

**AMENDMENT NO. 3 TO CONTRACT NO. C18169712
BETWEEN THE CITY OF PALO ALTO AND
OB SPORTS GOLF MANAGEMENT (BAYLANDS), LLC**

This Amendment No. 3 (this “Amendment”) to Contract No. C181769712 (the “Contract” as defined below) is entered into as of August 19, 2024, by and between the CITY OF PALO ALTO, a California chartered municipal corporation (“CITY”), and OB SPORTS GOLF MANAGEMENT (BAYLANDS), LLC, a Limited Liability Company, Department of Industrial Relations Registration No. 1001184589, located at 15044 North Scottsdale Road, Suite 300, Scottsdale, AZ 85254 (“CONSULTANT”). CITY and CONSULTANT are referred to collectively as the “Parties” in this Amendment.

RECITALS

A. The Contract (as defined below) was entered into by and between the Parties hereto for the provision of golf programming services of golf course management, course maintenance, practice facility maintenance, and retail sales, as more fully described in Exhibit “A” (Scope of Services), as detailed therein.

B. The Parties now wish to amend the Contract in order to extend the term for two years and nine months through June 30, 2027 for continuation of golf programming services and to increase the compensation retroactive to July 1, 2024 by Ten Million One Hundred Seven Thousand Five Hundred Fifty-Nine Dollars and Eighty-Five Cents (\$10,107,559.85) from Seventeen Million Eight Hundred Eighty-Six Thousand Seven Hundred Twenty-One Dollars and Thirty-Seven Cents (\$17,886,721.37), to a not to exceed total amount of Twenty-Seven Million Nine Hundred Ninety-Four Thousand Two Hundred Eighty-One Dollars and Twenty-Two Cents (\$27,994,281.22), as detailed herein.

NOW, THEREFORE, in consideration of the covenants, terms, conditions, and provisions of this Amendment, the Parties agree:

SECTION 1. Definitions. The following definitions shall apply to this Amendment:

- a. **Contract.** The term “Contract” shall mean Contract No. C18169712 between CONSULTANT and CITY, dated April 10, 2018, as amended by:

Amendment No. 1, dated June 21, 2021

Amendment No. 2, dated July 3, 2024

- b. **Other Terms.** Capitalized terms used and not defined in this Amendment shall have the meanings assigned to such terms in the Contract.

SECTION 2. Section 2, “TERM AND OPTION”, of the Contract is hereby amended to read as follows:

Vers.: Aug. 5, 2019

“The term of this Agreement shall be from the date of its full execution and approval by City’s City Council (the “Commencement Date”) through June 30, 2027, unless terminated earlier pursuant to Section 19 of this Agreement.”

A renewal option for a period or periods of up to 3 years (from July 1, 2021 through June 30, 2024, is available as mutually agreed, to be executed in accordance with Section 27.4 of this Agreement. (In June 2021, the Parties agreed to the first renewal option in Amendment 1 to this Agreement.) A second renewal option for a period or periods of up to an additional 3 years (from July 1, 2024 through June 30, 2027), is available as mutually agreed, to be executed in accordance with Section 27.4 of this Agreement. Absent a mutually extended agreement, the City reserves the right to extend this Agreement for up to six months. During such six-month extension period, the parties may agree to a renewal option as provided for herein.”

SECTION 3. Section 4, “NOT TO EXCEED COMPENSATION” of the Contract is hereby amended to read as follows:

