original and all of which together shall constitute one (1) and the same instrument.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the day and year first above written.

CITY OF DEL REY OAKS

SEASIDE COUNTY SANITATION DISTRICT

Date: 12/17/19
By: 

Date: _____
By: _____

Danial Pick, City Manager

Craig Malin, District Manager

Approved As To Form:
Date: 1/13/2020

Approved As To Form:
Date: _____

By: 
Alex J. Lorca, City Attorney

By: _____
Michael Whilden, District Counsel