TITLE: Substitution of Subcontractor for the Desert Hot Springs Community Health and Wellness Center Project

## RECONMENDATION

That the Desert Hot Springs Health and Weliness Foundation Board finds Pacific Custom Pools a non responsible subcontractor and serves notice of prime contractor's request to substitute swimming pool subcontractor for the John Furbee Aquatic Center Project

## DISCUSSION

On January 9, 2013, Pacific Custom Pools (PCP), the John Furbee Aquatic Center swimming pool subcontractor, demobilized their construction crews from the project site, leaving a considerable amount of work remaining to complete the pool construction. As a result, on January 11, 2013, the project prime contractor, Doug Wall Construction (DWC), provided ' 24 Hour Notice' to PCP to complete their portion of the work per their contract and the project plans and specifications. On January 14, 2013, DWC served PCP with a Notice of Non-Compliance and since has not received any contact or correspondence from PCP as to their intent to comply. DWC has determined that the pool subcontractor has "abandoned" their remaining contractual obligations and is requesting the Desert Hot Springs Health and Wellness Foundation Board's (Foundation Board) authorization to substitute the pool subcontractor.

Public Works Contract Code Section 4107 allows awarding authorities to grant a prime contractor's request to substitute a subcontractor provided any of the situations listed in Section 4107.1-8 occur during the contract period. DWC has determined that at least two (2) conditions; 4107.3 "listed subcontractor fails or refuses to perform his or her subcontract" and 4107.7 "work performed is substantially unsatisfactory and not in substantial accordance with the plans and specifications" and "the subcontractor is substantially delaying or disrupting the progress of the work" (paraphrased).

The Foundation Board is required by Section 4107.9 to determine and provide notification of such to PCP as a 'non responsible contractor' prior to the execution of a substitution. To minimize excessive delay, DWC initiated the process to solicit bids from no less than three (3) interested pool construction subcontractors immediately after PCP abandoned their contract. Upon the Foundation Board's approval, DWC will mobilize the new subcontractor to perform the remaining work to include installation of chemical tanks/pumps, connection of aqua solar system, system controlier initiation, deck and pool equipment, competition start blocks, lane delineators and water polo equipment.

## FISCAL IMPACT

The prime contractor, Doug Wall Construction, has not claimed additional costs to the project associated with this action.

## EXHIBITS

1) 24 Hour Notice
2) Notice of Non-Compliance
3) Public Works Contract Code Section 4107

## DxC

## Doug Wall Constriction, Inc. <br> 

Doug Wall Construction, Inc
Re: 24 Hour Notice to complete contract work
Project: Desert Hot Springs Health and Wellness Center
1/11/2013
To: Jim Barger with Pacific Pools

Dear Jim,

Let this letter serve as a 24 hour notice for you to complete your scope of work for completion of the pool. Specifically per your Contract and per plans, specifications, and approved submittals. You are expected to: 1 - Provide a list of all items outstanding with a date of delivery to the project and a duration of install time. 2 - Provide adequate workers every wrork day until your scope of work is complete.
Ifyou do not respond to this notice with specific item completion dates and workers accordingly within 24 hours, we will be forced to complete the remaining portion of your incomplete work at your cost per article 3.4 and 3.5 of your Subcontract Agreement with us. The Project Specifications clearly state that you are to provide a complete and operational pool system with a minimum 14-day trouble free operation period.

The list of items incomplete to date are inchuding but not linited to:
Specification Section $1311542.02 \& 3$ Hand and Grab Rails at all side steps
Specification Section 1311542.07 Starting Platforms
Speciffcation Section $1311542.08 \quad$ Racing Lanes and Reels
Specification Section 1311542.09 Racing Lanes and Storage Reels
Specification Section $1311542.10 \quad$ Back Stroke Pemants
Specification Section 1311542.11
Specification Section 1311542.12
Sperification Section 1311542.14
Specification Section 1311542.15
Specification Section 1311542.23
Specification Section 1311542.24
Specification Section 1311542.25
Specification Section 1311542,26
Specification Section 1311542.29
Specification Section 1311542.30
Specification Section 1311532.21
Specification Section 131153
Specification Section 131153 2.12.P
Specification Section 131153 2.13.H
Specfication Section 1311532.14 .1
Specification Section 131153 3.14.A
Specification Section 131153 3.16.A
Specification Section 131153 3,16.B
Specification Section 131153 3.16.C Start up and Operational Tests operational not less than 14 days
Specification Section 131153 3.16.D Chemical System Start Up
78450 Ave 41, Bermuda Dunes, CA 92203
Tel: 760-772-8446 Fax: 760-772-9407

| Specification Section $1311533.16 . \mathrm{E}$ | Pool Heater Start Up |
| :--- | :--- |
| Specification Section $1311533.16 . \mathrm{F}$ | Pool Operation Training |
| Specification Section 131153 1.05.B | Operation and Maintenance Manuals |
| Specification Section 131153 1.05.C | Record Drawings |
| Specification Section $1311533.16 . \mathrm{F}$ | Post Operating Instructions |
| As shown on plans | Ultraviolet Light Disinfection System |

Schedule (recent notifications and responses)
*You were notified on $9 / 7 / 12$ in writing that your date of completion was scheduled for $11 / 12 / 12$.
*You were notified on $12 / 11 / 12 \mathrm{in}$ writing that our date of completion had been extended to 12/19/12.
*You responded on $12 / 11 / 12$ in writing that you would be able to be complete by the end of December 2012 or Early January 2013.
*On $12 / 19 / 12$ you were sent a letter with six attachments reminding you that the Owners Grand Opening was scheduled for $1 / 11 / 13$, and that all work to complete items were expected to be complete before that time. The attachments inchuded a work to complete list, a change order summary dated $9 / 12 / 12$, a schedule dated $12 / 10 / 12$, two emails from you, one of which stated your estimate to be complete, and a list of payments made to your company dated $12 / 17 / 12$.
*In summary, you plastered the pool earlier this week. We filled it with water. You removed your employees today with an e-mail stating "this is the last straw" and telling Doug Wall that he should find someone elise to finish your work The pool is not operational or complete.

Payment (recent notifications)
Your have been furnished with current Change Summary ledgers and cost to date ledgers throughout the project. On 11/29/12 Shelley Baker sent you a ledger and again on $12 / 19 / 12$ I sentyou ledger of all payments made to your company. You have been paid $100 \%$ of your contract, $100 \%$ of all approved change orders, and $\$ 18,275.35$ of your retention. You are currently paid greater than the work you have in place.

Respectfully,
William Butter / Project Manager

## $\mathrm{DNC}_{\mathrm{C}}$

## Dovg Warl. Constrictron, inc. 

Doug Wall Construction, Inc.
Re; Notice of Non Compliance with the 24 hour notice sent on 1/11/13.
Project: Desert Hot Springs Health and Wellness Center
$1 / 14 / 2013$
To: Jim Barger with Pacific Pools
Dear Jim,

Let this letter serve as a Notice of Non-Compliance.
On 1/11/13 you were given a 24 hout notice to complete your scope of work. You were instructed provide the following items:
1 - Provide a list of all items outstanding with a date of delivery to the project and a duration of install time. 2 - Provide adequate workers every work day until your scope of work is complete.
Your response today at $2: 16$ pm was, "As of close of business today PCP will be re-assigning it's workforce to other projects". You have not provided workers or any delivery dates of outstanding items as requested.

At this time let it be clear and duly noted that Pacific Custom Pools has ahandoned this project and will be replaced by Doug Wall Construction Incs with work forces able to complete the remaining portion of Pacific Custom Pools scope of work per the Plans, Specifications, Approved Submittals and Subcontract Agreement at Pacific Pools own cost plus 15\% per article 3.4 and 3.5 of the Subcontract Agreement.

Respectfiully,
William Butler / Project Manager

# PUBLIC CONTRACT CODE SECTION 4100-4114 

4100. This chapter may be cited as the "Subletting and Subcontracting Fair Practices Act."
4101. The Legislature finds that the practices of bid shopping and bid peddling in connection with the construction, alteration, and repair of public improvements often result in poor quality of material and workmanship to the detriment of the public, deprive the public of the full benefits of fair competition anong prime contractors and subcontractors, and lead to insolvencies, loss of wages to employees, and other evils.
4102. Nothing in this chapter limits or diminishes any rights or remedies, either legal or equitable, which:
(a) An original or substituted subcontractor may have against the prime contractor, his or her successors or assigns.
(b) The state or any county, city, body politic, or public agency may have against the prime contractox, his or her successors or assigns, including the right to take over and complete the contract.
4103. Any officer, department, board or commission taking bids for the construction of any public work or improvement shall provide in the specifications prepared for the work or improvement or in the general conditions under which bids will be received for the doing of the work incident to the public work or improvement that any person making a bid or offer to perform the work, shall, in his or her bid or offar, set forth:
(a) (1) The name and the location of the place of business of each subcontractor who will perform work or labor or render service to the prime contractor in or about the construction of the work or improvement, or a subcontractor licensed by the State of California who, under subcontract to the prime contractor, specially fabricates and installs a portion of the work or improvement according to detailed drawings contained in the plans and specifications, in an amount in excess of one-half of 1 percent of the prime contractor's total bid or, in the case of bids or offers for the construction of streets or highways, including bridges, in excess of one-half of 1 percent of the prime contractor's total bid or ten thousand dollars $\{\$ 10,000\}$, whichever is greater.
(2) (A) Subject to subparagraph (B), any information requested by the officer, department, board, or commission concerning any subcontractor who the prime contracior is required to list under this subdivision, other than the subcontractor's name and location of business, may be submitted by the prime contractor up to 24 hours after the cleadline established by the officer, depariment, board, or commission for receipt of bids by prime contractors.
(B) A state or local agency may implement smbaragraph (A) at its option.
(C) The portion of the work that wisl be done by each suboontractor hadert this act. The prime contractor shali list onty cne subcontzactor for each portion as is defined by the prime contractur in his or her bid.
 bicis for conerzuctior jE any publid work or improvemert shall sperify ta the bid intitation and public notice the place the bids of the prime bontractors are to be received ard the time by wich eney shatl be received. Fhe face and time shall be wtitended by no fess then ta hours if the officer, department, board, or compssion issues ant material changes, additions, ow deletions to the invitatign later than 72 hours prion to the bid closing. Any bids received afeer ene time spectijet in the notioe or any entension due to material changes shall be rectirmed unopened.
(b) As uEed in this section, the temm "material change" means a change mith a subatantiul cost impat, on the total bid as determined by the anarding agency.
(c) As used in this section, the tem "bid inyitaton" shail include ary dociments issued to prime ontractors that contain ciescriptiots of the work to be bid or the content, form, on maner oz submission of bide by bidders.
4104. Circmotention by a generai contractor who bicis as a prime contractor of the requirement under Soction 4104 for him or her to list his or her subconcractors, by the device of listing another contractor wo witl hin turn sublet portions constituting the majority of the work cowered by the prime contract, shall be considered a violation of this chapter and shail subject that prime coneraotor to the penalties seit fozth in sections 4110 and $\leq 111$.

4l06. If a prime contractor fails to specify a subcortractor or $\dot{E}$. a prime concractor specifics more than one subcontroctor for the sare portion of work to be performed ander the coneranc in excess of one-half of 1 percent of the prime contractor's totel bid, the prime contractor agrees thet he or she is fully cualified to perform that portion himseli or herself, and that the prime contractor shall perform thet portion himself or horself.

If after awtra of cortryct, the prime contravtor subcontracts, except as provided for in Sections 4107 or 4109 , any such portion of the work, the prime cortraetor shall bs subject to the penalities nemed in section 4111.

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Al07 A prime contragtor whose bud is ezvepted may not:
    (a) Subsciture a person as sub=ontraztor in place of the
subconcractor listed in the original bid, excopt that the awarding
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grovided ir Sonticr <1J7.5, oonsent ts the swostitution gf amother
parsor as a subugn=rastor in any of the follonirg sitaetions:
    (1) When the smbobncractor iisted in the bid, after heving bad a
reasonable opportunit% to do st, fi=ils or refises to ezecute e
mutter contract for the seope of thexk spevified in the suocortraceor.
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Fonc written contract, based upon the genemal tems, zorizeions, plans, and specifications for the project inoolved ar the ienms ot thet siocontwaetor's writter bid, is presenked to the suoponcractor by the prime contractor.
(2) When the listed subsontractor bscomes fnscitent or the enbiect of tin order for relies in bankrapecy.

FWh Then the listed subooncrator Eatis or refuses to pewfora his other subcertract.
(4) When the listed subcontravitr fixis or refubas to mest the bond requinements of the prime contractor as set forct an seotion 4108.
(5) When the prime ooncractor demonstrates to the awerding authoricy, of its duly authorized offiger, subject to the furthes provisions set Eorth ir Section 4107.5 , that the namp of the subcontractor was listed as tha result of an thadvertate abetcal ecror.
(6) When the listed subcontractor is not i.icensed pursuant to the Concraccors License Law.
Why when the awerding authorivy, or its duly authctiead offioer, deterinines that the work performed by the listed subconcraocor is substantially unsetisfactory and not in substantial avoordance mith che plans and specifitetions, or that the subcontractor is substattially delaying or disrupring the progress of the work.
(8) When the listed subcontractor is focligible to work on a public works project pursuant to section 1777.1 or 1777.7 of the Labor Code.
(9) Then the awarding authonicy determines that a itsted subcontractor is not a responsible contractor.

Prior to approval of the prime contractor's request for the substitution, the awarding authority, or its duly authorizst cificer, shall give notice in writing to the ilsted sibocontactor of the prime contractor's request to substitute and of the reasons for the request. The notice shall be served by coritifed or registered mail to the last knom address of the subooneractor. The listad subcontractor who has bean so notified has five working days within which to subait written objections to the substitution to the awarding atthority. Faibure to file these writicr objections constitutes the listed suboontractor's consent to the substitution.

If written objections are filed, the awarding authority shall give notice in writing of at least five working days to the itsced subcontractor of a hearing by the awarding authority on the prime contractor's request for substitution.
(b) Permit a subcontract to be voluntarily assigned or transferred or allow it to be performed by anyone other than the original subcontractor listed in the original oid, without the conseri of the anarding authority, or its duly authorized officer.
(c) Other than in the perfomance of "change orders" caising changes or deviations from the ariginal contract, aublet or suboncract any portior of the work in exoess of one-haj of 1 percent of the prime coritactor's total bid as to whith his or her original bid did not dusignate a subcortrantor.

[^0]

# City of Desert Hot Springs 

65-950 Pierson Blva. • Desert Hot Springs * CA 92240 (760) 329-6411

## CERTIFIED MAIL NO.: 70031680000436043087

April 10, 2013

Mr. Jim Barger
Pacific Custom Pools, Inc.
265 North Vinedo Avenue
Pasadena, CA 91107

## RE: SUBSTITUTION OF SUBCONTRACTOR FOR THE DESERT HOT SPRINGS COMMUNITY HEALTH AND WELLNESS CENTER PROJECT (PROJECT) - NOTICE OF PUBLIC HEARING

Dear Mr. Barger,
Pursuant to Public Works Contract Code Section 4107.9, you are hereby notified that the Desert Hot Springs Health and Wellness Foundation Board will hold a Public Hearing on April 17, 2013, at 3:00 pm in the Carl May Community Center (located at 11711 West Drive, Desert Hot Springs, CA 92240) to consider the request submitted by Doug Wall Construction, the Project prime contractor, to substitute the subcontractor of record, Pacific Custom Pools, on the subject Project for the following reasons:

1. PWCC Section 4107.3: "...subcontractor fails or refuses to perform his or her subcontract."
2. PWCC Section 4107.7: "...the subcontractor is substantially delaying or disrupting the progress of the work. ${ }^{*}$

Pacific Custom Pools and Doug Wall Construction shall be granted an opportunity to address their respective comments to the Board prior to the Board's action on this matter.

Sincerely,


[^1]
## TRANSMITTAL VIA PERSONAL DELIVERY

City of Desert Hot Springs
65-950 Pierson Blyd.
Desert Hot Springs, CA 92240

## RE: Substitution of Subcontractor for the Desert Hot Springs Community Health and Wellness Center Project (Project) - Notice of Public Hearing Hearing Date: April 17, 2013 at 3:00 p.m. Project: Desert Hot Springs Health and Wellness Center

Doug Wall Construction, Inc. (hereinafter referred to as "Wall") has received the City's notice of April 10, 2013. You will be receiving by separate cover a letter from Wall explaining in detail the numerous violations of contract on the part of Pacific Custom Pools, Inc. (hereinafter referred to as "Pacific") and the reasons for the termination of Pacific. As a result of this termination and the need to complete the contract, Wall hired the services of a new subcontractor. The City has provided notification in its April 10, 2013 letter of grounds to terminate Pacific as a subcontractor. The first ground is under PWCC Section 4107.3: "...subcontractor fails or refused to perform his or her subcontract." and PWCC Section 4107.7: "..the subcontractor is substantially delaying or disrupting the progress of the work."

