

## **PUBLIC IMPROVEMENT AGREEMENT**

THIS AGREEMENT made at the City of Reedley, by and between **Cushman Contracting Corporation**, HEREINAFTER CALLED the **Contractor** and the CITY OF REEDLEY, hereinafter called the **Owner**.

WITNESSETH: That the Contractor and the Owner, for the consideration hereinafter named, agree as follows:

### **SECTION A**

The Contractor agrees to furnish all labor and materials, including tools, implements, and appurtenances required, and to perform all work in a good and workmanlike manner, free from any and all liens and claims of mechanics, materialmen, Subcontractors, artisans, machinists, teamsters, draymen, and laborers, required for: **CRICKET HOLLOW BOAT LAUNCH FACILITY** in the City of Reedley, including all appurtenances thereto, in strict compliance with the Bid and Contract Documents and the Special Provisions dated August 26, 2018.

### **SECTION B**

The Contractor and the Owner agree that the Bid and Contract Documents, as completed by the Contractor, the Prevailing Wage Rate Determination as determined by the State Director of Industrial Relations, or Federal Wage Rate Determination as determined by the Secretary of Labor, whichever is higher, the Standard Specifications dated May 2006, of the State of California, Department of Transportation, and any supplementary specifications referenced therein, the Standard Plans, the Special Provisions including the General Provisions, the Plans and Drawings, and the Standard Specifications, together with this Agreement, form the contract, and they are as fully a part of this contract as if herein repeated. No part of said Specifications which is in conflict with any portion of this agreement shall be considered as any part of this agreement, but shall be utterly null and void.

### **SECTION C**

The Owner agrees to pay the Contractor in current funds for the Performance of the contract, **Eight hundred and forty eight thousand dollars (\$ 848,000.00 )**, it being understood that said price is based upon the estimated quantities of materials to be used as set forth in the Proposal, and upon completion of the project the final contract price shall be revised, if necessary, to reflect the true quantities used at the stated unit price thereof as contained in the Contractor's Proposal hereto attached.

### **SECTION D**

If the Contractor shall be adjudged as bankrupt, or if he makes a general assignment for the benefit of his creditors, or if a receiver should be appointed on account of his insolvency, or if he or any of his Subcontractors should persistently or repeatedly refuse or should fail, except in cases of materials, or if he should fail to make prompt payment to Subcontractors or for material or labor, or persistently disregard laws, ordinances, or the instructions of the City Engineer of the City of Reedley, hereinafter referred to as Engineer, then the Owner may upon certificate of the Engineer when sufficient cause exists to justify such action, serve written notice upon the Contractor and his surety of its intention to terminate the contract, and unless within five (5) days after service of such notice, such violations shall cease and satisfactory arrangement for correction thereof be made, the contract shall, upon the expiration of said five (5) days, cease and terminate.

In the event of any such termination, the Owner shall immediately serve written notice thereof upon the surety and the Contractor, and the surety shall have the right to take over and perform the contract, provided, however, that if the surety within ten (10) days after the serving upon it of notice of termination does not give Owner written notice of its intention to take over and perform the contract or does not commence performance thereof within the ten (10) days stated above from the date of the serving of such notice, the Owner may take over the work and prosecute the same to completion by contract or by any other method it may deem advisable, for the account and at the expense of the Contractor, and the Contractor and his surety will be liable to the Owner for any excess cost occasioned the Owner thereby, and in such event the Owner, may without liability for so doing, take possession of and utilize in completing the work such materials, appliances, plant and other property belonging to the Contractor as may be on the site of the work and necessary therefore.

In such case, the Contractor shall not be entitled to receive any further payment until the work is finished. If the unpaid balance of the contract price shall exceed the expenses of finishing the work, including compensation for additional managerial and administration services, such excess shall be paid to the Contractor. If such expense shall exceed such unpaid balance, the Contractor shall pay the difference to the Owner. The expense incurred by the Owner, as herein provided, and damage incurred through the Contractor's default, shall be certified by the Engineer.

## **SECTION E**

With respect to any work required to be done under this contract, the Contractor shall indemnify and hold harmless the Owner (City of Reedley), the State of California, the United States of America, and all other participating public agencies whether or not said agencies are named herein who have jurisdiction within the areas under which the work is to be performed and all officers, officials, volunteers and employees of the Owner, the State of California, the United States of America and said other participating agencies against any and all claims, demands, causes of action, damages, (including damages to the Owner's property or property of any participating agencies) costs, or liabilities (including costs, or liabilities of the Owner, or the participating agencies with respect to its employees) in law or in equity of every kind and nature whatsoever, directly or proximately resulting from or caused by the performance of the contract whether such performance by the Contractor, his Subcontractor, or anyone directly or indirectly employed by him; and the Contractor shall, at his sole risk and expense, defend any and all suits, actions, or other legal proceedings, which may be brought or instituted by third persons against the Owner, their participating agencies, their officers and employees on any such claim, demand, or cause of action and the Contractor shall pay and satisfy any judgment or decree which may be rendered against the Owner, their participating agencies, their officers and employees and any such suit, action, or other legal proceedings. In no event shall the Contractor indemnity obligation extend to the active negligence, sole negligence, or willful misconduct of an indemnified party in compliance with CA Civil Code §2782.

