

**CONSTRUCTION AGREEMENT  
CALLIPPE PRESERVE GOLF COURSE BUNKER RENOVATION  
RFP PWD 24.303**

**THIS CONSTRUCTION AGREEMENT** (“Agreement”) is entered into this \_\_\_\_\_ day of September 2024, between the **CITY OF PLEASANTON**, a municipal corporation (“City”), and **XXX, INC.**, California corporation whose address is XXX, CA 945XX, and telephone number is XXX.XXX (“Contractor”).

**RECITALS**

A. WHEREAS, Contractor is qualified and experienced in providing golf course bunker renovation using the Better Billy Bunker Method or an approved equal renovation method.

B. WHEREAS, Contractor has experience with the City’s Callippe Preserve golf course or other similar municipal golf courses.

C. WHEREAS, the City has awarded the Contractor a contract for the renovation of eleven (11) greenside golf bunkers, per **RFP PWD 24.303**.

**NOW THEREFORE**, in consideration of the mutual covenants and conditions in this Agreement, City and Contractor agree as follows:

1. **Term.** The term of this Agreement commences on the date written above, and Contractor will begin work on October 1, 2024 and complete Work by November 15, 2024, unless the Term is extended by the City.
2. **Work to be Performed.**
  - a. Contractor shall renovate eleven (11) greenside bunkers at holes #10, #12, #13, #15, #16 and #18 as described in the attached **Exhibit A** .
  - b. Contract Change Orders must be approved in advance in writing by the Director of Public Works, or their designee.
3. **Compensation.** City shall pay Contractor for work performed at the prices set out in the Contractor’s Price Quote to the City as set forth in **Exhibit A** attached and incorporated herein. Compensation for work shall not exceed \$XXX,000 which includes a fifteen (15) percent contingency for unforeseen circumstances and related extra work as determined necessary by the City per the Contractor’s proposal of \$XXX,XXX. Payment of such contingency funds is not guaranteed to Contractor unless the City requests such extra work.
4. **Method of Payment.**

- a. **Progress Payments.** As of the twentieth day of each month, Contract may submit for review a request for progress payments, listing the amount and value of work actually performed during the preceding month, or partial thereof. Upon the City's review and approval, including adjustments if any, City shall make a progress payment to the Contractor.
- b. **Retention Payment.** Five percent (5%) of the amount due shall be retained by the City as a retention. The City shall retain five percent (5%) of the contract amount for thirty-five (35) days after the Notice of Completion for the work is recorded. The Contractor may elect to receive 100 percent of payments due under the agreement from time to time, without retention from any portion of the payment by the City, by depositing securities of equivalent value with the City in accordance with the provisions of Section 22300 of the California Public Contract Code. Such securities, if deposited by the Contractor, shall be valued by the City, whose decision on valuation of the securities shall be final. Securities eligible for investment under this provision shall be limited to those listed in Section 16430 of the California Government Code.
- c. **Time of Payment.** Requests submitted promptly as of the 20<sup>th</sup> day of each month will be paid by the 10<sup>th</sup> day of the following month.

5. **Indemnification.** Contractor shall hold harmless, defend, and indemnify the City, its officers, agents and employees ("Indemnitees"), against any and all claims, costs, demands, causes of action, suits, losses, expenses, attorney's fees, or liability, arising from or in any manner related to Contractor's (includes Contractor's employees, agents, or subcontractors) negligent act or omission, whether alleged or actual, regarding the work performed or caused to be performed pursuant to this Agreement and any amendments thereto. Contractor shall not, however, be obligated to indemnify Indemnitees from Claims arising from the sole negligence or willful misconduct of Indemnitees. This indemnification includes any claim that the materials or equipment provided under this Agreement, or any tool, article or process used, constitutes an infringement of any patent issued by the United States. This indemnification provision shall survive termination or cancellation of the Agreement.