Before I address some of the points raised by Wall in its letter to the City, I would like to address the City's attention to the attached contract between Wall and Pacific. Pacific in its correspondence with this office claims that the contract in some manner was amended by certain oral agreements between Wall and Pacific. Wall adamantly denies this statement. Under continued threat by Pacific not to complete its work, Wall did sign a contract addendum which in our opinion does not substantially change the terms and conditions of the contract as it pertains to the performance of Pacific and its requirements under the contract. We would like to point out that the addendum was signed under coercion from Pacific who essentially stated "We will not complete the work unless you agree to sign the addendum." Therefore, we believe that the addendum is legally invalid. In any event, as I mentioned above, we believe that the addendum has no effect upon the basic requirements of Pacific under its contract. Its contract is attached as "Exhibit 1" to this letter.

I would like to take some time in this letter to point to certain sections of the contract which apply to this egregious conduct of Pacific. The points are as follows:

1. I address your attention to Sections 2.4 and 2.6 of the contract. These sections require that no progress or final payment will be made to the subcontractor unless the appropriate releases from the sub-subcontractors and suppliers to the subcontractor are provided. As you will note from the correspondence between Wall and Pacific these releases were not provided. Despite this fact, Pacific continued to demand payment even though it had in fact been overpaid for its work.
2. Section 3.1 of the contract is adamant that the subcontractor is to provide sufficient workers to complete the work diligently to completion and not to hinder or delay other trades in the performance of their work.
3. Section 3.2 provides that the subcontractor is to complete all the work according to the schedule attached as ExhibitD to the contract. The important point of section 3.2 states:
> "It is understood that GENERAL CONTRACTOR reserves the right to change the sequencing of the work, if necessary, after approval without penalty. The Subcontractor shall satisfy the General Contractor's Site Superintendent in providing an adequate amount of workers as requested by the General Contractor to say on the project schedule as modified by the General Contractor... In the event that the Subcontractor does not provide an adequate or additional work force to the satisfaction of the General Contractor's Site Superintendent, outside the General Contractor at the subcontractors expense will hire workforces."

Therefore, the general contractor has a right to revise the schedule and the subcontractor unconditionally must move forward to complete the work.
4. The most damning section of the contract to Pacific is Section 3.4. Since it is a lengthy provision I will not directly quote the provision in this letter but urge the board to review the section. Generally if the subcontractor refuses to provide sufficient work and labor to complete the job, the general contractor unconditionally may terminate the contract and hire a new subcontractor. Pacific argues that it was not paid and therefore it had a right to stop work. This is absolute nonsense under the contract and under case law. The subcontractor is still obligated to move forward and complete the work even if there is a dispute. The court specifically stated in B.C. Richter Construction Co. v. Continental Casualty Co. (1964) 230 Cal.App. $2 \mathrm{~d} 491,500$ that when a contract contains a provision that the subcontractor may not stop work or delay the job even though there be a dispute or controversy, the subcontractor must complete the work. If the subcontractor does not continue to move forward, the subcontractor will have breached the contract.
5. The above is buttressed by Section 3.8 which provides that the only remedy by the subcontractor for delay by the general contractor is an extension of time to complete the work but not any monetary penalty.

Substitution of Subcontractor - Notice of Public Hearing
April 12, 2013
Page 3
6. Pacific has continually made claims for additional work or to substitute materials called out by the architect and engineer. Critically, this area is governed by Article 4 of the contract relative to change orders. Section 4.1 of the contract provides that change orders must be in writing or subcontractor proceeds at its own risk. If the contractor orders a change under a Notice to Proceed, the subcontractor must proceed with the work within 48 hours. See Section 4.2.
7. Section 4.5 provides that the subcontractor is only entitled to receive 10 percent above costs after providing detailed information under the remaining subprovisions of Section 4.5. Pacific has continually failed to provide the required detailed information in order to properly move forward with a change!
8. Section 5.7 of the contract provides that if a subcontractor claims an excuse for its failure to perform the subcontractor must provide ten (10) days written notice to the general contractor after the occurrence of the act or omission. While Pacific has continually made excuses for its own failure to perform, it has never provided the required ten (10) day notice under Section 5.7.
9. Probably the most important provision of the contract applicable to Pacific in this case is Section 5.13 which provides as follows:

> "In the event of any disagreement between GENERAL CONTRACTOR and Subcontractor as to (I) the scope of the work required under this Agreement, (ii) scheduling, (iii) prior Change Orders, (iv) or any other disagreement, Subcontractor will not stop working or reduce progress, but will promptly follow the written orders of GENERAL CONTRACTOR as to the performance of the work, and will continue with the prompt and diligent prosecution of the work on the Project; said dispute shall not delay timely completion of the Work or any work related thereof."

As I indicated above, my client is sending its own separate letter with backup correspondence. I am also providing backup items with this letter which in many respects are cumulative to what my client has sent. There items are as follows:

- "Exhibit 3" - 1/11/2013-24 Hour Notice to complete contract work - Wall to Pacific;
- "Exhibit 4" - 1/11/2013-E-mail chain between Wall and Pacific re payments and Pacific's statement they are leaving the job;
- "Exhibit 5" - 1/12/2013-Wall letter to Pacific re 24 Hour notice; and
- "Exhibit 6" - 1/14/2013 - Wall letter to Pacific re Notice of Non-Compliance.

Substitution of Subcontractor - Notice of Public Hearing
April 12, 2013
Page 4

I am sending these items because I think they are germane to what I am stating in my letter. I believe the correspondence demonstrates that Wall has literally bent over backwards to accommodate the incredible unprofessional actions of Pacific. Throughout this job, Pacific has attempted to gain an edge. It first attempted to substitute most of the materials called for to be provided under the contract. These requests occurred over several months. Most of these requests were denied even though the requests were late and not properly provided to the engincer. Next, Pacific continually delayed the project by failing to man the job. They complained about changes to the schedule but forget that most of these changes to the schedule did not affect its basic construction of the pool. While the pool changed direction, the directional change had a minor affect upon Pacific's work. While the City added square footage to the building, Pacific could have continued to construct the pool to the point of plastering. Instead, Pacific delayed and even when it promised to complete the work in its December correspondence, it failed to complete the work as promised not only to Wall but to Mr. Acosta. Hence, Wall had no alternative but to fire Pacific and to hire a new subcontractor to complete the work.

This leads me to the final issue. Technically, under the Public Works Contract Code, Wall is required to seek the approval of the City before it hires a substitute contractor. We would submit that Wall did obtain the approval of the City prior to hiring a substitute contractor. I am attaching a copy of the January 29, 2013, meeting minutes for the Community Health and Wellness Center. It specifically notes that Wall sent out six invitations to bid to finish the pool and that a selection would be made by February 1, 2013. While this approval does not technically comply with the code, an important case provides that this technicality is de minimis and essentially not necessary if in fact the substitution moves forward in good faith. I specifically address your attention to the case of Titan Electric Corp. v. Los Angeles Unified School District (2008) 160 Cal.App.4th 188. In Titan, the contractor had moved forward and substituted a subcontractor who was in violation of its contract. The contractor had not complied with the technical requirements of the public works code in seeking the approval of the governmental entity before the substitution. After the work was complete, the contractor did move forward to obtain the appropriate substitution from the governmental entity. The entity did approve the substitution even though it was after the fact. The Court held that the substitution of the subcontractor was properly allowed and that the requirement of the code is essentially de minimis when the substitution is appropriate.

Therefore, we would respectfully submit that the agency ratify its approval of this substitution and deny the protest filed by Pacific Custom Pools, Inc.

Yours very truly,


MARC S. HOMME

MSH:tlj
cc: Client

## $\mathrm{Du}_{\mathrm{C}}$

Doug Wall Construction, Inc.
CASt. Le te 743112

## GENERAL CONTRACTOR/SUBCONTRACTOR AGREEMENT



SUBCONTRACTOR $\quad$ Pacific Custom Pools, Inc. 265 North Vinedo Avenue, Pasadena, CA 91107
Phone 626-795-3400 Fax 626-795-4003
Contact Josh Repp
Contact Jim Bargen
initial
1


Doug Wal Construction, inc.

# GENERAL CONTRACTOR-SUBCONTRACTOR CONTRACT 

THIS AGREEMENT, Made as of June 27th, In the Year of $2011_{+}$<br>Between the General Contractor: Doug Wall Construction, Inc.<br>And the Subcontractor: Pacific Custom Pools, Ine.<br>For the Project: City of Desert Hot Springs Community Wellness Center

## ARTICLE 1

## SPECIFICATION OF THE WORK

1.1 This Agreement is for construction of the above Project located at 11320 CHOLLA Drive, Desert Hot Springs, CA 92240. Subcontractor shall furnish the labor and materials to finish the work (collectively "Work") per Exhibit "A" (Scope of Work), Exhibit "B" (Inclusions), and Exhibit "C" (Plans, Specifications, \& Addendums). The signing of this agreement will verify that the Subcontractor has reviewed and understood all of the bid documents aforementioned (complete set of blueprints, complete set of project specifications, and all addendums and bid RFl's as applicable). The entire work of improvement is referred to herein as the ("Project").
1.2 Subcontractor agrees to furnish all labor, at the applicable prevailing wages rates, services, materials, installation, hoisting supplies, insurance, equipment, dust control, traffic control, scaffoiding, tools, submittals/shop drawings, close-out documentation, all safety measures and other items of every kind and description required for the prompt and efficient execution of the work described and/ or referenced in this agreement and to perform the work necessary and incidental to complete the scope of work listed in Exhibits A and B.
1.3 Subcontractor has examined and thoroughly understands that the Plans and Specifications identified in Exhibit "C", which are specifically incorporated into this Agreement, will be in accordance


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with the applicable laws, regulations, ordinances, and building codes, and the provisions of this contract at no additional cost to Doug wall Constraction, Inc. or the Owner. The signing of this agreement will verify that the Subcontractor has reviewed and understood all applicable "current" Building Codes as related to the bid documents.
1.4 Whether or not shown by the Plans or mentioned in the Specifications, the Work includes, without additional compensation, the following: (i) any item of labor, service and/or material reasonably inferred by the Plans and Specifications or customarily furnished by a subcontractor performing work in this line; (ii) any item of labor, service, or material required to make the Work comply with any ordinance or regulation; (iii) all plans, drawings, permits, and fees required by law, regulations, ordinance, or building code; and (iv) all scaffolding and equipment necessary or required for the performance of the work.

## ARTICLE 2

## AGREEMENT PRICE AND PAYMENT PROVISIONS

2.1 GENERAL CONTRACTOR agrees to pay the subcontractor, for the strict, full and faithful performance of its Work under this Agreement, the sum of $\mathbf{~ 8 8 6 5 , 0 4 4 . 0 0 ,}$, including, but not limited to, all City, County and State taxes, upon the following terms.

2,1a The subcontractor shall within 10 days of execution of this contract submit a schedule of values for the General Contractor approval. No payment shall be made until the General Contractor has agreed this upon.
2.2 With respect to monthly progress payments, on every 15th of each month, the subcontractor shall submit a pencil draft showing the percentage of the work in places according to the schedule of values as described on page one of this agreement, projecting to the end of the month for the General Contractor and the Owner's review and approval. Once the pencil draft has been reviewed and approved at the end of the month by the Construction Manager and Owner, a notification of the approved dollar amourt will be sent to the subcontractor's office. The subcontract shall submit invoice(s) and shall be accompanied by (i) conditional material and/or labor releases and waivers of lien from Subcontractor and all lower-tier subcontractors and all suppliers for the current month, on firms satisfactory to General Contractor (ii) unconditional material and labor releases and waivers of lien from subcontractor and all lower-tier subcontractors and suppliers for the prior month, on forms satisfactory to General Contractor and (iii) such other documentation reasonably required by General Contractor. Progress payments will be made to the Subcontractor within (3) days after the General Contractor receives payment from the Owner. $10 \%$ Retention will be withheld from ail progress payments. No progress payment will be made without confirmation from the General Contractor's Site Superintendent that As-Built drawings are complete and current.
2.3 Except as stated above, the final payment to Subcontractor shall be made on or about 3 days after the General Contractor is paid by the Owner. Before final payment is made to the Subcontractor, the Subcontractor shall have completed all work, that Subcontractor shall have delivered all material and/or labor releases, and waivers of hien, for itself and for all of its 'sub-contractors and suppliers, as required by this contract. That Subcontractor shall have completed all punch list items and provided all closeout documents to the satisfaction of the General Contractor and contract documents.


24 No progress payment, final payment or other payment under this Agreement shall be made without General Contractor's job superintendent's approval and uniess accompanied with properly executed labor and/or material releases on forms satisfactory to General Contractor.
2.5 As a condition to receiving or requesting any payment under this Agreement, Subcontractor agrees to furnish and deliver to General Contractor a duplicate copy of all plans, drawings, diagrams, or applications, if any, required by any law, regulation, or ordinance as a condition for obtaining a permit, which are not otherwise in General Contractor's possession; and deliver the Certificates of Insurance described elsewhere in this Agreement.
2.6 Subcontractor agrees to pay when due all valid charges for labor performed and materials used in connection with the Work of this Agreement. Subcontractor shall at all times indemnify and hold GENERAL CONTRACTOR harmless against all liability for claims and liens (whether valid, invalid or disputed) for labor performed or materials used or furnished to be used in connection with Work which is the subject of this Agreement, including all incidental or consequential damages resulting to GENERAL CONTRACTOR from such claims or liens. Futher, in the event suit on such claim or lien is brought, Subcontractor shall defend said suit at its own cost and expense, and shall pay and satisfy any such lien or judgment as may be established by the decision of the court in said suit. Subcontractor agrees within ten (10) days after written demand to cause any lien or the effect of any suit to be removed from the Project by property bonding or other means acceptable to GENERAL CONTRACTOR. In the event Subcontractor fails or is unable to do so, GENERAL CONTRACTOR is authorized to use whatever means it may deem appropriate, including, but not limited to, recording a bond pursuant to Section 3143 of the California Civil Code, to cause said lien or suit to be removed or dismissed, and the cost thereof shall be immediately due and payable to GENERAL CONTRACTOR by Subcontractor. IT SHALL BE THE RESPONSIBILITY OF SUBCONTRACTOR TO PAY ALL OF SUBCONTRACTOR'S SUPPLEERS, LABORERS, JOURNEYMEN AND SUB-SUBCONTRACTORS WHEN SUCH PERSONS HAVE RENDERED SERVICES. GENERAL CONTRACTOR has the right to request that joint checks be issued to all material suppliers, subcontractors, rental companies, whether or not they file a 20 day Preliminary Notice.
2.7 GENERAL CONTRACTOR shall be entitled to withhold from Subcontractor any payments due or to become due for work previously performed, in addition to any other remedies GENERAL CONTRACTOR may have hereunder, in the event of the following conditions; (i) Subcontractor's failure to correct improper or defective work; (ii) claims or lien claims filed, or notice given to GENERAL CONTRACTOR of claims or liens to be filed, against Subcontractor and/or GENERAL CONTRACTOR and/or the Project property on account of the failure of Subcontractor to pay for labor and/or materials; (iii) a reasonable doubt that Subcontractor can complete the Work under this Agreement for the balance then unpaid; (iv) damage to GENERAL CONTRACTOR and/or to another subcontractor or its work; (v) failure of Subcontractor's Work to pass any inspections; (vi) installation or attempted installation of an item different from that specified by this Agreement, unless approved in writing by GENERAL CONTRACTOR; (vii) failure of Subcontractor to make payments properly to its supplier and/or subcontractors; and (viii) a reasonable doubt that Subcontractor can complete the Work in a timely manner.
2.8 Final payment hereunder shall not be due until Subcontractor has delivered to GENERAL CONTRACTOR all statutory final waiver and release of tien forms referenced above, as-built plans for Subconractor's Work, and all warranties, guarantees, operating instructions and manuals for Subcontractor's Work, all as required by the Plans and Specifications.
2.9 Subcontractor agrees not to assign any monies due or to become due hereunder.

2.10 Regardless of any previous discussion on this matter, and regardless of any reference to contract price escalation in Subcontractor's, any sub-subcontractor's or any supplier's proposals or bids, GENERAL CONTRACTOR shall not be required under this Agreement or otherwise to pay escalations due to increases in labor or materials or due to any other factor. All escalation in all costs are deened to be included in the Agreement price as it appears in this Agreement.
2.11 If Subcontractor is indebted to GENERAL CONTRACTOR on any other job or for any other reason, GENERAL CONTRACTOR may offset such indebtedness against any payment earned under this Agreement.
2.12 It is understood and agreed that no payment by GENERAL CONTRACTOR to Subcontractor shall constitute an acceptance or approval of any labor or material which fails to conform to the Plans and Specifications or applicable building codes, regulations, ordinances or laws.
2.12 Subcontractor shall only use the subcontractors and suppliers submitted to GENERAL CONTRACTOR in writing within ten days from the date hereof.