The Contractor shall furnish the Owner with a Certificate of Insurance, indicating insurance coverage with respect to the liability assumed by the Contractor under the provisions of this article, and shall further indicate insurance coverage with minimum limits as shown in the project specifications.

The Certificate of Insurance shall further provide that a minimum thirty (30) days notice of cancellation or reduction in coverage shall be given the Owner.

An Additional Insured Endorsement to the Contractor's Liability Insurance policy naming the City of Reedley, its officers, officials, employees and volunteers, and other participating public agencies (if applicable) and all officers and employees of the above shall also be furnished.

#### **SECTION F**

Contractor represents that he has secured the payment of Worker's Compensation in compliance with the provisions of the Labor Code of the State of California and during performance of the work contemplated herein will continue so to comply with said provisions of said Code. Contractor shall supply the Owner with the insurance data and certificates as set forth in the specifications. The Certificates of Insurance evidence that Worker's Compensation Insurance is in effect as well as employer's liability insurance with limits of \$2,000,000 per accident and providing that the Owner will receive thirty (30) days notice of cancellation. If the Contractor self-insures Worker's Compensation, Certificate of Consent to Self-insure shall be provided the Owner.

#### **SECTION G**

Contractor shall forthwith furnish in triplicate a faithful performance bond in an amount equal to One-Hundred (100%) percent of the contract price and a payment (labor and materials) bond in an amount equal to One-Hundred (100%) percent of the contract price, both bonds to be written by a surety company acceptable to the Owner and in the form prescribed by law.

The payment bond shall include a provision that if the Contractor or his Subcontractors shall fail to pay (a) amounts due under the Unemployment Insurance Code with respect to work performed under the contract or (b) any amounts required to be deducted, withheld, and paid over to the Employment Development Department from the wages of the employees of the Contractor and Subcontractors pursuant to Section 13020 of the Unemployment Insurance Code with respect to such work and labor, then the surety will pay these amounts. In case suit is brought upon the payment bond, the surety will pay a reasonable attorney's fee to be fixed by the court.

#### **SECTION H**

Should either party to the contract bring an arbitration or mediation proceeding or other action to enforce any provisions of the contract, including an action pursuant to Public Contract Code Section 20104.4, the prevailing party shall be entitled to recover reasonable attorney's fees and all costs in connection therewith. The term "prevail" as used in this section shall include any action at law, in equity, or pursuant to arbitration in which either party has been successful.

#### **SECTION I**

Time is of the essence. The improvement and work contemplated in the performance of this contract is predicated on suitable weather conditions as determined by the City Engineer. In the event the City Engineer determines that suitable conditions are not experienced during the contract period (after the notice to proceed) it is agreed that the contract may be delayed by weather and will be credited additional days as provided in the specifications, but no additional monetary compensation. Any such delay shall be documented and processed on the standard change order form.

IN WITNESS WHERE OF, they have executed this agreement the 27<sup>th</sup> day of November, 2018.

CONTRACTOR,  
Cushman Contracting Corporation

BY: [Signature]  
Lee Cushman

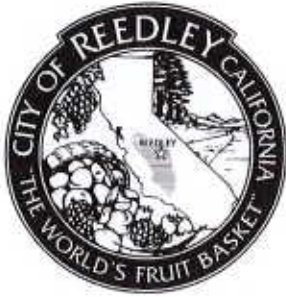
(Print Name Below Signature Line)

OWNER,  
CITY OF REEDLEY

BY: [Signature]  
NICOLE R. ZIEBA  
CITY MANAGER

RECOMMEND FOR APPROVAL

BY: [Signature]  
JOHN S. ROBERTSON, P.E.  
CITY ENGINEER



## REEDLEY CITY COUNCIL

- ☒ Consent
- ☐ Regular Item
- ☐ Workshop
- ☐ Closed Session
- ☐ Public Hearing

ITEM NO: 7

**DATE:** October 23, 2018

**TITLE:** ADOPT RESOLUTION NO. 2018-089 AWARDED A CONSTRUCTION CONTRACT TO CUSHMAN CONTRACTING CORPORATION FOR CONSTRUCTION OF CRICKET HOLLOW BOAT LAUNCH FACILITIES IN THE AMOUNT OF \$848,000 AND GRANT THE CITY MANAGER AUTHORITY TO APPROVE CHANGE ORDERS UP TO AN AMOUNT APPROXIMATELY EQUAL TO 10% OF THE CONSTRUCTION CONTRACTED AMOUNT

**SUBMITTED:** John S. Robertson, P.E., City Engineer

**APPROVED:** Nicole Zieba, City Manager

### RECOMMENDATION

Adopt Resolution No. 2018-089 awarding a construction contract to Cushman Contracting Corporation for construction of the Cricket Hollow Boat Launch Facilities in the amount of \$848,000 and grant the City Manager authority to approve contract change orders up to an amount approximately equal to 10% of the construction contracted amount.

