

## MALENY GOLF CLUB FUNDING AGREEMENT

Date: 08/06/2017

### PARTIES

Sunshine Coast Regional Council of corner of Currie Street & Bury Street, Nambour in the State of Queensland ("Council")

### AND

MALENY GOLF CLUB INCORPORATED of 15 Porters Lane, North Maleny in the State of Queensland ("Contractor")

### PROJECT

The design, construction and establishment of Stage 2 Golf Course (incorporating Stages 2.1, 2.2 and 2.3 - refer to Schedule 2 - golf course layout) at 15 Porters Lane, North Maleny.

### LAND

15 Porters Lane, North Maleny being part of Lot 14 on SP287418

### 1. DEFINITIONS

**Asset** - any asset acquired or produced wholly or partly with the Contract Price.

**Council Material** - any documents, equipment, software, goods, information and data stored provided by Council to the Contractor for the purposes of this Deed

**Contract Price** - the amount paid or payable by Council to a limit of \$450,000 (Four hundred and fifty thousand dollars) excluding GST.

**Critical Planting** - the establishment of vegetation within the lease area or the transition zone adjacent to the lease area, under the Deed of Agreement - Transition Zone, entered into between the parties and deemed by Council as being necessary to enhance the safety of users of the area outside the lease area and transition zone and as deemed necessary by Council.

**Project** - the design, construction and management of Stage 2.1 (holes 4, 5 and 6), 2.2 (holes 1, 2 and 3) and 2.3 (holes 7, 17 and 18) golf course including fairways, greens, tees and associated infrastructure located at 15 Porters Lane, Maleny, Queensland (as per Schedule 2 - golf course layout).

**Reports** - a quarterly report (or such other period as required by Council) by the Contractor to Council, in a form acceptable to Council, detailing and quantifying the way in which the funds are allocated to the construction of the Project and other relevant information.

#### Required documents:

- (a) copies of invoices issued by subcontractors and/or suppliers who have undertaken the work associated with the Project;
- (b) certificates of compliance or completion as required for any works undertaken for the Project.

**Site** means the location described in the Project being the 15 Porters Lane, North Maleny, Queensland more particularly described as Lot 14 on SP287418 (indicated in Schedule 2 – golf course layout).

**2. BACKGROUND**

- 2.1 Council is the registered owner of land located at 15 Porters Lane, North Maleny which is defined as the Site in this Funding Agreement.
- 2.2 The Contractor has been granted a 30 year lease over the Site for the purpose of designing, constructing, establishing and managing a golf course (defined as the Project in this Agreement).
- 2.3 The Contractor has made all relevant applications to Council as the relevant governing body for development of the site and has obtained all approvals including the Operational Works Permit.
- 2.4 Council has agreed to engage the Contractor to undertake the works to complete the Project under the terms set out in this Funding Agreement.

**3. TERM**

The Funding Agreement term is for a period until 31 December 2018 from the date of this Funding Agreement.

**4. PROJECTS**

**4.1 Project Performance**

The Contractor must carry out the Project:

- (a) to achieve the objectives of the development and delivery of facilities and equipment for the design, construction, establishment and management of a golf course on the Site.
- (b) in accordance with this Funding Agreement;
- (c) in accordance with the Operational Works Permit; and
- (d) diligently, effectively and to a high professional standard.

**4.2 Contractor to comply with directions etc**

The Contractor must:

- (a) liaise with and provide information, including copies of any material created for the purpose of this Funding Agreement or required to be provided to Council under this Agreement, to the Council as notified by the Council;
- (b) facilitate visits by Council representatives as the Council reasonably requests, including for the purposes of monitoring, evaluating and reviewing the Project; and
- (c) comply with any reasonable Council request or direction.

**4.3 Delay by Contractor**

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- (a) Without limiting its obligations under clause 4.1, the Contractor must take all reasonable steps to minimise delay in completion of the Project.
- (b) Without limiting Council's rights, if the Contractor notifies the Council of an expected delay, the Council may, at its sole discretion:
  - (i) extend the timeframe for completion of the Project by written notice to the Contractor;
  - (ii) reduce the scope of the Project and adjust the Contract Price accordingly by written notice to the Contractor; or
  - (iii) terminate this Deed.

#### 4.4 Subcontractors

The Contractor is fully responsible for the performance of the Contractor's obligations under this Funding Agreement, regardless of whether the Contractor has subcontracted any of its obligations.