## ARTICLE 3

## TIME OF COMPLETION

3.1 Subcontractor agrees to commence the work required under this Agreement within twenty-four (24) hours after notice by GENERAL CONTRACTOR to do so, to keep sufficient workers, supplies of Material, tools and equipment on the job, to prosecute the Work diligently to completion, and Subcontractor agrees not to hinder or delay the other trades in the performance of their work. GENERAL CONTRACTOR shall be the judge as to the sufficiency of the workers, suppliers or material, tools, and equipment furnished by Subcontractor.
3.2 Subcontractor agrees to complete all Work under this Agreement in accordance with Exhibit D Project Schedule. The sequencing of the wotk is to be scheduled and approved by GENERAL CONTRACTOR. It is understood that GENERAL CONTRACTOR reserves the right to change the sequencing of the work, if necessary, after approval without penalty. The Subcontractor shall satisfy the General Contractor's Site Superintendent in providing an adequate amount of workers as requested by the General Contractor to stay on the project schedule as modified by the General Contractor. If the Subcontractor does not provide an adequate work force, and if the Subcontractors suppliers delay any material, the Subcontractor shall work overtime, weekends, and shift work at the General Contractor's request and discretion and at no additional cost to the General Contractor or the Owner. In the event that the Subcontractor does not provide an adequate or additional work force to the satisfaction of the General Contractor's Site Superintendent, outside the General Contractor at the Subcontractors expense will hire work forces.
3.3 Subcontractor shall schedule its Work and the presence of its employees at the jobsite and any deliveries of equipment or materials by its supplier on such days and at such times and during such hours as may be directed by GENERAL CONTRACTOR. Subcontractor shall assume responsibility for such schedule compliance not only for its employees but also for all its suppliers and subcontractors, and their suppliers.
3.4 If in the judgment of GENERAL CONTRACTOR the Work of Subcontractor is not proceeding in accordance with the terms of this Article 3, or Subcontractor has breached any other provision of this Agreement, or should Subcontractor at any time refuse, fail or neglect to supply a

sufficient amount of skilled worker's or materials of the proper quality and quantity or cause by any action or omission, including the performance of this Agreement or Subcontractor's presence on the Project site, or the presence of its subcontractors or suppliers on the jobsite, the stoppage or delay of, or interference with, the work of GENERAL CONTRACTOR or of any other subcontractor or supplier on the Project, or cause any loss or damage to GENERAL CONTRACTOR due to failure to complete the Work by the date agreed upon between the GENERAL CONTRACTOR and subcontractor, GENERAL CONTRACTOR shall have the right to invoke any remedy against Subcontractor otherwise provided in this Agreement and sball further have the right, after giving twenty four (24) hours to Subcontractor of its breach, to proceed to have the Work of this Agreement done in the manner most expedient to GENERAL CONTRACTOR and change the cost (including any incidental expenses) thereof Subcontractor, and GENERAL CONTRACTOR shall be entitled to take possession of and use any materials, tools, equipment, plans, permits, and diagrams on the jobsite or intended for the Work and use the same for performance of the Work Subcontractor waivers any claim, demand, or cause of action against GENERAL CONTRACTOR for the loss or use of the tools, materials, equipment, plans, permits or diagrams, taken or used by GENERAL CONTRACTOR in accordance herewith. The rights of GENERAL CONTRACTOR pursuant of this Article specifically include, but are not limited to, the right to cause Subcontractor to change its job supervisor and the right to expel Subcontractor from the jobsite, to engage other help to complete the Work, and to deduct from any amounts due to Subcontractor any damages directly or indirectly sustained by GENERAL CONTRACTOR.
3.5 In the event GENERAL CONTRACTOR is required to complete the Work of Subcontractor in accordance with the provisions in the Agreement, Subcontractor agrees to reimburse GENERAL CONTRACTOR for all its costs and expenses plus an additional fifteen percent (15) of its costs and expenses as overhead in addition to such other sums as may be provided for in this Agreement.
3.6 In the event of any disagreement between GENERAL CONTRACTOR and Subcontractor as to (i) the scope of the work required under this Agreement, (ii) scheduling, (iii) pricing of Change Orders, (iv) or any other disagreement, Subcontractor will not stop working or reduce progress, but will promptly follow the written orders of GENERAL CONTRACTOR as to the performance of the work, and will continue with the prompt and diligent prosecution of the work on the Project; said dispute shall not delay timely completion of the Work or any related thereof.
3.7 If no earlier date is set forth in the Plans or Specifications or elsewhere in this Agreement, then within thirty (30) days of the execution of this Agreement, Subcontractor will prepare and submit for approval all shop drawings, details, samples, equipment data or other submittal information as required by this Agreement.
3.8 In the event of delay to Subcontractor in performing the Work from the conduct or lack of conduct of GENERAL CONTRACTOR, or the Project architect, or their officers, employees, agents or consultants; or resulting from delay or failure of GENERAL CONTRACTOR in making the site available, or in furnishing any items required to be furnished to Subcontractor pursuant to this Agreement; or resulting from any other contractor or Subcontractor on the Project; or resulting from changes to the Project ordered by GENERAL CONTRACTOR ; or resulting from (i) extraordinary conditions of weather for the area and time of year, (ii) war or national conflicts or priorities arising there from, (iii) fires beyond the reasonable control of Subcontractor, (iv) strike or other disruptions, except for the first five working days of any strike or labor disruption, or (v) any other cause beyond Subcontractor=s reasonable control (but not including delays caused by Subcontractor, subcontractors of any tier or suppliers); and for no other cause of causes, Subcontractors shall be entitled to an extension of time only in regard to the time for completion of the Work of this Agreement, and only by the amount of time Subcontractor is actually delayed thereby in the performance of this Agreement, provided notice is given as hereinafter provided. Subcontractor shall

not be entitled to any such extension of time for such delay from any such causes unless Subcontractor notifies GENERAL CONTRACTOR in writing within five calendar days of the commencement of each such cause, together with esseutial supporting data, and thereafter promptly gives written notice of the termination thereof. Subcontractor shall not be entitled to recover from GENERAL CONTRACTOR, and hereby waives any and all claims against GENERAL CONTRACTOR for increased compensation or damages which Subcontractor may suffer from any of the above causes, or any other cause, and Subcontractor further waives any and all claims against GENERAL CONTRACTOR for increased compensation or damages for any other disruption. Interference or loss of efficiency or productivity caused by GENERAL CONTRACTOR or Project architect, or their officers, agents, employees or consultants, or by other subcontractors or contractors on the Project. Further, Subcontractor agrees to indemnify and defend GENERAL CONTRACTOR against any and all claims by Subcontractor=s subcontractors and subcontractors of any their for additional compensation or damages resulting from any delays, disruptions, interferences or loss of efficiency or productivity caused by GENERAL CONTRACTOR, or Project architect, or their officers, agents, employees or consultants, or by other subcontractors or contractors on the Project.
3.9 The completion time contemplated by this Agreement anticipates a certain number of lost days due to normal weather conditions. Only unusual or extreme weather conditions for the time of year will be considered as justification for an extension of time to complete Subcontractor=s Work.
3.10 Should Subcontractor default in the proper performance of its Work, thereby causing delay to the Project, it shall be liable for any and all and damages sustained by GENERAL CONTRACTOR as a result thereof.

## ARTICLE 4

## CHANGE ORDERS

4.1 Subcontractor understands and agrees that no change orders or contract additions will be made unless agreed to in writing by GENERAL CONTRACTOR. If any additional work is performed and not covered in this contract, the Subcontractor proceeds at his own risk and expense. No alterations, additions, or small changes can be made in the work or method of the performance, without the written change order signed by the GENERAL CONTRACTOR and Subcontractor.
4.2 Upon receipt of a "Notice to Proceed" from the General Contractor, the Subcontractor shall proceed with any work within 48 hours requested by the General Contractor; Whether contract work, change related work, and or any additional work, even if pricing has not been submitted, received, or approved at the time that the Notice to Proceed was issued. If the Subcontractor does not fulfill any work requested by the General Contractor by way of a notice to proceed, In the event that the Subcontractor does not provide an adequate or additional work force to the satisfaction of the General Contractor's Site Superintendent, outside work forces will be hired by the General Contractor at the Subcontractors expense. In addition to this, any costs incurred by outside work forces will be at the Subcontractors expense. Any time lost resulting from the Subcontractor not proceeding with a Notice to Proceed from the General Contractor will result in liquidated damages of no less than $\$ 500.00$ per day or as noted in the Project Manual, which ever is greater of the two.
4.3 If the General Contractor requests any additional pricing from the Subcontractor, the Subcontractor shall provide pricing within $\mathbf{7 2}$ hours upon request. If hard pricing is not recaived and or agread upon, the General


Contractor may issue a notice to procaed to the Subcontractor. The Subcontractor shail provide unit costs, material breakdown, labor breakdown, and vendor back up for reviaw and approval. All additional work will be hard priced unless the Genteral Contractor authorizes time and material specifically on the nolice to proceed.
4.4 Labor \& Material units used in pricing change orders shall not exceed the standard labor \& material units (per task or item). All Change Items shall confirm to the General Conditions as stated in the Project Manual.
4.5 Overhead and Profit Percentage shall not exceed $10 \%$ above cost. The Subcontractor shall provide back up and break down of their own costs to the satisfaction of the General Contractor.
4.5.1 The following items are to be considered a part of the Overhead and Profit Percentage:
4.5.1.1 Home and Jobsite Office Expense, such as:
4.5.1.1.1 Management, administrative and engineering personnel.
4.5.1.1.2Office rentals, material and equipment (desks, chairs, paper, pencils, calculators, file cabinets, etc.) for jobsite office.
4.5.l.1.3 Communications
4.5.1.I.4 Reproduction
4.5.1.1.5 Travel
4.5.1. . 6 Insurance and non sales taxes (excluding insurance on field labor, and sales taxes on direct cost materials).
4.5.1.1.7 Jobsite office or trailer (including utility hook-up or connection).
4.5.1.1.8Brochures and submittals, including copies for distribution.
4.5.1.1.9Foreman job truck.
4.5.1.1.10 Shop drawing detailing costs, either in-house or contracted, when associated with a change in scope.
4.5.1.2 Hoisting (other than outlined in the basic agreement).
4.5.1.3 Scaffolding - Normal.
4.5.1.4 Small tools, standard equipment, and expendables.
4.5.1.5 Clean up.
4.5.1.6 Estimating and preparing of quotations.
4.5.1.7 Parking costs.
4.5.1.8 Contingencies.
4.5.1.9 Material storage, including associated cost such as rental of space, extra handing, protection of material, extra insurance coverage, etc.
4.5.1.10 Safety related costs.
4.5.1.11 All other non-direct costs of any kind attributable to the work, unless specifically and mutually agreed to as being an unusual condition.
4.5.1.12 Profit.

TOTAL OVERHEAD AND PROFIT PERCENTAGE WILL NOT EXCEED:
4.5.1.12.1 For additive Change Orders:
4.5.1.12.2

FOR DEDUCTIVE CHANGE ORDERS:
$\leq 10 \%>$
8


Overhead and Profit Percentage on sub-subcontractors is Imited to $5 \%$.
All Change Items shall confirm to the General Conditions as stated in the Project Manual.

## ARTICLE 5

## PERFORMANCE OF WORK

5.1 Subcontractor shall furnish and maintain in operating condition a sufficient amount of equipment, machinery, tools, and implements of the type necessary to perform the Work. Subcontractor shall not employ any tools, equipment, machinery, or other implements on the site of the Work that are not solely owned by Subcontractor, unless Subcontractor shall first obtain written permission from GENERAL CONTRACTOR. Subcontractor assumes fill responsibility for any loss or danage of any type whatsoever to its equipment, tools, machinery, and implements while in use or stored at the job site. Unless otherwise provided by written agreement between Subcontractor and GENERAL CONTRACTOR Subcontractor shall furnish, erect, dismantle, and remove any and all scaffolding, ladders, runways, staging, or other supportive or auxiliary structures or devices required to perform the Work under this Agreement at the expense of Subcontractor.
5.2 Subcontractor agrees at its own cost and expense to do all digging, back filling, cutting patching, compaction and fitting of every kind required properly to install Subeontractor's Work and to do this in a proper and timely manner. Subcontractor will pay for any expense incurred by GENERAL CONTRACTOR due to failure of Subcontractor to install its Work at the time specified by this Agreement.
5.3 Subcontractor shall furnish full-time supervision for the total duration and performance of the Work who will be under the supervision of GENERAL CONTRACTOR's Superintendent who is under the direct responsibility of GENERAL CONTRACTOR's Project Manager.
5.4 If Subcontractor desires to work overtime hours (beyond normal working hours) or holidays, during which the Project may not be represented by GENERAL CONTRACTOR, the Subcontractor is responsible for all its work and placement thereof, including accident reporting, site security, direction and inspection, as well as its own overtime cost unless it is agreed in writing otherwise.
5.5 Subcontractor shall hold at least once weekly, a safety meeting with all its field employees on this Project and turn a copy of each meeting's report into GENERAL CONTRACTOR'S Project Manager.
5.6 Subcontractor's failure to promptly report in writing to GENERAL CONTRACTOR any alleged defects in any work of another person or Subcontractor on or in which Subcontractor is to install its Work will be deemed an acknowledgement by Subcontractor that such other work is fit and proper for the reception, attachment, or covering by Subcontractor. No claim justification for alleged defects caused by any work so covered or attached will be recognized as valid or may be asserted by Subcontractor to justify any failure to perform on its part. Such failure to promptly report any such alleged defects shall be deemed to be an absolute waiver of any and all claims and SUBCONTRACOTR SHALL ACCEPT FLLL. RESPONSIBILITY FOR THE WORK WITH NO EXCEPTIONS.
5.7 Any act or omission of GENERAL CONTRACTOR which Subcontractor might claim as an excuse for its own failure to perform shall be deemed waived by Subcontractor unless it shall notify

## 9



GENERAL CONTRACTOR in writing of its intention to assert such excuse within ten (10) days after the occurrence of any such act or omission.
5.8 Subcontractor agrees to remove debris from the jobsite on a daily basis and to keep the Project property inside and outside free and clean at all times, including, upon completion of the Work, removal of all excess material, debris, and equipment. Subcontractor's failure to do so shall give GENERAL CONTRACTOR the option of removing said items at Subcontractor's own risk and expense upon twenty-four (24) hours written notices sent via fax and/or email form.
5.9 Any tests for uncovering of the Work ordered or required by any competent public authority or necessary in connection with the entire construction shall be performed and repaired at the expense of Subcontractor.
5.10 Subcontractor shall pay for any and all damage to another's work. deemed an acknowledgement by Subcontractor that such other work is fit and proper for the reception, attachment, or covering by Subcontractor. No claim justification for alleged defects caused by any work so covered or attached will be recognized as valid or may be asserted by Subcontractor to justify any failure to perform on its part. Such failure to promptly report any such alleged defects shall be deenred to be an absolute waiver of any and all claims and SUBCONTRACOTR SHALL ACCEPT FULL RESPONSIBILITY FOR THE WORK WITH NO EXCEPTIONS.
5.11 In the event that the Work performed by Subcontractor does not meet the requirements of all agencies issuing permits for, or inspecting, the Work, or such other agencies as may be listed or referenced in this Agreement, and a re-inspection is required as a result thereof, Subcontractor agrees to pay the cost(s) of such re-inspection(s) and authorized GENERAL CONTRACTOR to deduct said cost(s) from the next monies due to Subcontractor.
5.12 Subcontractor shall promptly correct all work rejected by GENERAL CONTRACTOR as defective or as faiting to conform to the Agreement documents (including, but limited to, the Plans and Specifications), whether observed before or after completion of the Work, and whether or not fabricated, installed or completed. Subcontractor shall bear all costs of correcting such rejected work. If Subcontractor, after having received GENERAL CONTRACTOR=S demand to correct defective or nonconforming work, fails to correct such condition, GENERAL CONTRACTOR may correct such condition and charge Subcontractor for all costs and expenses incurred by GENERAL CONTRACTOR, including a twenty five percent (25\%) markup for GENERAL CONTRACTOR 's overhead.
5.13 In the event of any disagreement between GENERAL CONTRACTOR and Subcontractor as to (i) the scope of the work required under this Agreement, (ii) scheduling, (iii) prior Change Orders, (iv) or any other disagreement, Subcontractor will not stop working or reduce progress, but will promptly follow the witten orders of GENERAL CONTRACTOR as to the performance of the work, and will continue with the prompt and diligent prosecution of the work on the Project; said dispute shall not delay timely completion of the Work or any work related thereof.
5.14 Should there be picketing at the Project jobsite, and should GENERAL CONTRACTOR establish a reserved gate system, it shall be the obligation of the Subcontractor to continue to supply a sufficient number of skilled workers or materials of the proper quality and otherwise to continue to prosecute the Work with promptness and diligence. Subcontractor shall notify in writing, and assign its employees, material men and suppliers, to such gates or entrances as may be established for their use by GENERAL CONTRACTOR and in accordance with such conditions and at such times as may be imposed

by GENERAL CONTRACTOR. Strict compliance with GENERAL CONTRACTOR's gate usage procedures shall be required by Subcontractor's employees, material men, subcontractor's subcontractors, and their material men and suppliers.