### EXECUTIVE SUMMARY

Staff is requesting that the City Council adopt Resolution No. 2018-089 awarding the Cricket Hollow Boat Launch Facilities project (Project), to Cushman Contracting Corporation (Contractor) and authorize the City Manager to execute a Public Improvement Agreement for the Project with the Contractor.

On September 19, 2018 the City of Reedley conducted a bid opening for the Project. The City received three sealed bids. The bids were opened, read aloud, and ranged from \$848,000 to \$1,006,671.39. Upon review of the received bids it was determined that the lowest responsive responsible bidder was Cushman Contracting Corporation with a bid of \$848,000.



## **BACKGROUND**

In 2014, the City received approximately \$900,000 of funds from the Division of Boating and Waterways (DBW) for the scoping and construction of improvements for the boat launch facility at Cricket Hollow. Over the last few years, staff and several consultants have worked to finalize the required scope of services, obtain all required permits from state and federal agencies, and complete the construction documents.

After many months of analysis and studies, permits from the following agencies were obtained: US. Army Corp of Engineers Letter of Permission, Kings River Conservation District Endorsement, Central Valley Flood Protection Board, Central Valley Regional Water Quality Control Board, California State Lands Commission Agreement, California Department of Fish and Wildlife Streambed Alteration Agreement.

Once the permits were obtained, staff and the Division of Boats and Waterways took many months to approve the construction documents. Upon acceptance of the construction documents, the project was advertised in late August and September of 2018. The City received and opened three sealed bids on September 19 and recommends that the project be awarded to the lowest responsive responsible bidder, Cushman Contracting Corporation.

## **FISCAL IMPACT**

On October 9, 2018, the City Council approved Budget Amendment Resolution No. 2018-043 to allocate City funds to be used with the grant funds to fully fund the Project, contingencies, and construction management services. The total amount to cover the costs listed above is estimated at approximately \$992,132. The local funds allocated to this project are from the Development Impact Fees – Fire, Measure C funds (flexible and pedestrian/trail) and Sewer Capital Enterprise funds.

## **ATTACHMENTS**

1. Resolution No. 2018-089
2. Bid Tabulation

## **RESOLUTION NO. 2018-089**

**A RESOLUTION TO THE CITY COUNCIL OF THE CITY OF REEDLEY  
AWARDING A CONSTRUCTION CONTRACT TO CUSHMAN  
CONTRACTING CORPORATION FOR CONSTRUCTION OF CRICKET  
HOLLOW BOAT LAUNCH FACILITIES IN THE AMOUNT OF \$848,000  
AND GRANT THE CITY MANAGER AUTHORITY TO SIGN CHANGE  
ORDERS APPROXIMATELY EQUAL TO 10% OF THE  
CONSTRUCTION CONTRACTED AMOUNT**

**WHEREAS**, the City of Reedley issued a Notice to Bidders for the Cricket Hollow Boat Launch Facilities project; and

**WHEREAS**, the City received, opened and read aloud three (3) bids which ranged from \$848,000 to \$1,006,671.39; and;

**WHEREAS**, the lowest, most responsive and responsible bid was submitted by Cushman Contracting Corporation; and

**WHEREAS**, on October 23, 2018 held a Public meeting at the City of Reedley, City Council Chamber, at 845 "G" Street, and received a staff report to award a construction contract for the Base Bid in the amount of \$848,000.

**NOW, THEREFORE, BE IT RESOLVED** that the City Council of the City of Reedley using their independent judgment approved this resolution based on the following:

1. The above recitals are true and correct; and
2. That the contract for Cricket Hollow Boat Launch Facility Project, is awarded to Cushman Contracting Corporation for the unit and lump sum prices as bid for the Base Bid, the total amount of the contract being \$848,000
3. That the City Manager is authorized and directed to promptly execute the contract for the subject work with Cushman Contracting Corporation subject to the submittal of the necessary bonds, insurance certificates, and other necessary documents required by the specifications and special provisions for this project, all for the approval by and to the satisfaction of the City Engineer or the City Attorney.
4. The City Manager is hereby authorized to execute contract change orders to the contract for this project and shall not exceed approximately 10% of the total bid or \$84,800 without prior approval of this City Council.
5. The total construction budget for this project, including the construction contract, contingency and construction engineering costs shall not exceed \$992,132.
6. This resolution is effective immediately upon adoption.

This foregoing resolution is hereby approved and adopted at a regular meeting of the City Council of the City of Reedley held on the 23<sup>rd</sup> day of October, 2018, by the following vote:

AYES: Soleno, Pinon, Beck, Fast, Betancourt.


NOES: None.

ABSTAIN: None.

ABSENT: None.

  
Anita Betancourt, Mayor

ATTEST:

  
Sylvia B. Plata, City Clerk