“The compensation to be paid to CONSULTANT for performance of the Services described in Exhibit “A” (“Scope of Services”), and reimbursable expenses as specified in Exhibit “B” (“Compensation”) herein, shall not exceed **Twenty Seven Million Six Hundred Ninety-Six Thousand Two Hundred Ninety-Eight Dollars and Twenty-Four Cents. (\$27,696,298.24)** as detailed in Exhibit “B” (“Compensation”). CONSULTANT agrees to complete all Services, including specified reimbursable expenses, within this amount. Any work performed or expenses incurred for which payment would result in a total exceeding the maximum amount of compensation set forth herein shall be at no cost to the CITY. A Contingency Amount of **Two Hundred Ninety-Seven Thousand Nine Hundred Eighty-Two Dollars and Ninety Eight Cents (\$297,982.98)** is available, as detailed in Exhibit “B” (“Compensation”), to provide for reasonable and unforeseen costs/services, upon approval of City and to be executed via written amendment to this Agreement as provided for in Section 27.4 herein. In the event such Contingency Amount is utilized as provided for herein, the total compensation for Services, reimbursable expenses and the costs/services added under the Contingency Amount, shall not exceed **Twenty Seven Million Nine Hundred Ninety Four Thousand Two Hundred Eighty One Dollars and Twenty Two Cents (\$27,994,281.22)** as detailed in Exhibit “B” (“Compensation”).”

SECTION 4. The following exhibit(s) to the Contract is hereby amended, as indicated below, to read as set forth in the attachment to this Amendment, which is hereby incorporated in full into this Amendment and into the Contract by this reference:

- a. Exhibit “B” entitled “COMPENSATION”, AMENDMENT NO. 3”, AMENDED, REPLACES PREVIOUS

SECTION 5. Legal Effect. Except as modified by this Amendment, all other provisions of the Contract, including any exhibits thereto, shall remain in full force and effect.

SECTION 6. Incorporation of Recitals. The recitals set forth above are terms of this Amendment and are fully incorporated herein by this reference.

(SIGNATURE BLOCK FOLLOWS ON THE NEXT PAGE.)

SIGNATURES OF THE PARTIES

IN WITNESS WHEREOF, the Parties have by their duly authorized representatives executed this Amendment effective as of the date first above written.

CITY OF PALO ALTO

**OB SPORTS GOLF
MANAGEMENT(BAYLANDS), LLC**

City Manager

Officer 1

By: 

Name: Jeff Hansen, Executive Vice President,

Title: EVP & General Counsel

APPROVED AS TO FORM:

City Attorney or designee

Officer 2

By: 

Name: Jay McGrath, Chief Legal officer

Title: Chief Legal officer

Attachments:

EXHIBIT "B" entitled "COMPENSATION, AMENDMENT NO. 3", AMENDED, REPLACES PREVIOUS

EXHIBIT "B"
COMPENSATION, AMENDMENT NO. 3
(AMENDED, REPLACES PREVIOUS)

A. NOT TO EXCEED COMPENSATION.

ORIGINAL TERM (Execution of Agreement until June 30, 2021)

The not-to-exceed compensation to be paid to Consultant for performance of the Services described in Exhibit "A", including both payment for professional services and reimbursable expenses, as detailed in this Exhibit "B" ("Compensation"), shall not exceed \$859,000 for FY 2018, and for Year 1 of this Agreement (FY 2019). The not-to-exceed amounts for Year 2 and Year 3 annual compensation to Consultant hereunder shall be as determined in the approved Annual Operating Budget for each such year, as provided for in this Agreement.

Payment of the annual compensation due to Consultant hereunder shall be made in quarterly installments.

Quarterly payments consist of the following:

1. A quarterly management fee of \$27,000.
2. Up to \$1,000 per month for travel reimbursement up to the not-to-exceed amount of \$39,000 for the Term of this Agreement.
3. Quarterly lump sum payments based on the approved Annual Operating Budget. The first quarterly lump sum payment includes payment for start-up costs which are detailed in Section D ("Start-Up Costs") below.

Quarterly payments for FY 2018 and for Year 1 (FY 2019), paid upon receipt of invoice as provided for herein, shall follow the schedule below:

Q4 FY 2018*	\$ 859,000
Q1 FY 2019	\$ 670,000
Q2 FY 2019	\$ 662,000
Q3 FY 2019	\$ 618,000
Q4 FY 2019	\$ 679,000
Total	\$3,488,000

* Including start-up costs detailed in Section D ("Start-Up Costs") below.