## ARTICLE 6

## TAXES AND PERMITS

6.1 The Subcontractor understands and agrees that he shall be responsible for all taxes, fees and expenses imposed directly or indirectly for its work, labor, material and services required to fulfill this contract. The Subcontractor is responsible for all permits pertaining to the law, ordinances and regulations where the work is performed.

## ARTICLE 7

## INSURA NCE AND INDEMNITY

7.1 Subcontractor shall maintain, at its own expense, throughout the life of this Agreement and the additional time periods specified below, the minimum types and amounts of insurance set forth below, which insurance shall be placed with insurance companies rated, at a minimum, $A A @$ by Best $=s$ Key Rating Guide and shall incorporate the provisions requiring the giving of written notice to GENERAL CONTRACTOR at least thirty (30) days prior to cancollation, non-renewal, or material modification of any policies as evidenced by return receipt of Untied States certified mail:

1. Comprehensive or Commercial General Liability Insurance, including operations, broad form property damage, completed operations, and contractual liability coverage's, with minimum limits of $\$ 1,000,000$ per occurrence and $\$ 3,000,000$ Aggregate limit. This insurance shall not have a deductible or self-insured retention in excess of $\$ 25,000$, absent written authorization of GENERAL CONTRACTOR.
2. Comprehensive Automobile Liability Insurance covering owned, hired and non-owned vehicles, with limits of not less than $\$ 1,000,000$ each accident, combined Bodily Injury and Property Damage. This insurance shall not have a deducible or self-insured retention in excess of $\$ 1,000$ absent written authorization of GENERAL CONTRACTOR.
3. Workers' Compensation Insurance as required by law, Coverage A (Statutory Benefits), and Coverage B (Employer's Liability) providing a minimum coverage for bodily injury by accident of $\$ 1,000,000$ each accident, bodily injury by disease with a $\$ 1,000,000$ policy limit, and bodily injury by disease of $\$ 1,000,000$ each empioyee. In addition, coverage must include a waiver of subrogation endorsement.

Prior to the commencement of Work under this Agreement, Subcontractor shall furnish GENERAL CONTRACTOR with certificates of insurance evidencing compliance with the foregoing requirements, and shall provide endorsements naming the GENERAL CONTRACTOR, GENERAL CONTRACTOR'S and employees as additional insured under the Comprehensive or Commercial General Liability, and the Comprehensive Automobile Liability. ISO forms CG2010B 11/85 or CG2026 11/85, or equivalents are acceptable; ISO forms CG2010A or CB2010B 10/93 or their equivalents ARE NOT ACCEPTABLE. Any form that limits coverage to "ONGONG OPERATIONS" or otherwise does not grant additional insured status under the products/completed operations coverage IS NOT ACCEPTABLE. In addition, prior to the commencement of Work under this Agreement, Subcontractor shall furnish GENERAL CONTRACTOR

with endorsements indicating the Subcontractor's insurance shall be primary coverage and that GENERAL CONTRACTOR'S insurance shall be excess and noncontributory with regard to claims allegedly caused by, arising out of or relating to Subcontractor's acts or omissions, and providing that thirty (30) days' prior notice shall be given GENERAL CONTRACTOR in the event of cancellation or modification of Subcontractor's coverage's.

All of the coverage's forms must be acceptable to GENERAL CONTRACTOR. If requested by GENERAL CONTRACTOR, Subcontractor shall provide certificd copies of all such policies to GENERAL CONTRACTOR within thity (30) days of such request. GENERAL CONTRACTOR reserves the right to require Subcontractor to name additional parties in interest to be additional insured. If any Subcontractor fails to secure and maintain the required insurance and provide the required certificates of insurance and endorsements, GENERAL CONTRACTOR will not process any payments.

The requirements under this Article 7 shall not in any way affect Subcontractor's defense or indemnification of GENERAL CONTRACTOR and Manager pursuant to this Agreement, nor reduce any of Subcontractor's other obligations under this Agreement. Subcontractor's insurance obligations hereunder shall survive the expiration or earlier termination of this Agreement.
7.2 Subcontractor shall indemnify, defend and hold GENERAL CONTRACTOR , the Manager and any subsidiary, parent or affliate corporations of GENERAL CONTRACTOR, and all of their directors, officers, and employees (collectively All indemnitiese) harmless from all losses, claims, liabilities, injuries, costs and expenses that Indernnities may incur by reason of any injury or damage sustained to any person or property arising out of or occuring in connection with Subcontractorms alleged or actual acts, errors or omissions or the alleged or actual acts, errors or omissions of any subcontractor of any tier or any other person directly or indirectly employed by them or any of them, while engaged in the performance of the Work, or any activity associated therewith or relative thereof. Subcontractor=s duty to defend and indemnify Indemnities shall exist if the alleged injuries or damages sustained by the claimant are the result in part of Indemnities active or passive negligence, but the duty to defend and indemnify Indemnities shall not extend to injuries or damage that are the result of Indemnities sole negligence or willful misconduct. Subcontractor=s duty to defend is separate and distinct from the duty to indemnify and shall immediately arise when a claim is asserted against Indemnities in connection with the performance of Subcontractor, or those for whom Subcontractor is liable, in connection with this Agreement, and regardless of whether others may owe Indemnities a duty of defense and/or indemnity. The indemnity rights and obligations identified in this Agreement shall be, and are, the only indemnity rights and obligations between the parties, in law or equity, arising out or related to this Agreement and the Project or any claims asserted in relation thereto.

## ARTICLE 8

## WARRANTY

8.1 Except as provided herein and by the California Civil Code to its maximum extent, Subcontractor shall warranty all labor, materials and equipment furnished on the project for One (1) year against defects in workmanship or materials utilized. The manufacturer's warranty will prevail. Subcontractor's warranty for defective construction shall last for the maximum period provided by law.
8.2 In the event that the project specifications require an extended warranty, the subcontractor shall comply with the project contract documents.


## HAZARDOUS MATERIALS, WASTE AND ASBESTOS

9.1 Both parties agree that dealing with hazardous materials, waste or asbestos requires specialized training, processes, precautions and licenses. Therefore, wiless the scope of this agreement includes the specific handling, disturbance, removal or transportation of hazardous materials, waste or asbestos, upon discovery of such hazardous materials the Subcontractor shall notify the GENERAL CONTRACTOR immediately and allow the GENERAL CONTRACTOR to contract with a properly licensed and qualified hazardous material.

## ARTICLE 10

## ARBITRATION OF DISPUTES

10.1 If there is any dispute between the parties concerning this contract or the performance thereof, the parties agree to submit the dispute to binding arbitration with a mutually agreed arbitrator or JAMS. Once a party commences arbitration, the arbitrator or JAMS shall inform the other party of the arbitration, giving the other party an opportunity to respond pursuant to JAMS rules. If the other party fails to respond, JAMS shall consider that party to be in default and shall immediately set an arbitration proceeding so that the party initiating the arbitration can prove up damages. The party failing to respond (the defaulted party) may not participate in the hearing. If either party fails to contribute its share of fees demanded by the arbitrator or JAMS, the party failing to contribute said fees shall be immediately defaulted. The defaulting party shall not be entitled to attend the arbitration hearing and said arbitration hearing shall proceed pursuant to a normal default prove up. Any arbitration shall be held at Palm Desert Califomia.

ARTICLE 11

## ATTORNEY FEES

11.1 In the event of any arbitration or litigation relating to the project, project performance or this contract, the prevailing party shall be entitled to reasonable attorney fees, costs and expenses.

ARICLE 12

## MISCELLANEOUS PROVISIONS

12.1 Integrated Agreement. This Agreement constitutes the entire agreement between GENERAL CONTRACTOR and Subcontractor with respect to the matters covered hereby. All prior negotiations, representations and agreements with respect hercto not incorporated herein are hereby canceled. This Agreement shall be modified or amended only by a written document duly executed on behalf of the parties hereto. GENERAL CONTRACTOR and Subcontractor shall both be deemed to have participated in the drafting of this Agreement; bence, in the event any provision of this Agreement is deemed to be ambiguous, it shall not be constructed against either party,
12.2 Compliance With Laws. Subcontractor shall observe and abide by and perform all of its obligations hereunder in accordance with all applicable laws, rules and regulations of all govertmental authorities having jurisdiction.

12.3 Captions and Titles. The captions of sections, divisions, articles, paragraphs, subparagraphs, clauses and the tike in the Agreement (including docunents incorporated by reference into this Agreement) are for convenience only and shall in no way define the content or limit the meaning or construction of the wording of the sections, divisions, articles, paragraphs, clauses and the like.
12.4 Governing Laws, Severable Provisions. If any section, paragraph, subparagraph or clause of this Agreement shall be found by a court of competent jurisdiction to be void, unenforceable, or to be of such effect as to render this Agreement illusory, that section, paragraph, subparagraph or clause shall be deemed to be separable from the rest of the Agreement, and shall in no way render the remaining terms of the Agreement void or unenforceable, or render the Agreement illusory. The laws of the State of Califomia shall govem this Agreement.
12.5 Discrepancies. In the event of a discrepancy between any provisions of this Agreement (including documents incorporated by reference into this Agreement), the most stringent requirements for the execution of the Work shall apply.
12.6 Bonds. Subcontractor shall, at any time requested by GENERAL CONTRACTOR (including after Subcontractor=s commencement of Work under this Agreement), obtain and thereafter at all times during the performance of the Work maintain, a performance bond and a labor and material bond, each in form and obtain such bonds at the lowest cost to GENERAL CONTRACTOR ,
12.7 Independent Contractor. The Work shall be performed by Subcontractor as an independent contractor at its sole risk, cost and expense.
12.8 No Third Party Beneficiaries. Nothing contained in this Agreement shall be deemed to create any third party contract rights in Subcontractor or any subcontractor, supplier or other provider of labor, services, materials or equipment under this Agreement.
12.9 Assignments and Subcontracts. Except with the express written consent of GENERAL CONTRACTOR Subcontractor shall not assign, subcontract or otherwise transfer any of its obligations hereunder. This Agreement shall inure to the benefit of, and be binding on, the parties hereto and their respective successors and assigns.
12.10 Waiver. No waiver, express or implied, by either party to this Agreement of any term or provision in this Agreement, or any breach or default by the performance of any obligations hereunder, shall be deemed or constructed to be a waiver of any other term or provision in this Agreement. Failure on the part of any party hereto to complain of any act or failure to act of the other party, or declare the other party in default hereunder, irrespective of how long such failure continues, shall not constitute a waiver of the rights of such party hereunder. Inspection or failure of GENERAL CONTRACTOR to perform any inspection heretunder shall not release Subcontractor of any of its obligations hereunder.
12.11 Knowledge. By the signing of this Agreement, Subcontractor acknowledges that Subcontractor has read and understands this Agreement, has inspected the Project jobsite, has examined and understands the Plans, Specifications, Addendums, and bid RFI'S, is familiar with all the laws, regulations, codes, ordinances, and rules pertinent to its Work and agrees to install its Work in the manner requested by public or public utility having jurisdiction thereof, and the location and manner required by public or private authority, and public utility for connection of service to its Work without any additional cost to GENERAL CONTRACTOR.


## EXHIBIT "A"

## SCOPE OF WORK

The intent of this contract is to provide complete Pool and Splash Deck System from rough to finish. Including but not limited to all shop drawings, engineering, submittals, lay out, excavation, reinforcing steel, plumbing, electrical, gunite, concrete, tile, water proofing, plaster, coping, decking, mechanical.
This work includes all specific reference to Specification Sections:

## All Plans / All Specifications / All Addendum 1, 2, A, B, C

Including but not limited to sections:
131111 Pool General
Requirements
131153 Swimming Pool Special Equipment
131154 Swimming Pool Equipment
131160 Pool Electric Work
312316 Excavation
031000 Concrete Forming and Accessories
032000 Concrete Reinforcing
033713 Swimming Pool Shotcrete
071614 Pool Cementitious Waterproofing
092227 Swimming Pool Plaster
093800 Swimming Pool Tile

Subcontractor shall visit the site and become familiar with the existing conditions and the physical condition of the site. Subcontractor shall examine and fully understand the Contract Documents and all other exhibits, attachments, engineering reports, soil reports, special studies, and existing conditions to the extent necessary to perform the Work.



## EXHIBIT "B"

## STANDARD INCLUSIONS

(Between General Contractor \& Subcontractor)

1) All work to be done in accordance with the SCAQMD Rule 403 "Dust Control" and SWPPP.
2) All work to be in compliance with all current federal A.D.A. regulations.
3) Subcontractor's manpower will be made available for miscellaneous work as needed by GENERAL CONTRACTOR to not exceed his cost plus fifteen percent ( $10 \%$ ) overhead and profit. Back up verifying Subcontractors cost will be provided to the General Contractor with every Change Order Request.
4) Subcontractor's project superintendent will be available to GENERAL CONTRACTOR for daily project walk thru's reviews and inspections. (Time to be determined by GENERAL CONTRACTOR).
5) A full-time qualified supervisor will be required at the job site, whenever the subcontractor has employees on the project to coordinate with GENERAL CONTRACTOR and other sub-trades.
6) Copies of Material Safety Data Sheets (MSDS) must be supplied to the jobsite superintendent before delivering and material that may be hazardous, in any way, to any person working or occupying the area where material is to be used or stored.
7) Subcontractor will be responsible for all required inspections, including scheduling and inspector relations. Subcontractor will inform GENERAL CONTRACTOR of the date and time of all inspections so that GENERAL CONTRACTOR, at their option, may be present, Subcontractor will notify GENERAL CONTRACTOR 48 hours prior to requested inspections and Subcontractor's representative will be available for walking the job with inspector.
8) Management personnel, as well as the project superintendent, for the subcontractor will attend weekly jobsite meetings at GENERAL CONTRACTOR 's request. Each Subcontractor is entirely responsible for his own Safety Meetings. Copies of these mesting notes will be forwarded to GENERAL CONTRACTOR'S superintendent on a weekly basis.
9) Subcontractor's delivery times and staging of all material and equipment will be coordinated with GENERAL CONTRACTOR'S superintendent.
10) Subcontractor shall be responsible for all Cal-Osha requirements, permits, policies, rulings, permit costs, applications, fees, inspections, and penalties if any, related to their trade or work.
11) Temporary power and sanitation facilities to be provided by GENERAL CONTRACTOR unless otherwise noted in this agreement or the project specifications.

12) Subcontractor will provide the GENERAL CONTRACTOR's Site Superintendent with copies of their daily reports DAILY, weekly safety meetings EACH FRIDAY, and any and all accident or incident reports DALLY. All accidents or incidents must be reported to GENERAL CONTRACTOR immediately.
13) Subcontractor to perform clean up of their work on a daily basis, to GENERAL CONTRACTOR'S satisfaction, including all haul off and/or, at GENERAL CONTRACTOR 's option subcontractor will take part in GENERAL CONTRACTOR 's participation in recycling at which GENERAL CONTRACTOR will schedule haul off and back charge to subcoatractor.
14) Subcontractor shall coordinate their work with other subtrades, adhering to GENERAL CONTRACTOR'S project schedule.
15) Subcontractor to furnish GENERAL CONTRACTOR, GENERAL CONTRACTOR'S representatives, and any of GENERAL CONTRACTOR'S other subcontractors with the right to ingress and egress.
16) It is to be understood if Subcontractor desires to work odd hours (beyond nomal working hours) or holidays whereby the project may not be represented by GENERAL CONTRACTOR or GENERAL CONTRACTOR'S representatives, then Subcontractor is responsible for all his work and placement thereof, including but not limited to accident reporting, site security, supervision, inspections, and all incurred overtime cost.
17) Subcontractor shall fumish to GENERAL CONTRACTOR (1) complete set of As-built Drawings, showing material types, location, and elevation of all the Subcontractors related work. These drawings shall be in sepia or auto-positive form and approved by GENERAL CONTRACTOR. Final payment shall not be released until said drawings have been received and approved by GENERAL CONTRACTOR.
18) It is the Subcontractor's responsibility to report any and all substandard work, material or improperly constructed work by others before Subcontractor commences his work under this subcontract. If Subcontractor fails to report such situation, Subcontractor will be held responsible to redo his portion of the work.
19) Subcontractor shall comply with the terms \& conditions on all components of the building systems:
A) Subcontractor warrants that all components of the building systems will function one (1) year from the day the Notice of Completion is filed. Said building systems shall function without abnormalky, interruption or delay.
B) Subcontractor shall immediately cure and rectify, to the satisfaction of GENERAL CONTRACTOR, General Contractor or any tenant, and defects, which result in abnormal or interrupted function of said building systerns.
20) All materials and installations are to confonm to the contract documents, all applicable codes and the requirements of any regulatory agencies having jurisdiction. This contractor is responsible for all contract document information in the preparation of shop drawings. If there are conflicts, shop drawings shall highlight this discrepancy with a recommended solutiont.