### 5. PAYMENT

#### 5.1 Payment of Contract Price

- (a) Subject to compliance by the Contractor with this Agreement, the Council will pay the Contract Price for the Project as a series of progress payments as set down in Schedule 1.
- (b) Council will inspect the Site and the works completed upon notification by the Contractor that a stage of works has been completed.
- (c) At the time that Council inspects the Site, Council will also re-inspect any previous stage for which payment has been made to ensure that the establishment of the fairways, greens, tees and infrastructure in any previous stage has been maintained.
- (d) Where any previous stage has fallen to a standard below Council's expectation, Council may elect, at its sole discretion, to retain any part or the whole of any future payment until such time as that stage has been rectified.
- (e) Subject to clause 5.1(d), payment will be made by Council within 28 days of Council providing written advice to the Contractor that the extent of works for that relevant stage has been completed to Council's satisfaction.

#### 5.2 Right to suspend payment

Without limiting the Council's rights, the Council may suspend payment of the Contract Price (whether in whole or in part) for the Project, if Council is satisfied that:

- (c) the Contractor does not have the capacity to manage the Project;
- (d) the Contractor does not have the capacity to perform the Project in accordance with this Agreement; or
- (e) the Contractor is in default of the terms of the lease for the Site.

### 6. MANAGEMENT OF FUNDING

#### 6.1 Use of Contract Price

- (a) The Contractor must not use:

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- i) the Contract Price;
- ii) any interest acquired with the Contract Price;
- iii) any Assets;
- iv) the existence of this Agreement,

as any form of security for any purpose, unless the Council has given its prior written approval.

#### 6.2 Repayment of Contract Price

- (a) If the Contractor fails to remedy a failure to comply with this Funding Agreement in a substantial respect within 30 days, or such longer period as the Council stipulates, after receiving notice requiring it to do so, the Contractor is liable, on demand from Council to repay to the Council the whole of the Contract Price provided for the Project (or the amount of Contract Price paid as the case may be).
- (b) If at the end of the Term, some of the Contract Price has not been spent or committed, then that amount may be withheld by Council unless the Council provides written permission for all, or some of the amount to be spent in some other manner as the Council directs.

### 7. MONITORING, EVALUATION, REPORTING

#### 7.1 Monitoring, Evaluation, Reporting and Improvement

- (a) The Contractor must keep proper records and undertake the monitoring and reporting activities specified in this Agreement to meet all of the Council's monitoring, reporting and project acquittal requirements.
- (b) The Contractor must provide to Council copies of its annual audited financial reports upon request.

#### 7.2 Contractor's obligations

- (a) The Contractor must monitor the Project activities.
- (b) The Contractor must meet the performance obligations in clause 4.1.
- (c) The Contractor must submit the Reports.
- (d) The Contractor agrees to provide the Reports quarterly from the date of this Agreement.
- (e) In order to fulfil the performance obligations set out at Clause 4.1 of this Agreement, the Contractor must:
  - (i) undertake construction of the Project in a timely and professional manner;
  - (ii) attend to payment of any contractors or subcontractors engaged by the Contractor;
  - (iii) comply with the terms of its lease for the Site; and
  - (iv) comply with the terms and conditions of the Operational Works Permit or any other development permits issued in respect of the Project.
- (f) These obligations are imposed for the Agreement Term.

### 8. CONFIDENTIALITY

- 8.1 The Contractor must not, except as expressly authorised by the Council or required by law, disclose to any person any of the details of this Agreement.

**9. INDEMNITY**

**9.1 General indemnity**

The Contractor indemnifies (and agrees to keep indemnified) the Council against any:

- (a) cost or liability incurred by the Council;
- (b) loss of or damage to property of the Council; or
- (c) loss or expense incurred by the Council in dealing with any claim against it, including legal costs and expenses on a solicitor/own client basis and the cost of time spent, resources used, or disbursements paid by the Council,  
arising from:
  - (d) any act or omission by the Contractor or the Contractor's officers, agents, employees, contractors or advisers, in connection with this Agreement, where there was fault on the part of the person whose conduct gave rise to that cost, liability, loss, damage, or expense;
  - (e) any breach by the Contractor of this Agreement; or
  - (f) any loss or injury sustained on the Site arising from the construction of the Project.

**9.2 Preservation of other rights**

The right of the Council to be indemnified under this clause is in addition to, and not exclusive of, any other right, power or remedy provided by law, but the Council is not entitled to be compensated in excess of the amount of the relevant cost, liability, loss, damage or expense.

**10. TERMINATION FOR DEFAULT**

**10.1 Right to terminate for default**

In addition to the right to terminate provided for elsewhere in this Agreement, the Council may terminate this Funding Agreement with immediate effect by giving notice to the Contractor if:

- (a) the Contractor breaches any provision of this Agreement and fails to remedy the breach within 30 days, or such longer period as the Council stipulates, after receiving notice requiring it to do so;
- (b) the Contractor breaches a material provision of this Agreement and that breach is not, in the opinion of the Council, capable of remedy;
- (c) the Contractor breaches any provision of the lease for the Site and fails to remedy the breach within the time advised to the Contractor by the notice issued by Council relating to the breach;
- (d) the Contractor notifies the Council that the Project is not to proceed; or
- (e) the Contractor becomes insolvent, bankrupt, subject to administration or is unable to meet its debts.