The quarterly payments for Year 2 (FY 2020) and Year 3 (FY 2021) of this Agreement shall be based upon the approved Annual Operating Budget for each such year as provided for in this Agreement. **In no event shall the Annual Operating Budgets for Year 2 and Year 3 of this Agreement grow by more than 3% over the prior year.**

BUDGET SCHEDULE NOT TO EXCEED AMOUNTS (ORIGINAL TERM ONLY):

Sub-total Services:	\$ 8,862,000
Total Reimbursable Expenses (Travel):	\$ 39,000
Total Services and Reimbursable Expenses:	\$ 8,898,000
Contingency Amount:	\$ 110,000
Maximum Total Compensation:	\$9,008,000

FIRST RENEWAL TERM (July 1, 2021-June 30, 2024)

The not-to-exceed compensation to be paid to Consultant for performance of the Services described in Exhibit "A", including both payment for professional services and reimbursable expenses, as detailed in this Exhibit "B" ("Compensation"), shall not exceed \$2,844,095 for Year 4 of this Agreement (July 2021-June 2022, aka FY2022). The not-to-exceed amounts for Year 5 (July 2022-June 2023) and Year 6 (July 2023-June 2024) annual compensation to Consultant hereunder shall be as determined in the approved Annual Operating Budget for each such year, as provided for in this Agreement.

Payment of the annual compensation due to Consultant hereunder shall be made in quarterly installments.

Quarterly payments consist of the following:

1. A quarterly management fee of \$27,000.
2. Up to \$1,000 per month for travel reimbursement up to the not-to-exceed amount of \$36,000 during the First Renewal Term of this Agreement.
3. Quarterly lump sum payments based on the approved Annual Operating Budget.

Quarterly payments for Year 4, paid upon receipt of invoice as provided for herein, shall follow the schedule below:

Q1 FY 2022	\$ 711,023.75
Q2 FY 2022	\$ 711,023.75
Q3 FY 2022	\$ 711,023.75
Q4 FY 2022	\$ 711,023.75
Total	\$ 2,844,095.00

The quarterly payments for Year 5 and Year 6 of this Agreement shall be based upon the approved Annual Operating Budget for each such year as provided for in this Agreement.

In no event shall the Annual Operating Budgets for Year 5 and Year 6 of this Agreement grow by more than 3% over the prior year.

BUDGET SCHEDULE NOT TO EXCEED AMOUNTS FOR YEARS 4 THROUGH 6:

Sub-total Services:	\$ 8,754,813.24
Total Reimbursable Expenses (Travel):	\$ 36,000
Total Services and Reimbursable Expenses:	\$ 8,790,813.24
Contingency Amount:	\$87,908.13
Maximum Total Compensation for Years 4-6:	\$ 8,878,721.37

SECOND RENEWAL TERM (July 1, 2024-June 30, 2027)

The not-to-exceed compensation to be paid to Consultant for performance of the Services described in Exhibit "A" retroactive to July 1, 2024, including both payment for professional services and reimbursable expenses, as detailed in this Exhibit "B" ("Compensation"), shall not exceed \$3,237,725 for Year 7 of this Agreement (July 2024-June 2025, aka FY2025). The not-to-exceed amounts for Year 8 (July 2025-June 2026) and Year 9 (July 2026-June 2027) annual compensation to Consultant hereunder shall be as determined in the approved Annual Operating Budget for each such year, as provided for in this Agreement.

Payment of the annual compensation due to Consultant hereunder shall be made in quarterly installments.

Quarterly payments consist of the following:

1. A quarterly management fee of \$27,000.
2. Up to \$1,000 per month for travel reimbursement up to the not-to-exceed amount of \$36,000 during the First Renewal Term of this Agreement.
3. Quarterly lump sum payments based on the approved Annual Operating Budget.

Quarterly payments for Year 7, paid upon receipt of invoice as provided for herein, shall follow the schedule below:

Q1 FY 2025	\$ 809,431.25
Q2 FY 2025	\$ 809,431.25
Q3 FY 2025	\$ 809,431.25
Q4 FY 2025	\$ 809,431.25
Total	\$ 3,237,725.00

The quarterly payments for Year 8 and Year 9 of this Agreement shall be based upon the approved Annual Operating Budget for each such year as provided for in this Agreement.