6. **Insurance.** During the term of this Agreement, Contractor shall maintain in full force and effect, at its own cost and expense, insurance coverages with insurers with an A.M. Best's rating of no less than A:VII. Contractor shall have the obligation to furnish City, as additional insured, the minimum coverages identified below, or such greater or broader coverage for City, if available in the Contractor's policies:

- a. **General Liability and Bodily Injury Insurance.** Commercial general liability insurance with limits of at least \$2,000,000 combined limit for bodily injury and property damage that provides that the City, its officers, employees and agents are named as additional insureds under the policy as evidenced by an additional insured endorsement satisfactory to the City Attorney. The policy shall state in writing either on the Certificate of Insurance or attached rider that this insurance will operate as primary insurance for work performed by Consultant and its subconsultants, and that no other insurance effected by City or other named insured will be called on to cover a loss.
- b. **Automobile Liability Insurance.** Automobile liability insurance with limits not less

than \$2,000,000 per person/per occurrence.

- c. Workers' Compensation Insurance. Workers' Compensation Insurance for all of Consultant's employees, in strict compliance with State laws, including a waiver of subrogation and Employer's Liability Insurance with limits of at least \$1,000,000.

For work deemed public works, by signing this Agreement, Contractor is certifying, pursuant to Section 1861 of the California Labor Code, that: "I am aware of the provisions of Section 3700 of the Labor Code which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that Code, and I will comply with such provisions before commencing the performance of the work of this Contract."

- d. Certificate of Insurance. Contractor shall file a certificate of insurance with the City prior to the City's execution of this Agreement, and prior to engaging in any operation or activity set forth in this Agreement. The Certificate of Insurance shall provide in writing that the insurance afforded by this Certificate shall not be suspended, voided, canceled, reduced in coverage or in limits without providing notice to the City in accordance with California Insurance Code section 677.2 which requires the notice of cancellation to: 1) include the effective date of the cancellation; 2) include the reasons for the cancellation; and 3) be given at least 30 days prior to the effective date of the cancellation, except that in the case of cancellation for nonpayment of premiums or for fraud, the notice shall be given no less than 10 days prior to the effective date of the cancellation. Notices shall be sent by certified mail, return receipt requested. In addition, the insured shall provide thirty (30) days prior written notice to the City of any cancellation, suspension, reduction of coverage or in limits, or voiding of the insurance coverage required by this agreement. The City reserves the right to require complete certified copies of policies.
- e. Subcontractors. Contractor shall include all subcontractors as insured under its policies or shall furnish separate certificates and endorsements for each subcontractor. All coverages for subcontractors shall be subject to all of the requirements stated in this Agreement, including but not limited to naming additional insureds.
- f. Waiver of Subrogation. The insurer agrees to waive all rights of subrogation against the City, its officers, employees and agents.
- g. Defense Costs. Coverage shall be provided on a "pay on behalf of" basis, with defense costs payable in addition to policy limits. There shall be no cross-liability exclusions.

7. **Independent Contractor.** The Contractor is an independent contractor retained by the City. All personnel employed by the Contractor, including subcontractors, and personnel of subcontractors, are not and shall not be employees of the City.

8. **Contractor's Warranty.** Contractor shall bear the risk of loss or damage to any goods associated with the work until delivered to and accepted by the City. Contractor further warrants that all work done, and goods provided under this Agreement shall: a) meet all conditions of the Agreement; b) shall be free from all defects in design, material and workmanship; and 3) shall be fit for the purposes intended. If any defects occur within the 12

months following acceptance, Contractor shall be solely responsible for the correction of those defects.

9. **Labor Code/Prevailing Wages.** The work performed under this Agreement is a “public work” and prevailing wage laws shall apply. No less than the general prevailing rate of per diem wages, and not less than the general prevailing rate of per diem wages for holidays and overtime work, for each craft, classification or type of worker needed to execute the work under this Agreement shall be paid to all workers, laborers and mechanics, electricians, employed in the execution of the work by the Contractor or any subcontractor doing or contracting to do any part of the work. The appropriate determination of the Director of the California Department of Industrial Relations shall be filed at the City Clerk’s Office and available for inspection. Contractor shall post, at each job site, a copy of the prevailing rate of per diem wages.