21) The GENERAL CONTRACTOR must approve key personnel assigned to the project. Such key personnel shall not be romoved from the project without approval from GENERAL CONTRACTOR.
22) At the request of the General Contractor, change order pricing shall be broken out by activity and showing the cost of materials, labor and equipment.
23) Backfill,-compaction, concrete encasements, import and/or export of soils as required by the General Contractor.

EXHIBIT "C"

## PLANS, SPECIFICATIONS \& ADDENDUMS

THE SUBCONTRACTOR IS NOT PERMITTED TO CONTACT THE ARCHITECT, ENGINEER, OR ANY OWNER'S REPRESENTATIVE WITHOUT EXPRESS PREMISSION FROM THE GENERAL CONTRACTOR. ALL QUESTIONS ARE TO BE DIRECTED TO THE GENERAL CONTRACTOR.

Architect: DLR GROUP WWCOT

## Engineers:

Civil: MSA Consultants Inc.
Structural: BG Structural Engineering Inc. MEP: MRC Enginecring Inc.
Landscape: RGA Landscape Architects Inc.
Aquatics: Rowley International Inc.
Plan Title Page dated: 11/22/10 (City of Desert Hot Springs Stamped)
Project Specifications Title Page dated: 4/25/2011

## Addendams:

1 dated 5/10/2011
2 dated 5/19/2011
A dated 2/3/2011
B dated 2/9/2011


C dated 2/11/2011
*Federal Labor Standards Provisions (4 page attachment-included in this Agreement and to be recognized as part of this Agreement)

As provided at bid time and with this contract

EXHIBIT "D"
PROJECT SCHEDULE (Forthcoming from DWC)

## SUBCONTRACTOR'S AGREEMENT PREAMBLE AND SUMMARY

Contract \#
BASIC PROVISIONS

This Subcontractors Agreement ("Agreement") is executed to be effective on June 25th, 2011 between Doug Wall Construction, lnc ("Wall") and Pacific Custom Pools, Inc.
("Subcontractor"). Defined terms are shown in boldface type when tirst used and first defined. Definitions are in the attached General Provisions. While Subcontractor is referred to herein as a ASubcontractore, it is acting in effect as a general contractor to Wall for its scope of work hereunder. Wall and Subcontractor agree as follows:

1. Description of Work and Contract Price: Subcontractor agrees to perform the following Work per the Entire Agreement and has briefly described below:
(a) Project

City of Desert Hot Spungs Community Wellness Center
(b) Trade Description / SOV:

Spray Ground
dwc Cost Code 1116
$\$ 242,264.00$
Swimming Peols
DwC COST CODE 1340
\$622,780.00

(c) Scope of Work: Per exhibit A \& B

131111 Pool Genera:
Requirements
131153 Swimming Pool Special Equipment
131154 Swimming Pool Equipment
131160 Pool Electric Work
312316 Excavation
031000 Concrete Forming and Accessories
032000 Concrete Reinforcing
033713 Swimming Pool Shotcrete
071614 Pool Cementitious Waterproofing
092227 Swimming Pool Plaster
093800 Swimming Pool Tile
(d) Contract Documents: Per exhibit C\& D
(e) Contract Price: $\quad \$ 865,044,00$
2. Billing Schedule: Pencil draft 15th of each month
3. Disbursement Schedule: Distributed within 72 hours after payment is received by Owner
4. Retention: Retention Percentage: $10 \%$ of Contract Price
5. Liquidated and Delay Damages regarding FE and CO documents:
$\$ 100.00$ per calendar day on all front end (FE) documents, including submittals after the 14th day from receiving Subcontract Agreement Notification. Close out (CO) documents, including as-builds, will be required within 10 days of request by General Contractor. $\$ 500.00$ per calendar day for projects delays. The General Contractor will determine project delays. The

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General Contractor will issue a schedule and update it progressively throughout the project. The General Contractor will dictate durations for the Subcontractor to comply with for each work scope category. Failure to comply with the General Contractor resulting in delays will result in liquidated damages whether or not the Owner imposes them.
6.
7. Performance Bond: (Check One)
$\underline{X} \quad$ Performance bond waived
Wall's Initial
Amount of performance bond (if different than Contract Price): N/A \$
8. Labor and Materials Bond: (Check One) $\qquad$ Labor and materials bond waived X
Amount of labor and materials bond (if different than Contract Price): N/A \$ $\qquad$
SECTIONS $8,9,10,11,12,13$ TO BE COMPLETE BY SUBCONTRACTOR
9. Subcontractor Authorized Personnel Names \& Phone Numbers:


Contact Billing:

10. Subcontractor's License Numbers:
contractors: ${ }^{A} B_{1}, 053 C 27817244$ State: CA
City License:TBD City:
11. Subcontractor's Insurance Carriers:

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Subcontractor Insurance Carries.


Contact Site Formant:
$T B D$
Contact Project Manager:
James Barge

Expiration: $6 / 30 / 2012$
Expiration:


Liability: Navigators
Automobile: STate Baum
worker's comp: Coatis

Expiration: $3 / 9 / 12$
Expiration $8 / 23 / 11$
Expiration: $3 / 17 / 12$
12. Subcontractors Legal Status: (check ope)

Subcontractor is a


State $\qquad$
Partnership ___ Sole Proprietorship $\qquad$

If a Corporation, name (s) of principal officers:

If a Partnership, or Proprietorship, names(s):

Federal I.D. Number:
Social Security Number:

$$
953779764
$$

13. Business Address and Address for Notices:

Business Address:
$205 N \cdot V i n e d o ~ A u e ~ P a s a d e n e ~$
Business Phone:

$$
626-7453400 \times 203
$$

Customer Service No:

Mailing Address:


Fax No:

$$
6267954003
$$

Emergency Phone:

Cell Phone: $626-6254000$
14. List of Subcontractor's Material and Equipment Suppliers regarding this project:



Business Address: He N. Vinedo Ave Mailing Address: SAMLE pasadena CA 91107
Business Phone: $626795-3400 \quad$ Fax No.: 626795.4003

SIGNATURES FOR SUBCONTRACTOR'S AGREEMENT

This Agreement consists of the foregoing Basic Provisions and the following General Provisions. If there are any inconsistencies between the Basic Provisions and the General Provisions the General Provisions shall prevail.

Doug Wall Construction, Inc. Signature

William Butler
Printed Name


Signature

Project Manager
Title


Subcontractors Signature


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## Federal Labor Standards Provisions

## U.S. Department of Housing and Urban Development - Office of Labor Relations.

Previous editions are obsolete Page 1 of 5 form HID-4010 (00/2009) ref. Handbook 1344.1 Applicablilty

The Proied or Program to which the construction work covered by this contract pertains is bolng essisted by the United States of America and the following Federal Labor Standards Provisions are Included in this Contracl pulsuank to the provislons applicable to such Federal assistance.
A. 1. (t) Minimum Wagas, All laborers and mechanics employed of working upon the slle of the work, will be pald uncondittonally and not lass ofton than once a weak, and wilhout subsequent daduction ar rabato on any account (except such payroll deductlons as are permitted by regulations issued by the Secretary of Labor under Ltis Copeland Act (29 CFR Pan 3), the foll amount of wages and bona fide foinge benefts (or cash aqukalants thareof) due at time of payment computed at rates not less than those confalned In the Wage delermination of the Secretary of Labor which is attechad hereto and made a pert hereof, regandless of any contractual relationshit whloh may bo alleged to exist between the contractor and such laborers and mechanlos. Contributions made or costs reasonably anticlpaled for bona fide frige benaflts under Section l(b)(2) of the Davls-Bacen Apt on behalf of laborers or mechankes are coralderad weges pald to such laborers or mechanjes, subject to the provisions of 29 GFR $5.5(a)(1)(1 v)$; alsa, regular contributlons made or costs incurred for more than a weekly perlod (but not less often than quarterly) under plans, funds, of programs, which cover the particular weakly pariod, are deemed to be constructively made or incurred during such weekly pertod.
Such laborers and mechanics shall be paid the approprlate wage rate and fringe benofits on the wage detemination for the claseification of work actually performed, without regard to skill, except as provided in 29 CFR 5.E(a)(4), Laborera or machanics performing work in more than one classiffcation may be compensaled al the rate specifed for each classification for the then ectually worked thareln: Provided, That the employer's payroll records accurately sat forth the lime spent in each classlicelion in which work lo parfomed. The wage detemfnation (including any additional classification and wage tatas confonnod uhder 29 CFR $5.5(\mathrm{a})(\mathrm{i})(\mathrm{B})$ and the Dav/s-Bacon postor ( $\mathrm{NH}-1321$ ) shatl be posted at all times by the contractor and Its subconlractors at the sfe of the work in a prominemt and accesslble, place where it can be easily seen ty the workers.
(ii) (a) Any class of laborers or mechanics whlch is not listed in the wage determination and which is to be employed under the contract shall be classified In conformance with the wage determinatlon. HUD shall approve an add|flonal classlficallion and wage rafe and filnge benefls therefore only when the following criterla have been mat:
(1) The work to be perfomed by the classification requestad is not performed by a classification in the wage determinallon; and
(2) The classlifation is utilized in the area by the construction Industry; and
( 3 ) The proposed wage rate, Including eny bona fide finge benalits, bears a reasonable relationshlp to the wage rates contalned in the wege delernination.
(b) If the contractor and the laborers and mechanles to be employed In the classfication (If known). or thelr representatives, and HUD or lis designe agree on the classffication and wage rate anciuding the amount deglgnated for fringe benafits where approprlate), a raport of
the action taken shall be sent by HUD or lts deslgnee to the Admintsirator of the Wage and Hour Divtslon, Employment Standards Adminiatratlon, U.S. Department of Labor, Washington, D.C. 20210, The Adminlairator, or an authorized represantative, will aporove, modily, or disapprove evary eddtitional casslifation actlon withln 30 days of recelipt and so advise HUD or lte deslgnee or will notly HUD or lts designes withln the 30 -day perlod that addiltonal time ls necassary. (Approvad by the Offlce of Management and Budget under OMi control number 1215-0140.)
(c) In the bvent the contractor, the laborers or mechanias to be employed In the classificestion or thelr representatlves, and HLD or its daslgnee do not agree or the proposed classification and wage cate (Including the emount daslgnated for frlmge benefis, where appropriate), HUD or the deslgnee shalt refer the questlons, including the verss of all interested parties and the recommendation of KUD or ita dealgnee, to the Adrnintatrator for detarminatlon. The Administrator, or an authorized represantatlva, wil] lssue a determination withln 30 daye of recolpt and so advige HUD or tis degignee or will notify RUD or fts destgnea within the 30-day period that additional tme is necessary. (Approved by the Office of Memagement and Budget under OMIE Control Number 1215-0140.).
(d) The wage rate (Including finge benelts where appropiate) datermined pursuant to subparagraphs (1)(B)(b) or (D) of thls paragraph, shall be pald to all workers pertorming work in the classification under thls contract from the first day on which work is parformed in the classiflcatlon.
([II) Whenever the minimum wage rate prescribed In the contrad for a class of laborers or mechandes Includes a fringe benate whlch is not expreased as an hourly refo, the contracior shall ether pey the beneflt as slated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equlvalant thersol.
 parson, the contractor maly conslder as of the wages of any laborer or mechanic the amount of any costs reasonably anlicipated in provlding bons flde tringe beneftle Undar a plan or program, Provided, That the Secretary of Labor has found, upon the writen requast of the contractor, that the applicable standards of the Davis-Bacon Act have baen met, The Seoretary of Labor may requre the contractor to get salda in a separate accounk assats for the meating of obligations under the plan of program. (Approved by the Office of Management and Budget under OMB Control Number 1215-014C.)
2. Withhalding. HUD of tis deslgnee shall upon its own action or upon willen raquest of an authorized representalive of the Deparment of Latar withhold or cause to be withheld from the contractor under this contract or any other Faderal contratd with tha sama prima contrector, or any other Faderally-asslated contract subject to Davis-Bacon pravaling wage requiraments, whlch is heid by the same prime contractor so much of the accrued payments or advances as may be considered nacessany to pay laborars and machanlos, indudny apprantless, tralne日e and halpers, employed by the contractor or any subcontractor the full amount of weges required by the contract. In the event of failure to pay any laborer or mechanle, lnoluding eny apprantlog, tralnae or halper, employad or working on the slte of the wark, all or part of the wages requiled by tise eontract, HuD or lts. destgnee may, after withen notice to the contractor, eponsor, appicieant, or owner, take such action as may be necassary to cause the suspenslon of any further payment, advance or guarantee of funds untll such volations heve caased. HUD or its designes may, after writien notice to the contractor, elsaburse such amounts withheld for and on account of the conlfactor or subscontractor to the reapacthe employeas to whom they are due. The Comptrolter General shall make such disbursements in the cass of direet Davis-Bacon Act contracts.
3. (1) Payrolls and basle records. Payrolls and baste records releting thereto shall be maintained by the coiftractor duiling the course of the

# Federal Labor Standards Provisions 

U.S. Department of Housing and Urban Development-Office of Labor Relations.

Previous editions are obsolete Page 1 of 5 form HUD-4010 (06/2009) ref. Handbook 1344.1 Applicabillity

The Profeci or Program to which the construction work covered by thls conirect pertaling is being asslsted by the United States of Americe and the following Federal Labor Standards Proulslons. are Included in this Coniract pursuant to the provislons appilcable to such Federal bssistance.
A. 1. (II) Minimum Wages. All laborers and mechanies employed or working upan the sitte of the wark, will be paid uncondiflonally and not lass often than once a weak, and whlhout subsequent deduction or rebate on any account (except such payroll deduttlons as are permilthed by regulalions issued by the Secretary of Labor under the Copeland Act (29 CFR Part 3), the full amcunt of wages and bona fide Fringe benofits (or cash equivalents thereof) due at tlime of payment computed at rates not less than those contanned in the wage determinallon of the Secretary of Labor which ls attached herefo and made a part heraot, regardiless of any contractual relatlonghip which may be allaged to ex|st between the contractor and such faborers and mechants. Contributions mada or costa reasonably antlifipated for bone fide fringe banefits unier Sectlon (b)(2) of the Davis-Bacon Act on behalf of laboress or machanics are congiderad wages pald to such laborars or mechanles, subject to the provislong of 29 CFR $5.5($ a) (i) (w); also, reguiar conitributlons made or coste incurred for more than a waekly pariod (but not lass often than quartarly) under plans, funds, or prageams, which cover the particular weekly perlod, are daemed to be constructivaly made or Incurred during such weekly pariod.