In no event shall the Annual Operating Budgets for Year 8 and Year 9 of this Agreement grow by more than 3% over the prior year.

BUDGET SCHEDULE NOT TO EXCEED AMOUNTS FOR YEARS 7 THROUGH 9:

Sub-total Services:	\$ 9,971,485.00
Total Reimbursable Expenses (Travel):	\$ 36,000.00
Total Services and Reimbursable Expenses:	\$ 10,007,485.00
Contingency Amount:	\$100,074.85
Maximum Total Compensation for Years 4-6:	\$ 10,107,559.85

REIMBURSABLE EXPENSES

The administrative, overhead, secretarial time or secretarial overtime, word processing, photocopying, printing, insurance and other ordinary business expenses are included within the scope of payment for services and are not reimbursable expenses.

City shall reimburse Consultant for the following reimbursable expenses at cost. Expenses for which Consultant shall be reimbursed are:

Travel for Consultant's management staff to travel from Consultant's headquarters to the Premise/City to ensure performance in accordance with this Agreement, not to exceed \$1,000 per month over the Term of this Agreement.

The expenses eligible for reimbursement under this paragraph are ordinary business expenses of Consultant and not operational expenses of managing the Premise.

INCENTIVE PAYMENTS

Consultant is eligible to receive incentive payments based upon achieving/exceeding annual revenue targets. For example, for FY 2022, revenue excluding golf retail merchandise sales, must exceed \$ 3,761,644 in order for Consultant to be eligible for incentive payments. If the revenue target is achieved/exceeded, then for every dollar of revenue achieved in excess of the annual revenue target, Consultant may retain \$0.20 as an incentive payment.

CONTINGENCY AMOUNT

An additional 1% of CONSULTANT compensation will be a contingency amount and is reserved by the City for possible use in the event of any reasonable and unforeseen costs during the fiscal year, as agreed to by City and implemented pursuant to a written amendment to this Agreement as provided for herein.

ADDITIONAL SERVICES

No Additional Services are authorized by the City through this Agreement, unless pursuant to a written amendment to this Agreement as provided for herein.

- B. PAYMENT.** Subject to Section 5 ("Invoices") of the Agreement, Consultant shall submit quarterly invoices to the City in advance of each quarter. The Consultant's invoice will then be submitted to the fiscal section for payment at which point the City has 30 working days from the last date of the invoice to render payment to the Consultant.

Invoices must include Consultant name, address, contract number, description of services, date of services, and compensation amount.

C. LATE FEES.

1. City shall pay to Consultant all of the fees described above, and any other sums due Consultant, at the times, at the places, and in the manner herein provided. If any payment or any part thereof to be made by City to Consultant pursuant to the terms hereof shall become overdue for a period of sixty (60) days, a "late charge" may be charged by Consultant for the purpose of defraying the expense incident to handling such delinquency.
2. The late charge shall be equal to the lesser of: (i) 1% of the quarterly management fee; or (ii) \$2,000 per month overdue based on the date payment was due.
3. In the event any portion of this Section violates any state or federal law or regulation, this Section shall be deemed void and shall have no other effect or make invalid any other provision of this Agreement.

- D. START-UP COSTS.** The City has agreed to pay, as a part of the Q4 FY 2018 payment to Consultant, the following items that Consultant shall purchase but City will retain ownership of. These include:

Item(s)	Amount
Point of Sale/Tee Time Systems "Clover" & Computers	\$ 10,000
Goose Dog	\$ 7,500
Office/Pro-Shop Equipment	\$ 16,116
Cart Storage & Range Equipment / Supplies	\$ 13,750
Restaurant tables, chairs and other furniture	\$ 44,189
Paint, Carpet, Flooring in Restaurant/Pro-Shop	\$ 80,000
New Inventory Purchases-Retail	\$ 50,000
Pre-Opening Marketing	\$ 71,075
Total Start-Up Costs	\$ 292,630