To the extent applicable, Contractor shall comply with all requirements of the California Labor Code, including but not limited to, Labor Code sections: 1773.2 (regarding posting wage determinations at each job site); section 1776 (regarding the certification, maintenance, and availability for inspection of payroll records); section 1777.5 (regarding employment of apprentices); section 1810 (regarding a legal day’s work as 8 hours of labor); and section 1775 (regarding penalties for violations). The Contractor shall forfeit fifty dollars (\$50.00) for each calendar day or portion thereof for each worker paid less than the stipulated prevailing rates for any public work done under the Agreement by it or by any subcontractor under Contractor

10. **Notices.** All notices herein required shall be in writing and shall be sent by certified or registered mail, postage prepaid, addressed as follows:

To Contractor: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

To City: City Manager  
City of Pleasanton  
P.O. Box 520  
Pleasanton, CA 94566

11. **Conformance to Applicable Laws.** Consultant shall comply with all applicable Federal, State, and Municipal laws, rules, and ordinances. Consultant shall not discriminate in the employment of persons or in the provision of work under this Agreement on the basis of any legally protected classification, including race, color, national origin, ancestry, sex or religion of such person.

12. **Counterparts and Electronic Signatures.** This Agreement may be executed in multiple counterparts, each of which shall be an original and all of which together shall constitute one agreement. Counterparts may be delivered via facsimile, electronic mail (including pdf or any electronic signature complying with U.S. federal E-Sign Act of 2000 (15 U.S. Code §7001 et seq.), California Uniform Electronic Transactions Act (Cal. Civil Code §1633.1 et seq.), or other applicable law) or other transmission method, and any counterpart so delivered shall be deemed to have been duly and validly delivered and be valid and effective for all purposes.

13. **Miscellaneous Provisions.**

- a. City may terminate this Agreement at any time by mailing a notice to Contractor. Contractor shall be paid for that portion of work already completed by Contractor as approved by City.

- b. Contractor acknowledges that time is of the essence regarding the performance of this Agreement.
- c. Contractor shall not assign or transfer this Agreement.
- d. If either City or Contractor waives a breach of this Agreement, such waiver shall not constitute a waiver of other or succeeding breaches of this Agreement.
- e. This Agreement constitutes the entire understanding of the parties.
- f. This Agreement may only be modified by a writing signed by the authorized representative of both parties.
- g. Contractor covenants that it has obtained and will keep in effect during the term of the Agreement all certificates, licenses, including a City Business License, permits or the like required by any federal, state or local regulatory agency in order to perform the work under this Agreement.
- h. Contractor shall comply with all federal, state and local laws, regulations and rules, including but not limited to applicable safety and environmental laws. Contractor shall bear full and exclusive responsibility for any release of hazardous or non-hazardous substances and disposal of hazardous wastes.
- i. The Contractor will permit the City to audit, examine and make copies of all contracts, invoices, payrolls and other documents or data relating to this Agreement. Such records shall be maintained for (3) three years from the date of final payment under this Agreement.
- j. This Agreement shall be governed by the laws of the State of California, with venue for any action under this Agreement in Alameda County, California.

**THIS AGREEMENT** executed the date and year first above written.

**CITY OF PLEASANTON**

**CONTRACTOR**

\_\_\_\_\_  
Gerry Beaudin, City Manager

By: \_\_\_\_\_  
Signature

ATTEST:

\_\_\_\_\_  
Jocelyn Kwong, City Clerk

\_\_\_\_\_  
Print name

Its: \_\_\_\_\_

APPROVED AS TO FORM:

By: \_\_\_\_\_  
Signature

\_\_\_\_\_

Daniel G. Sodergren, City Attorney

Rev. 7/23

\_\_\_\_\_  
Print Name

Its: \_\_\_\_\_

*Two signatures required for corporations*