**10.2 Council's rights upon termination for default**

Where the Council terminates this Agreement under clause 10.1, the Council will be entitled to recover from the Contractor any or all of the Contract Price.

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**10.3 Preservation of other rights**

This clause 10 does not limit or exclude any of the Council's other rights under this Agreement.

**11. GENERAL PROVISIONS**

**11.1 Audit and access**

- (a) The Contractor agrees to give the Council, or any persons authorised in writing by the Council, access to premises where obligations under this Agreement are being carried out.
- (b) The Contractor agrees to permit those persons to:
  - (i) inspect; and
  - (ii) take copies of any material relevant to this Agreement.

**11.2 Insurance**

- (a) The Contractor agrees:
  - (i) to effect and maintain the following insurance:
    - a. Public Liability insurance with a limit of liability of not less than \$20 million on a per occurrence basis;
    - b. Any Special Risk insurance required as a result of the use of the Site;
    - c. Cover for the full replacement value of the construction works, fit out, plant and equipment installed to fulfil the Project;
    - d. Worker's Compensation;
    - e. Any other insurance required under the lease for the Site or reasonably required by Council.
  - (ii) on request, to provide proof of insurance acceptable to the Council.
- (b) This clause 11.2 continues in operation for so long as any obligations remain in connection with this Agreement.

**11.3 Relationship of parties**

- (a) The Contractor is not by virtue of this Agreement an officer, employee, partner or agent of the Council, nor does the Contractor have any power or authority to bind or represent the Council.
- (b) The Contractor agrees:
  - (i) not to misrepresent its relationship with the Council; and
  - (ii) not to engage in any misleading or deceptive conduct in relation to the Project.

**11.4 Waiver**

- (a) A failure or delay by a party to exercise any right or remedy it holds under this Agreement or at law does not operate as a waiver of that right.
- (b) A single or partial exercise by a party of any right or remedy it holds under this Agreement or 6

at law does not prevent the party from exercising the right again or to the extent it has not fully exercised the right.

**11.5 Assignment**

The Contractor cannot assign its obligations, and agrees not to assign its rights, under this Agreement without the Council's prior written approval.

**11.6 Applicable law and jurisdiction**

- (a) This Agreement is to be construed in accordance with, and any matter related to it is to be governed by, the law of Queensland.
- (b) The parties submit to the jurisdiction of the courts of that State.

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EXECUTION

EXECUTED AS AN AGREEMENT on the *8<sup>th</sup>* day of *June* 2017

Signed on behalf of  
SUNSHINE COAST REGIONAL COUNCIL

By its delegated officers

  
.....  
Grantley Switzer  
  
.....  
Tom Jamieson

Executed for and on behalf of  
MALENY GOLF CLUB INCORPORATED  
by its authorised officers in the presence of:

  
.....  
President: Max Whitten

  
.....  
Treasurer/Secretary

Name: *DARRYN L. HARBOTTE*



## SCHEDULE 1 – payment schedule and description of works

Financial Year	Description of Works	Council payment schedule
2017/18	Completion of tees, fairways, greens and 'critical plantings' – holes 4, 5 and 6	\$100,000
	Completion of tees, fairways, greens and 'critical plantings' – holes 1, 2 and 3	\$125,000
2018/19	Completion of tees, fairways, greens and 'critical plantings' – holes 7, 17 and 18.	\$225,000
<b>TOTAL COUNCIL CONTRIBUTIONS (excluding GST)</b>		<b>\$450,000</b>

Element of work	Description of Work
Tee	Includes completion of earthworks, retaining as required, drainage as required, turfing laid and established. Disturbed areas surrounding the tee are rehabilitated and stabilised.
Fairway	Includes clearing of necessary vegetation, removal of weed species, slashing and mowing to provide an even playing surface of similar standard to the established driving range fairway at the date of this agreement. Any areas disturbed by earthworks are rehabilitated and stabilised.
Green	Includes completion of earthworks, retaining as required, and drainage as required. Turfing to greens - grasses planted and established. Disturbed areas surrounding the green are rehabilitated and stabilised.
Critical Planting	Includes planting in identified areas have been established in accordance with Operational Works approved landscape/rehabilitation plans.
Internal Planting establishment	Includes planting in identified areas established in accordance with OPW approved landscape/rehabilitation plans. Includes inter-fairway planting and all other planting not considered as 'critical planting'.

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### SCHEDULE 2 – golf course layout



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