Such laborers and mechanles shall be paid the appropriate wage rate and finge benefits on the wage determination for the classlification of work actually performed, without regard to skill, except as provided in 29 CFR 5.5 (a) (4). Laborers or mechaniles pertorning work in more than onie classification may be compensated at the rate spectifed for sach classification for tha time actually worked thereln: Provldad, That the employer's payroll records accurately sal forth the time spent in each classification in which work fa performed. The wage determination (Inoluding any additionat classilication and wage rates conformed under 29 GFR $5.5(\mathrm{~F})(1)(\mathrm{II})$ and the Davle-Bacon postar (NH-1321) shall be postad at ail times by the conifractor and lis suboonifactors at the stite of the work in a prominent and accassible, place where it can be exally seen by the werkers.
(II) (a) Any class of laborers or mechanlics whileh la not llsted in the wage detemination and which is to be employad under the coniract shail be classfiad in conformance with the wage determinallon. KUD shall approve an additional classlification and wage rate and fringe beneflis therefore only when the following crifarla have been mat'
[1) The work to be performed by the classification requested is not performed by a claselfication in the wage determineilon; and
(2) The classification is utilized in the area by fhe construction Industry; and
(3) The proposed wage rate, including any bona fide finge beneils, bears a reasonable relationshlp to the wage tates containad In the wage daterminatlon.
(b) If the conliractor and the latorers and mechanics to be employed in the classifealion (if Known), or their rapresentatives, and HUD or its designae agree on the classification and wage rate (|nelucing the amount designatad for finge benefils where appropratate, a report of
the action taken shall be sent by FHJ or its designee to the Administrator of the Wage and Hour Diwlion, Employment Standards Adminlatration, U.S. Department of Labor, Wasilngton, D.C. 20210. Tha Adminnatiator, or an zuthorized representalve, will approve, modify, of disapprove every additional elassification betlon within 30 days of recelpi and so adylse HUD or its designee or wilf notlify HUD or lts designee within the 30 -day perlod that additional time is racessary. (Approved by the Offlce of Mangermant and Budget under OMB control number 1215-0140.)
(c) In the event the contractor, the taborers or mechanlas to be amployed in the clessificalon or thelr representatives, and HUD or its deslanes do not agrae on the proposed classlifation and wage rate (Including the emount debignatod for firinge benefts, where appropilate), HUD or lis deslgnes ahall refer the questlons, Incilding the vews of all interested partise and the recommendetion of FUD or LEe desjanes, to the Administrator for detarmination, The Adrnindsutar. or an authorized feprasentative, will tissue a detarmination whilin 30 daya of racsipt and so advise HUD or ils designee or will notlis HUD or tits designee withln the 3 D -day period that additional time is nacassary. (Approved by the Office of Managemant and Bucget under OMB Control Numbor 1215-0140.)
(d) The wage rate (Including finge benafts whers appropiate) determined pursuant to subparagraphs (1)(i)(b) or (o) of this paragraph, shall be pald to all workers parforming woik in the classification under this contract from the fral day on which work is perfomed in the classification.
(lii) Whenever the minimum wage rate prescrited in the contrat ior a clabs of taborers or macherics thedudes a fringe benefit which is not expreased as an hourly rate, lhe centracor shall either pay the benefit as stated in the wage detembination or shall pay enother bona fide finge benefit or an houriy cesh equlvationt thereof.
(iv) If the contractor does nol make payments to a trustee or other third person, the contractor may consder as of the wages of any laborer or machanic ine amount of any cosis reasonably anivicipated in providing bona fide finge beneilits undar a plan or program, Provided, That the Secretary of Labor has found, upon the written request of the contractor, that the eppilicable standards of the Davis-Bacon Acd have besn met. The Secretary of Labor may requlfe the contractor to sel asalde in a saparate account assets for tha mesting of obllgations lindar the plan or prodrem. (Approved by the Office of Menagemerd and Budget under OME Control Number 1215-0140.)
2. With holding. HUD or its dasignee ahall upon fis own actlon or upon writen request of an athorized rapresaritilve of tha Dapartment of Labor withhold or ceuse to be withheld from the contractor under thls cantract of any othar Fexteral contreat with the seme prime contractor, or any other Federaily-assisted contract subject to Davis-Eacon prevailing wage requiremants, which is hald by the seme prime contractor so much of the accrued payments or advances as may be considered necesgary to pay laborers and mechanics, Induding apprentices, fralnees and helpers, employed by the contractor or eny subcontractor tha full amount of weges required by the contract. In the avent of tallure to pay any faborar or mechanic, including any apprantice, trainee or helper, employad or working on the site of the work, all of pert of the wages requlred by the conlract, HID or its. deslgnee may, after witten nollea to the contractor, sponsor, applicant, or owner, tako auch acton as may be necessary to cause the suspension of any further paymant, gdvance, or guarantes of funds until such victallons have ceased. HUD or Its deslenees may, after written notlce to the contracter, dlaburse such amounts withheld for and on account of the contractar of subcontractor to the tespective employeas to whom thay are due. The Comptroller General shall make such digbursements in the case of direct Davls-Sacon Aci contracis.
3. (i) Payroils and basle records. Peyrolls and busle records fatating thereto shall be maintained by the contuactor during the course of the
work and preserved for a period of three yaars thereatter for alf laborers and mechanics working at the site of the work. Such records shall contain the name, addrass, and soctal sacurity number of each such worker, his or her corract dasstrieation, hourly ralas of wages pald fincluding rates of contributions or costs anlicipeted for bona fide fringe benefits or cash equlualents thereof of the typee dascríaed to Section I(b)(2)(B) of the Davls-bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenaver the Secretary of Labor has found under 29, CFR 5.5 (a)(1)(iv) that the wages of any laborer or mechanic include the amount of any eosts reasonably antictpated in providing beneffas under a plan or program described $\pi$ Seclion $(\mathbf{b})(2)(B)$ of the Davis-Bacon Act, the contractor shall maintaln records which show that the commiltment to provide such banefits is enforceablo, that the plan or program is finanalalily resporssble, and that the plan or program has been commumicated lo writing to the laborers or mechanics affected, and records which show the cosis antielpated or the actual cost incurred in providing such benefits. Contractors employing apprentloes or tralnees under approved programs shall maintaln witten evidience of the reglatration of apprenticeship programs and cartifcation of trainee programs, the registratlon of the apprentices and traneess, and the ratlos and wage rales prascribed in the appllcabls programs. (Appraved by the Offlce of Management and Budget under OMB Control Numbers 1215-0140 and 1215-0017.)
(il) (a) The contractor shall submil weekly for each weak in which any contrad work is perfomed a copy of alt payrolls to HUD or its designee if the agency is a party to the contract, but if the agency la not such a party, the contractor will submit the payrolls to the applicant sponsor, or owner, as the case may be, for transmission to HUD or lis designee. The payrolls subinitted shall eet out accurately and complately all of the information required to be maintained under 28 CFR $5.5(\mathrm{a})(3)(\mathrm{l})$ axcept that full social sactrity numbers and homs addrasses shall not be includad on weakly transmittale. Instead the payrolls shall only need to include an Individually dentifying number for each employee ( 0.9 ., the last four diglts of the amployee's social security numbert. The required weekly payroh infomation may be submitted in any form dealred. Optlonal Formi WH-347 is avallable for thls purpose from the Departmant of Labor Wage and Hour Divislon Web site: uwndolaov/esolwhdiforms of its successor site. The pilme contractor is responslble for the submission of coples of payrolis by all subcontrators. Contractors and subeontrectors shall malntain the full soclal securly number and current address of asch covered worker, and shall provide them upan request to H:UD of tta deslanee if the agency is a party to the contract, but if the agency is not such a party, the contractor will submill the payrolls to the applicent sponsor, of owner, 88 the cess may be, for Iransmission to HUD or lls designee, the contrector, or the Wage and Hour Division of the Depertment of Labor for purposes of an investigation or audilt of compliance wilh prevalling wage requlrements. it is not a violation of this aubparagraph for a prime contractor to requite a subcontractor to proylde addresses and accial eecually numbers to the prime conitector for ths own records, without waeldy stibmisalon to HUD or lis designee. (Approved by the Offlea of Management and Eudget undar OMB Control Number 1215 0149.)
(b) Each payroll submitted shall be accompanted by a "Statement of Compliance, slgned by the contractor or subcontractor or hls or her agent who pays or supervises the payment of the persons employed under the cantract and shell catify the following:
(1) That the payroil for the payroll period containg the intomation required to be provided under 29 CFR 5.5 (a)(3)(Il), the approprlate information $\frac{15}{}$ belng malntained under 29 CFR 5.5 (a)(3) (0), and that such Intormation 15 correct and complele; Prevlaus edilans ars obsolete Page 3 of 5 fomm HUD-4010 (08/2009) rel. Handtood 1344. 1
(2) That each laborer or mechanle (Including each helper, apprentica, and traineg) employed on the contract during the payroll perfed has baen pald the fult waeksy wages earned, without rebata, elthar directly or indlraclly, and that no deductons hava'been made elther dlectly or indirecty from tha full wages oarned, other than pamisalble deductions as get torth in 29 CFP Part 3;
3) That erof laborer or machanic has been paid not lass than the appllcable wage rates and finge beneflis of cash equlvalents for the classifcation of work pariormed, as specifled in the applleable wage determination incorporated finto the coniract.
(c) The waekly submilssion of a propery axacuted certification sel forth on the reverse sldo of Optlonal Form WH-347 shall satisfy the requ|rement for submiasion of the "Statement of Complanca" raqulred by subparagraph A.3.(i)(b).
(d) The falailloatlon of any of the aboye carifications may sublect the contractor or subcontractor to elvil or criminal proseculton under Section 1001 of Ttlle 18 and Sealion 231 of Title 31 of the Unlted States Code.
(ili) The contractor or suboontractor shall make the records required under subparagraph A.3.(I) avallable for inspectlon, copying, or transonption by auftorized tepresentalives of HUD or his designee or the Department of Laber, and shall permil such representalles to Interviaw emplayees during working hours on the lob. If the contractor or subconifector falle to submile the requlrad records of to make them avallable, HUD or lts designege may, after wrilten notice to the contractor, sponsor, appleant or owner, take such acton as may be necossary to cause the suspension of any tuther payment, udvance, of guarankee of funds. Furthemore, fallure to submlt the requlied records upon request or to make such records available may be grounds for debament acton pursuant to 29 CFR 5.12.

## 4. Approntices and Traineos.

(1) Apprentices. Apprentices will be pemilited to work at less than the predeternined rate for the work they performed when they are employed pursuant to and indivdualiy reglatered in a bona fida apprentionshlp phogram reglsterad whth the U.S. Department of Labor, Employment and Training Administration, Offloe of Apprenticaship Tralning, Employer and Labor Services, or wilh a Stele Appranticeship Agancy recognized by the Office, or if a person is employed in his or her frat 80 days of probationary employizent as an apprentioe in such an apprenticeship program, who is not indlviduatly reglatared in the program, but who has beon ceatifed by the Office of Apprenticeship Trailning, Employer and Labor Seritces or a State Approtilcoshlp Agancy (where eppropilata) to be alligible for probaftonary amployment as an apprentice. The allowable ratio of apprenticas to fournaymen on The joh site in any oreft claralfleation ainall not be greatar then the tatio pemiltad to the contractor as to the entre work force under the regigtered program. Any worker listed on a payroll af an apprentica wage rata, who is nol reglstared or otharwise employed as stated above, shall be pald not less than the appllicable wage rate on the Wage determinallon for the classfication of work actually performed. In addition, any apprentice perioming wotk on the Job site in excoss of the ratlo psmittad under the reglstared program shall be.pald not less than the applleable wage rate on the wage determinailon for the work acfually perfomed. Whare a santractor is parforming construction on a project in a locality other than that in withe les program is reglatered, the ratios and wage retes expressed in parcentages of the pourneyman's houtiy rale) spesiffed in the contractor's or aubcontractor's ragistared program shall be observed. Every apprentices must be pald ai not less than the rate specifled in the regislered program for the apprentlos's level of progress, expressed as a percentage of the joumeymen howty rate specifed in the applicablo wage dotermination. Apprentices shall be pald fringe benafits in accordance with the provisions of the apprenticeshlp program. If the apprenticeshlp program does not specify finge beneflts, apprentioss must be pald the full 日mount of finge benefte listed on the wage determination for the appiloable classlfatilon. if the Administrator detarminas that a diferent practice prevalls for the applleable apprentios ctassiffcation, fringes bihall be paid in accordance wilh that datemunation. In the event the Office of Appranticeshlp Training, Employar and Labor Servieas, or a \$tate Apprentceshly Agency recognized by the Office, wiltdraws approval of an appranticeship program, the contractor will mo longer bs permilted to utilize
apprentices at less than the appicable predetemined rate for the work performed untill an accaptable program is approved.
(ii) Trainges. Except as providet In 29 CFR 5.18, tralnees will not be parmitted to work al less than the predatermined rale for the work perfomed unless they are employed pursuani 'ifo and Individually registered in a program which hes recelved prlor epproval, evidenced by formsi cardficatlon by the U.S. Deparment of Labor, Employment and Traning Administration. The ratio of tealneas to journeymen on the Job alte shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every tralnee must be paid al not less then the rate specffed in the approved program for the tralneg's level of progress, expressed as a percenlage of the jaumeyman hourly rale specitied in the applicable wage determination. Trainees shall be paid fringe beneffts in accordance with the provistons of the tralnee program. If the tralnee pragram does not mantlon finge benefits, traliteas ahall be peid the full amount of fringe benelits ilstad on the wage determination unless the Administrator of the Wage and Hour Divislon determines that there is an apprenticaship program assoclafed with the corresponding Journeyman wage rate on the wage determination which provides for less than full. fringe benefls for apprentices. Any employes listad on the payroll al a tralnee rate who Is not reglotered and partolpating in a trainting plan appoved by the Employment and Tralaing Adminlatration shall be pald nof less than the appllcable wage rate on the wage determination for the c|asalfleation of work actually perfomed. In addition, any traines parionning work on the job sile In excess of the ratio permilfed under the registered program shall be pald not less than the appl|cable wage rate on the wage deteminallon for the work actually performed, In the ovent the Empioymant and Tralnting Administration withdraws approval of a training program, the contractor will no longer be permitiaed to ull|lze tralnees at less than the applicable predetermined rate for the work performed unill an accaptable proyram ls approved.
(iII) Equal employment opportundty. The utilizatlon of apprentices, reinaes and journayman under 29 CFR Part 5 shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR Part 30.
5. Compllance with Copoland Act requirements. The contfactor shall comply with the requirements of 29 CFR Patt 3 which are incoppoated by cefarence in thla contract
6. Subcontracts. The contracior or subcontractor will Insert in any subcontracts the cleuses contalned in subparagraphs 1 through 11 in this pardgraph $A$ and such other clauses as HUD or its dealgineg may by approprlate instructione require, and a copy of the applicabla provalling wage doclsion, and also a olause raquiring the subcontractors to include these clauses tn any lowar tler suifconiracts. The prime contractor shail be responslble for the complance by any stibconfactor or lower tier subcontractor with all the coniract claseas in thls paragraph.
7. Contract tarmination; debarment $A$ breach of the contracl clauses in 29 GFR 5.5 may be grounds for temination of the contract and for debarment as a contractor and a subcontractor as provided in 28 CFR 5,12.
8. Compliance with Davis-Bacon and Related Act Requirements. All rulings and interpratations of the Davis-Becon and Related Acls contalned in 29 CFR Pats 1, 3, and 5 ace herein Incomoraled by reference in thla contrath
9. Disputas concerning labor standards. Disputes arising put of the labor slandards provislons of this contract shall not be subject to the general disputas ciause of thle contract. Such olsputes shall be resolvad in accordance with the procedures of the Department of Labof sat forth In 29 CFR Parts 5, 6, and 7. Dlspules withtin the maenligh of this clause Include disputes between tha confrector (or any of its subcontractors) and HUD or its deslgnee, the U.S. Depertment of Labor, or the employees or their representatives.
10. (i) Certification of Ellgibility. Ey entering into this contract the andractor certlifes that nalther it (nor he orsha) nor any person or firm who has an Interest in the contractor's firm is a person of firm Inefiglble to be awarded Govemment contracts by virtua of Sectlon 3 (a) of the Davis-Bacon Act or 29 CFR 5.12 (a)(1) or to be avarded HUD contracts or partelpata in HUD programs pursuant to 24 CFR Part 24.
(il) No part of this contract shall be subcontracted to any person of firm Ineilibible for award of a Govermment contract by wirtuo of Sectlon 3(a) of the Davis-Bacon Act or 29 GFR 6.12(a)(1) or to be awerded HLD comfracks of participate in
HUD programe pursuant to 24 CFR Part 24.
(III) The penaity for making false stalemente is presoribed in the U.S. Criminal Code, 18 U.S.C. 1001. Additlonally, U.S. Crimlnel Code, Section 1010 , Thle 18, U.S.C., "Faderal Housing Administation transactons", provides in part' 'Whoverer, for the purpose of... influeneing in any way the sction of such Adminiskration...., makes, utters or publishes any statement knowlag the sama to be false.... shall be finsd not mare than $\$ 5 ; 000$ or imprisoned not more than twi years, of both."
11. Complaints, Proceadings, or Testimony by Employecs. No labores or mechanic to whorn the wage, selay, or other lapor standarde provisions of this Contract are applicable ghall be digecharged or in any other manner dlacriminaled egalns! by the Contractor or any subcontractor because such employee has filed any complaint or ingltuted on caused to be lneltuted any proceseding or has tesilifed or la about to testlfy in any proceeding under or yelating to the labor atandards applloable under thls Coniract to his amployer.
B. Contract Work Hours and Sefaty Standards Act. The provislons of thls paragraph 8 are applifable where the amount of the prime contract oxeeeds $\$ 100,000$. As lased in thes paragraph, the terms "laborere" and "mechanlcs" Inciude watchnien and guards.
(1) Ovartime requiremente. No contractor or subcontractor contrating for any palt of the contract work which may requlte or Involve the employment of laborers or machanics shall requite or permit any such laboret or menthants In any workweok in which the Individual is amployed on surh work to work in exeess of 40 hours in such warkweek unleas such laborer of machanic recelves compansalion at a rate not less than one and ona-half firmes the basle rate of pay for all hours wotked in excess of 40 hours in such workwaek.
(2) Volation; llabilty for unpald wages; ilquldated damagas. In the evant of any vlotation of the clause set forth th subparegraph (i) of thls paragraph, the contractor and any subcontractor responsible thenefore shall be llable for the unpald wages. In addillont, such contractor and subcontractor ahall be llable to the United States (lin the case of work done under contract for the District of Columbla or a terfltory, to such Distriot of to such terifory), for Ilquldated damagas, Such liquideted damages shall be computad with raspact to aach Indiwdual laborer of machanic, includlag watchmen and guards, employed in vidatlon of The glause set forth in sebparagraph (1) of this paragraph, in the surm of $\$ 10$ for asch calendar day on which such hafividual was requited of pematted to work in excess of the standard workweek of 40 hours without paymant of tine overtme wages requlrad by the ciause set forth In sitit paragraph ( $\ddagger$ ) of thls paragraph. Prevlous edtlong are chsolete Page 5 of 5 fom HUD 4010 ( $05 / 2009$ ) ref. Handbook 1344.1
(3) Withhoiding for unpalti wages end Ilquidatod damages. HUD of its deslanee shall upon its own acilon of upon wiliten requast of an authortzed representatlve of the Deparment of Labor withhold or cause to be withlisld, from any moneyb payable on account of work parformed by tha contractor of subcontractor under any suth contract or any othas Federal contract with the same prime contraci, or any other Faderaly-assisied contract subject to the Contract Work Hours and Satety Stendards Act which is held by the seme prime contractor such sums 8 may be detemined to be necessary to sabisfy any Uabilitles of such contractor or subconiractor for unpald wagas and
liquidated damages as provided in the clause set forth in subparagraph (2) of this paragraph.
(4) Subrontracts. The contractor or subeontractor shall [nsert in any subcontracls the clauses eet forth in sutparagraph (1) through (4) of this paragreph and aiso a clatise requiring the subcontractors to include thase dauses in any lower tlar subconlracts. The prime contractor shall be responsibla for complance by any subcontractor or lower fler subcontractor with the clauses set forth in subparagraphs (1) through (4) of thls paragraph.
C. Health and Safety. The provislons of this paragraph C are appllcable where the amount of the prime contract exceeds $\$ 100,003$.
(1) No laborer or machanic shall be requtred to work in surfoundings or under working condittons which are unsanltary, hazardous, or dangerous to his haslith and safety as determined under construction safoty and health standards promulgated by the Secretary of Labor by regulatlon.
(2) The Contractor shall comply with all regulations lasued by the Secretary of Labor pursuant lo Title 29 Part 1928 and failure to comply may result in Imposition of sanctions pursuant to the Contract Work Hours and Safoty Standards Act, (Public Law 91-54, 83 Stat 98). 40 USC 3701 et seq.
(3) The contractor shall include the provisions of this paragraph in every subcontract so thal such provislons will be blnding on each subcontractor. The contractor shail take such actlon with raspact to any subcontractor as the Sacretary of Housing and Utban Developiment or the Secretary of Labor shall direct as a means of enfording such prouls[ons.

## Form IIUD-4010 (June 2009)

## Addendum to HUD's Federal Labor Standards Provisions FORM 4010

The contractor shall submit weakly, for each week in which any conlract work is perfomed, a copy of all payrolls to the (the applicant, sponsor or owner), as the case may be, for tranamisslon to the County of Fiverside-Econamic Development Agency,
The payrols submited shall eet out accuratein and oompletely all of the informetion requirad to be maintained under 29 CFR $5.5(9)(3)(0)$, excopt that full socfal security numbers and home addresses shall not be included on waekly transmitals. Insiesd ine payrolls shail anty need to include an Indwidually ldanitfying number for aech amployee (e.g., the lasl four diglis of the employes's soclal sacurity number). The requined waokly payroll Informailon may be submilted ith ary form desirad by contraclor or aubconiractors provided sald payroll complles with 29 CFR $5.5(a)(3)(1)$. Fom. Wh-347 is avallabla for this purpose


The prime contractor is responslble for the submission of coples of payrolls by ali subconitractors. Contractors and aubconfractors shall. malntain the full soclal security number and current address of each covered worker, and shall provide them upon requast to the (applicant, sponsor, or owner), as the ease may ba, for transmlsslon to the County of Riverside - Economle Developmant Agency, the
contractor, or the Wage and Hour Division of the Deparment of Labor for purposes of an investigation or audit of compliance with prevailing wage requilemants. It is not a vialation of this secilon for a prime contrector to raquifta a subcontractor to provide addresses and soclal securty numbers to the prime sontractor for lis own records, wilhout wealdy submission to the sponsorlmg government egency for the applicant, sponsor, or ownor).

## Subrittal of Photocopled Payroils:

The submiltal of phoiocopios or other automated duplication of the contrector's tegular payrole containing all of the required information pertinent to the CDBG-funded project is sufficient to satlity the payrot data requiraments purauant to 29 CFR 5.5 (a)(B)(1)(A).

MINUTES

# COMMUNITY HEALTH \& WELLNESS CENTER JANUARY 29, 2013 <br> 9:00AM 

## ATTENDEES

1. Rudy Acosta
2. Troy Strange
3. Dean Holm
4. Bill Butler
5. Bruce Nearman

## DISCUSSION

1. Need to track and identify the remaining/outstanding contractual obligations and punch list items.
a) Swimming Pool-
2. January 15,2013 - DWC sent out six (6) invites to bid to finish pool. A selection will be made February 1, 2013.
3. Still need the pumps installed that run the chemicals. The chemicals are being done manually.
4. Once work starts actual labor should be 2-3 weeks.
5. Materials lead time - Bill says it should be no more than 3 weeks out.
6. Solar panels for pool - Per Bruce still need to get a permit.
7. Splash pad still needs to be stained.
8. North gate leading into pool area still needs to be adjusted.
9. Gate to pool equipment area needs to be repaired to fasten more securely.

## PUNCH LIST ITEMS (see attached)

- Per Bill, a significant amount of the punch list items will be completed this week.
- Drinking water guard rails will still be pending/outstanding.
- By February 18, 2013 the shade structure will be completed.
- Bill will schedule to have the rubberized surface installed on February 19, 2013.
- It was determine in the meeting today that the contractor will have to install tile around the towel dispensers in the restrooms.
- Locker still needs to be installed in Cardio Gym. Rudy gave Bill a spec sheet of the lockers, he wants ( 3 lockers stacked - 6 ft high) etc.., Rudy would like the lockers that will allow people to bring their own padlocks.
- Contractor still needs to correct projector issue, it over shoots the screen and spills over the wall.


## MEETING ADJOURNED

10:15AM

# Dre <br> Doug Wall Construction, Ine. <br>  

Doug Wall Construction, Inc.
Re: 24 Hour Notice to complete contract work
Project: Desert Hot Springs Health and Wellness Center
1/11/2013
T'o: Jim Barger with Pacific Pools

Dear Jim,
Let this letter serve as a 24 hour notice for you to complete your scope of work for completion of the pool. Specifically per your Contract and per plans, specifications, and approved submittals. You are expected to: 1 - Provide a list of all items outstanding with a date of delivery to the project and a duration of install time. 2 - Provide adequate workers every work day until your scope of work is complete.
If you do not respond to this notice with specific item completion dates and workers accordingly within 24 hours, we will be forced to complete the remaining portion of your incomplete work at your cost per article 3.4 and 3.5 of your Subcontract Agreement with us. The Project Specifications clearly state that you are to provide a complete and operational pool system with a minimum 14-day trouble free operation period.

The list of items incomplete to date are including but not limited to:
Specification Section $1311542.02 \& 3$ Hand and Grab Rails at all side steps
Specification Section 1311542.07 Starting Platforms
Specification Section $1311542.08 \quad$ Racing Lanes and Reels
Specification Section $1311542.09 \quad$ Racing Lanes and Storage Reels
Specification Section $1311542.10 \quad$ Back Stroke Pennants
Specification Section $1311542.11 \quad$ Recall Ropes
Specification Section $1311542.12 \quad$ Deck Mounted War Polo Goals
Specification Section 1311542.14 Life Guard Chairs
Specification Section $1311542.15 \quad$ Disabled Chair Lift
Specification Section 1311542.23
Specification Section 1311542.24
Specification Section 1311542.25
Specification Section 1311542.26
Specification Section 1311542.29
Specification Section 1311542.30
Specification Section 1311532.21
Specification Section 131153
Specification Section 131153 2.12.P
Pool Cover and Storage Reels
Pool Vacuum
Wall Brush
Pool Water Testing Kit
Pool Signage
Safety Equipment
Shower and Eye Wash Station
Pumps for Chemical System (Chlorine and Acid)
Start up Training and Field Service for Filters (8) hours
Specification Section $1311532.13 . \mathrm{H} \quad$ Start up Instructions for Boiler
Specification Section 1311532.14 ,I Chemical Control Illustrated Operation Manual
Specification Section 131153 3.14.A Chart with Operating Instructions
Specification Section 131153 3.16.A Water Testing Results
Specification Section 131153 3.16.B On Hand Chemicals
Specification Section 131153 3.16.C Start up and Operational Tests operational not less than 14 days
Specification Section 131153 3.16.D Chemical System Start Up
78450 Ave 41, Bermuda Dunes, CA 92203
Tel: 760-772-8446 Fax: 760-772-9407

Specification Section 131153 3.16.E
Specification Section 1311533.16 . F
Specification Section 131153 1.05.B
Specification Section 131153 1.05.C
Specification Section 131153 3.16.F
As shown on plans

Pool Heater Start Up
Pool Operation Training
Operation and Maintenance Manuals
Record Drawings
Post Operating Instructions
Ultraviolet Light Disinfection System

Schedule (recent notifications and responses)
*You were notified on $9 / 7 / 12$ in writing that your date of completion was scheduled for $11 / 12 / 12$.
*You were notified on $12 / 11 / 12$ in writing that our date of completion had been extended to $12 / 19 / 12$.
*You responded on $12 / 11 / 12$ in writing that you would be able to be complete by the end of December 2012 or Early January 2013.
*On $12 / 19 / 12$ you were sent a letter with six attachments reminding you that the Owners Grand Opening was scheduled for $1 / 11 / 13$, and that all work to complete items were expected to be complete before that time.
The attachments included a work to complete list, a change order summary dated $9 / 12 / 12$, a schedule dated $12 / 10 / 12$, two emails from you, one of which stated your estimate to be complete, and a list of payments made to your company dated $12 / 17 / 12$.
*In summary, you plastered the pool earlier this week. We filled it with water. You removed your employees today with an e-mail stating "this is the last straw" and telling Doug Wall that he should find someone else to finish your work. The pool is not operational or complete.

Payment (recent notifications)
Your have been furnished with current Change Summary ledgers and cost to date ledgers throughout the project. on 11/29/12 Shelley Baker sent you a ledger and again on 12/19/12 I sent you ledger of all payments made to your company. You have been paid $100 \%$ of your contract, $100 \%$ of all approved change orders, and $\$ 18,275.35$ of your retention. You are currently paid greater than the work you have in place.

Respectfully,
William Butler / Project Manager

| From: | Jim Barger [jim@pacificcustompools.com] |
| :--- | :--- |
| Sent: | Friday, January $11,20138: 50$ AM |
| To: | Shelley; doug@dwallconst.com; bill@dwaliconst.com |
| Subject: | Fwd: update on payment |

Begin forwarded message:

## From: Jim Barger [iim@pacificcustompools.com](mailto:iim@pacificcustompools.com) <br> Subject: Re: update on payment <br> Date: January 11, 2013 8:47:12 AM PST <br> To: lulu@pacificcustompools.com <br> Cc: Shelley [shelly@dwallconst.com](mailto:shelly@dwallconst.com), "doug@dwallconst.com Wall" [DOUG@dwallconst.com](mailto:DOUG@dwallconst.com), BILL BUTLER [bill@dwallconst.com](mailto:bill@dwallconst.com)

We will be leaving the project this morning-this is the last straw.
On Jan 11, 2013, at 8:33 AM, "Lulu Lopez" [lulu@paciticcustompools.com](mailto:lulu@paciticcustompools.com) wrote:

## Lulu Lopez

From: "shellyb@dwallconst.com" [shellyb@dwallconst.com](mailto:shellyb@dwallconst.com)
Date: Fri, 11 Jan 2013 15:39:36 +0000
To: lulu@pacificcustompools.com[lulu@pacificcustompools.com](mailto:lulu@pacificcustompools.com)
Cc: doug@dwallconst.com[doug@dwallconst.com](mailto:doug@dwallconst.com); bill@dwallconst.com<bill@dwallcon st.com>
Subject: RE: update on payment
There is very little money left in your line item because we have paid you in advance the bulk of the job. All bills must be paid first before any other monies will be disbursed. Please submit all conditional finals from all suppliers and subcontractors and the balance of the money will be disbursed to Pacific Custom Pools.
Thank you

From: Lulu Lopez [mailto:Iulu@pacificcustompools.com]
Sent: Friday, January 11, 2013 7:30 AM
To: shellyb@dwallconst.com
Cc: douq@dwallconst.com; bill@dwallconst.com; Jim Barger
Subject: Re: update on payment
The payroll and Systems automated were sent weeks ago. I will re-send when I get in. I will work on the conditional finals/invoices for our vendors and the last of our payroll and reimbursements when I get in. Lulu Lopez

From: "shellyb@dwallconst.com" [shellyb@dwallconst.com](mailto:shellyb@dwallconst.com)
Date: Fri, 11 Jan 2013 15:17:02 +0000

To: lulu@pacificcustompools.com[lulu@pacificcustompools.com](mailto:lulu@pacificcustompools.com)
Cc: doug@dwallconst.com[doug@dwallconst.com](mailto:doug@dwallconst.com); bill@dwallconst.com[bill@dwallconst.com](mailto:bill@dwallconst.com)
Subject: RE: update on payment
Go ahead and send the requested so we can take care of it. We need all this to review.
Thanks Lulu

From: Lulu Lopez [mailto:Iulu@pacificcustompools.com]
Sent: Friday, January 11, 2013 7:05 AM
To: shellyb@dwallconst.com
Cc: bill@dwallconst.com; doug@dwallconst.com; Jim Barger
Subject: Re: update on payment
I will get that over to you, but what about the two payroll invoices you have and the one from Systems automated?
Lulu Lopez
From: "shellyb@dwallconst.com" [shellyb@dwallconst.com](mailto:shellyb@dwallconst.com)
Date: Fri, 11 Jan 2013 14:13:54 +0000
To: Lulu Lopez[lulu@pacificcustompools.com](mailto:lulu@pacificcustompools.com)
Ce: bill@dwallconst.com<bill@)dwallconst.com>; doug@dwallconst.com[doug@dwallconst.com](mailto:doug@dwallconst.com)
Subject: RE: update on payment
Hi Lulu,
Your remaining balance due on the DHS Wellness Center is below your retention amount. We will need all conditional final releases from all your suppliers including equipment not delivered yet. Please forward the requested asap.
Thank you
From: Lulu Lopez [mailto:Iulu@pacificcustompools.com]
Sent: Thursday, January 10, 2013 5:35 PM
To: shellyb@dwallconst.com
Subject: Fwd: update on payment

Thank you,
Lulu Lopez
626-795-3400 ext. 203

Begin forwarded message:

From: Lulu Lopez [ulu@pacificcustompools.com](mailto:ulu@pacificcustompools.com)
Subject: update on payment
Date: January 10, 2013 5:34:06 PM PST
To: Shelley [shelly@dwallconst.com](mailto:shelly@dwallconst.com), "doug@dwallconst.com Wall"
[doug@dwallconst.com](mailto:doug@dwallconst.com), BILL BUTLER [bill@dwallconst.com](mailto:bill@dwallconst.com)

## Cc: Jim Barger < $\langle i m @ p a c i f i c c u s t o m p o o l s . c o m>~$

Can you tell me when we can expect payment on the payroll invoices please?

Thank you,

## Lulu Lopez

626-795-3400 ext. 203

Jim Barger<br>Pacific Custom Pools, Inc.<br>265 North Vinedo Avenue<br>Pasadena, California 91107<br>(O)626-795-3400 ext. 210<br>(F)626-795-4003<br>(C) 626-625-4000<br>jim@pacificcustompools.com

Jim Barger<br>Pacific Custom Pools, Inc.<br>265 North Vinedo Avenue<br>Pasadena, California 91107<br>(O)626-795-3400 ext. 210<br>(F)626-795-4003<br>(C)626-625-4000<br>iim@pacificcustompools.com

# DOUG WALL CONSTRUCTION, INC. <br> CASt. !ic 4743112 

1/12/2013

Jim Barger
Pacific Custom Pools
265 N. Vinedo Ave.
Pasadena. CA 91107

RE: Desert Hot Springs Wellness Center 24 Hour Notice

Mr. Barger

I have reviewed the entire contrack. You are and have been paid ahead of your work in place most if not all of the project. So your claims of not being paid on time are unfounded. We have even helped you with your payroll when you needed it. If you do not respond to the 24 Hour notice you are in breach of your contract obligations. Please respond on Monday $1 / 14 / 2013$ with a full crew to complete the project that you are under contract to build as per plans and specifications.

Doug Wall


President

# Doug Wall Construction, inc. 


Doug Wall Construction, Inc.
Re: Notice of Non Compliance with the 24 hour notice sent on $1 / 11 / 13$.
Project: Desert Hot Springs Health and Wellness Center
1/14/2013
To: Jim Barger with Pacific Pools
Dear Jim,
Let this letter serve as a Notice of Non-Compliance.
On $1 / 11 / 13$ you were given a 24 hour notice to complete your scope of work.
You were instructed provide the following items:
1 - Provide a list of all items outstanding with a date of delivery to the projectand a duration of install time.
2 - Provide adequate workers every work day until your scope of work is complete.
Your response today at $2: 16 \mathrm{pm}$ was, "As of close of business today PCP will be re-assigning it's workforce to other projects". You have not provided workers or any delivery dates of outstanding items as requested.

At this time let it be clear and duly noted that Pacific Custom Pools has abandoned this project and will be replaced by Doug Wall Construction Inc. with work forces able to complete the remaining portion of Pacific Custom Pools scope of work per the Plans, Specifications, Approved Submittals and Subcontract Agreement at Pacific Pools own cost plus 15\% per article 3.4 and 3.5 of the Subcontract Agreement.

Respectfully,
William Butler / Project Manager

## Appondix *6

茕
12/17/12 DWC INTERNAL LEDGER REGARDING PACIFIC POOLS
REVISED CONTRACT AMOUNT ..... $\$ 916,474.61$
LESS PREVIOUS PAYMENTS T DATE ..... $\$ 791,987.24$
SUBTOTAL ..... $\$ 124,487.37$
THIS REQUEST as of $12 / 3 / 12$. ..... $\$ 52,215.26$
BALANCE after the $\$ 52,215.26$ is paid. ..... $\$ 72,272.11$
Pacific Pools Invoice received 12/3/2012 Systems Automated ..... $\$ 30,462.00$ check request submitted
Pacific Pools Invoice received 12/10/2012 Payroll ..... $\$ 16,669.14$
Pacific Pools mvoice received check request $12 / 17 / 12$
REVISED CONTRACT AMOUNT $\$ 916,474.61$
LESS PREVIOUS PAYMENTS T DATE after the $\$ 52,215.26$ is paid ..... $\$ 844,202.50$
SUBTOTAL after the $\$ 52,215.26$ is paid ..... $\$ 72,272.11$
THIS REQUEST as of $12 / 17 / 12$ ..... $\$ 47,131.14$
BALANCE after this request is made ..... $\$ 25,140.97$
SUBMITTED BY WBWork to complete list is attached

## bill@durallconstcom

From: Jim Barger [jim@pacificcustompools.com](mailto:jim@pacificcustompools.com)

| Sem: | Thursday, December 13, $201211: 10 \mathrm{AM}$ |
| :--- | :--- |
| To: | bil@dwallconst.com |
| Subject: | Re: Desert Hot Springs Wellness Center |

We will not finish by Christmas. I will have to review where we are at this week.


To All:

Your efforts are very appreciated.
This is the same schedule revised $12 / 10 / 12$.
The work to complete list is revised as of 6:00 am yesterday.

It is important with the holidays approaching that we are complete before Christmas.
Please confirm and schedule all work with Dean at 760-625-7762.
Any work incomplete after December is subject to liquidated damages.

## Bill Butler

<image001.jpg>
78450 Ave 41
Bermuda Eunes, CA 92203
760-772-8446 Phone
$760-7 / 2-9407 \mathrm{Fax}$

# <DHS Phase 2 revised 12-10-12 12-28-12 completion.pdf><12-13-12 WORK TO COMPLETE LIST DHS.pdi> 

Jim Barger
Pacific Custom Pools, Inc.
265 North Vinedo Avenue
Pasadena, California 91107
(O)626-795-3400 ext. 210
(F)626-795-4003
(C)626-625-4000
jim@oacifccustompools.com

| From: | Jim Barger [jim@pacificcustompools.com](mailto:jim@pacificcustompools.com) |
| :--- | :--- |
| Sent: | Tuesday, December $11,20129: 44$ AM |
| To: | bill@dwallconst.com |
| Subjec: |  |
|  | Re: DWC schedule |

I'd say we will complete sometime by end of December or early January. I'll have top come up and check our progress.
On Dec 11, 2012, at 8:42 AM, "billoudwallconst.com" [bill@dwallconst.com](mailto:bill@dwallconst.com) wrote:

The Owner expected final completion 12/14/12.
We have fallen short of that.
It is very important that we all finish strong.
Please schedule all work with Dean at 760-625-7762.

## Bill Butler

<image003.jpg>
78450 Ave 41
Bermuda Dunles, CA 92203 760-772-8446 Phore 760-772-9407 Fax
<DHS Phase 2 revised 11-9-12 12-14-12 completion.pdi>
Jim Barger
Pacific Custom Pools, inc.
265 North Vinedo Avenue
Pasadena, California 91107
(O)626-795-3400 ext. 210
(F)626-795-4003
(C) 626-625-4000
iimoloacificustompoois.com




| From: | Dean Hoim |
| :--- | :--- |
| To: | billoriwilconst.com |
| Subject: | paifc pools ilst |
| Date: | Monday, December 17, 2012 11:15:32 AM |

Pour concrete at splash pad
install tile at splash pad
install equipment at splash pad
install steps at pool walls
tile all face lane ad depth markers
complete tile at steps
complete trough cap tile
grout all tile
install main drain assemblies
Complete pool lights
Set transformer and complete electrical
Gas connection theater
heater exhaust thru roof
UV sterilizer install and connect
install sand in filters
install sump pump
install chemical tanks
install eyewash stations
Plaster
provide all external equipment
start up
maintenance period
training

# Doug Wall Constriction, Inc. 



## Doug Wall Construction, Inc.

CC: Doug Wall
Re: Completion and current status
Project: Desert Hot Springs Health and Wellness Center
12/19/2012

To:
Jim Barger with Pacific Pools
I received your letter by email today regarding your not returning to the project until after the 6 th of Jamuary. As Dean our Site Superintendent has told you and I want to refterate: The Grand Opening is scheduled for $1 / 11 / 13$. At this Grand Opening, there will be Mayors, City Manager's, different investors, etc. It is a big deal. The project will be complete less the pool unless you come through for us.

By now I'm sure you have received the payment Doug sent for $\$ 52,215.26$. This payment request was received by us on 11/28/12. I apologize for the miscommunications about what day the check would arrive None the less, you have it now. I attached a ledger dated $12 / 17 / 12$ showing your revised balance $\$ 72,272.11$. Even since we agreed to "pay as you go" for payroll and materials, we have always paid, even though a couple times it took a week or two.

Jim, in your experience, you know what a "Grand Opening" means to an Owner. This project is so important to this Community. I am pleading with you, to lay our differences aside and complete the project on or before the Grand Opening.

I attached the following to this message:
DWC ledger regarding balance of Pacific Pools dated 12/17/12
E-mail from Jim dated 12/13/12
E mail from Jim dated 12/11/12
DWC recent look ahead Schedule sent out on 12/10/12.
Work to complete list dated 12/17/12.
Change Summary dated 9/25/12.

Respectfully,
William Butler / Project Manager
this change in work. I will also we looking at the additional time we have been on the project due to changes that were perhaps directed by the City.

In closing, I hope you can understand that while we have had differences during this project, I have always made an effort to get you done. I have no idea what happened this time, perhaps there is something that I missed. Let me know your thoughts and how we may be able to move forward.

On Dec 13, 2012, at 10:47 AM, bill@dwaliconst.com wrote:

To All:

Your efforts are very appreciated.
This is the same schedule revised 12/10/12.
The work to complete list is revised as of 6:00 am yesterday.
It is important with the holidays approaching that we are complete before Christmas.
Please confirm and schedule all work with Dean at 760-625-7762.
Any work incomplete after December is subject to liquidated damages.

## Bill Butler

<image001.jpg>
78450 Ave 41
Mermuda Dines, 6A 92203
760-772-8446 Phone
760-772-9407 Fax

## <DHS Phase 2 revised 12-10-12 12-28-12 completion.pdf><12-13-12 WORK TO COMPLETE LIST DHS.pdf>

Jim Barger<br>Pacific Custom Pools, Inc.<br>265 North Vinedo Avenue<br>Pasadena, California 91107<br>(O)626-795-3400 ext. 210<br>(F)626-795-4003<br>(C) 626-625-4000<br>iim@pacificcustompools.com

## From:

Sent:
To:
Cc:
Subject:
Attachments:

## All ATACOARASTS

lpccuded
bill@dwallconst.com
Wednesday, December 19, 2012 1:51 PM
'Jim Barger' doug@dwallconst.com
RE: Desert Hot Springs Wellness Center
12-19-12 letter to Jim from Bill Re completion date.pdf, 12-19-12 attachments to letter from bill to jim. pdf

## Bill Butler

Down What Comate toes, IN:

78450 Ave 41
Bermuda Dunes, CA 92203
760-772-8446 Phone
760-772-9407 Fax

From: Jim Berger [nailto:fim@pacificcustompools.com]
Sent: Wednesday, December 19, 2012 9:48 AM
To: bill@dwallconst.com
Subject: Re: Desert Hot Springs Wellness Center
Just letting you know we are missing valuable time. The agreement was payment as we go to keep us working and the last payment is seriously past due. I did receive your voice mail giving an honest explanation which I appreciated. I just wish that if you had money problems, Doug would have called me to let me know. When Doug did call me on Monday afternoon, after going round and round, he did say he was sending our payments Fed Ex for Tuesday delivery. He also asked to meet with me and I told him it would not be possible this week, but perhaps Saturday. I told Doug I would have my office look at my schedule and set up Saturday if at all possible. My office did confirm with your office that I would be there Saturday. To my disappointment, the Fed Ex Doug promised did not arrive on Tuesday. This kind of behavior is setting the stage for nothing but turmoil and the delay of completing the project. Up until this point, we had a deal going that was serving both of our companies to get the project complete-agreeing that we would battle at a later date. Not sure what happenedDoug will have to answer that question.

I just want to give you a heads up that our office will be closed from the 21st of December through the 2nd of January. You should also note that our crews will be off from the 21 st of December through the 6th of January. We had planned on being on site this week and may have looked at working the 26-28 of December and the 2-4 of January. This being said, you have lost 5 days this week and the days scattered throughout the Holidays are looking dismal as well.

Bill-I must also warn you that we are committed to keeping our crews working on projects where we are paid on time. We will be moving our team to one of those projects. I can not ask my crews to start and stop on projects because the guys lose hours and this requires re-mobilization which is very costly to the Company. If you review the Contract that includes as an Exhibit an attachment of our proposal, part of the agreement was "Continuous mobilization". We have had multiple re-mobilizations, each by no fault of our own scheduling efforts. I will expect to be having a discussion at some point with you about the additional costs associated with

# Pacific Custom Pools, Inc. <br> 265 North Vinedo Avenue <br> Pasadena, California 91107 <br> Office 626-795-3400 Fax 626-795-4003 <br> www.pacificcustompools.com <br> California Contractor's License \# 417294 (A, B, C-53) <br> Nevada Contractor's License \#34654 (A-Unlimited A-101A-22) <br> Nevada Contractor's License \# 72587 (B-\$6,700,000) <br> Arizona Contractor's License \#157318-001 

March 12, 2013
Sent Via Certified Mail 7005257000050792434
Sent Overnight-Fed Ex 799264249990
Mr. Rudy Acosta, CHWC Project Manager
Desert Hot Springs Community Health and Wellness Center
65-950 Pierson Blvd.
Desert Hot Springs, California 92240
Re: Certified Mail 70081140000454737069
Your letter dated March 7, 2013
Received on March 12, 2013
Per section 4107.(a) 9 Pacific Custom Pools, Inc. (PCP) would like to challenge the request for substitution of PCP as the listed subcontractor on the above listed project.

The listed reasons stated by Doug Wall Construction (DWC) being Sections 4107. (a) 3 and Section 4107.(a) 7 are false. Specifically, DWC lists 7107. (a)3-PCP has never refused to perform under the terms of the Contract between DWC and PCP. DWC also cites Section 4107.(a) 7-PCP has never delayed or disrupted the progress of the work, rather it has been DWC that has disrupted the work of PCP by refusing to honor the Contract it signed with PCP.

We would request that the City properly give notice of a hearing so that PCP, it's subcontractors and it's vendors can present testimony in support of PCP's position to the original awarding authority.


Cc: Scott Therrien Esq.
Doug Wall Construction

# Pacific Custom Pools, Inc. 265 North Vinedo Avenue Pasadena, California 91107 Office 626-795-3400 Fax 626-795-4003 www.pacificcustompools.com California Contractor's License \# 417294 (A, B, C-53) Nevada Contractor's License \# 34654 (A-Unlimited A-101A-22) Nevada Contractor's License \# 72587 (B-\$6,700,000) Arizona Contractor's License \# 157318-001 

March 12, 2013
Sent Via Certified Mail 7005257000050792434
Sent Overnight-Fed Ex 799264249990
Mr. Rudy Acosta, CHWC Project Manager
Desert Hot Springs Community Health and Wellness Center 65-950 Pierson Blvd.
Desert Hot Springs, California 92240
Re: Delay Claim
Per California Public Contract Code please accept this as additional notice (first notice sent by letter dated February 11, 2013) that Pacific Custom Pools, Inc. (PCP) is requesting consideration of our delay claim for an additional 333 days beyond the time agreed upon in the original contract schedule. The City through its agents authorized several time extensions without offering any compensation to PCP for it's additional overhead costs. Further, as you are aware-- the-Gity--..... negotiated a Change Order with Doug Wall Construction (DWC) that extended the project well past the original date of completion. Input from PCP was never solicited and a Change Order was never offered to PCP during those negotiations.

Our delay claim is as follows:

```
PCP DHS CONTRACT WORK
\$1,042,478.06
```

PCP GROSS SALES 2011/2012

$$
\$ 6,909,732.88
$$

\% OF WORK COVERED BY DWC @ DHSWC

DURATION OF WORK BY PCP 508
DURATION OF PCP WORK PER AGREED SCHDULE 175
ADDITIONAL DAYS OVER SCHEDULE 333

| PCP OVERHEAD FOR PERIOD | $\$ 2,215,787,44$ |
| :--- | ---: |
| OVERHEAD COVERED BY DHSWC | $\$ 334,297.99$ |
| COST PER DAY | $\$ 658.07$ |

TOTAL OVERHEAD AS AN EXTRA-333 DAYS
$\$ 219,136.28$

Per California Code we will be forwarding an audited financial statement in support of our claim.

I have also attached to this letter a copy of the original letter sent to you on February 11, 2013.

Thanks in advance for you consideration,
James). Bgrger
President
Cc: Scott Therrien Esq.
Doug Wall Construction

# PUBLIC CONTRACT CODE SECTION 4100-4114 

4100. This chapter may be cited as the "Subletting and
Subcontracting Fair Practices Act."
4101. The Legislature finds that the practices of bid shopping and bid peddling in connection with the construction, alteration, and repair of public improvements often result in poor quality of material and workmanship to the detriment of the public, deprive the public of the full benefits of fair competition among prime contractors and subcontractors, and lead to insolvencies, loss of wages to employees, and other evils.
4102. Nothing in this chapter limits or diminishes any rights or remedies, either legal or equitable, which:
(a) An original or substituted subcontractor may have against the prime contractor, his or her successors or assigns.
(b) The state or any county, city, body politic, or public agency may have against the prime contractor, his or her successors or assigns, including the right to take over and complete the contract.
4103. Any officer, department, board or commission taking bids for the construction of any public work or improvement shall provide in the specifications prepared for the work or improvement or in the general conditions under which bids will be received for the doing of the work incident to the public work or improvement that any person making a bid or offer to perform the work, shall, in his or her bid or offer, set forth:
(a) (1) The name and the location of the place of business of each subcontractor who will perform work or labor or render service to the prime contractor in or about the construction of the work or improvement, or a subcontractor licensed by the State of California who, under subcontract to the prime contractor, specially fabricates and installs a portion of the work or improvement according to detailed drawings contained in the plans and specifications, in an amount in excess of one-half of 1 percent of the prime contractor's total bid or, in the case of bids or offers for the construction of streets or highways, including bridges, in excess of one-half of 1 percent of the prime contractor's total bid or ten thousand dollars ( $\$ 10,000$ ), whichever is greater.
(2) (A) Subject to subparagraph (B), any information requested by the officer, department, board, or commission concerning any subcontractor who the prime contractor is required to list under this subdivision, other than the subcontractor's name and location of business, may be submitted by the prime contractor up to 24 hours after the deadine established by the officer, department, board, or commission for receipt of bids by prime contractors.
(B) A state or local agency may implement subparagraph (A) at its option.
(b) The portion of the work that will be done by each subcontractor under this act. The prime contractor shall list only one subcontractor for each portion as is defined by the prime contractor in his or her bid.
4104.5. (a) The officer, department, board, or commission taking bids for construction of any public work or improvement shall specify in the bid invitation and public notice the place the bids of the prime contractors are to be received and the time by which they shall be received. The date and time shall be extended by no less than 72 hours if the officer, department, board, or commission issues any material changes, additions, or deletions to the invitation later than 72 hours prior to the bid closing. Any bids received after the time specified in the notice or any extension due to material changes shall be returned unopened.
(b) As used in this section, the term "material change" means a change with a substantial cost impact on the total bid as determined by the awarding agency.
(c) As used in this section, the term "bid invitation" shall include any documents issued to prime contractors that contain descriptions of the work to be bid or the content, form, or manner of submission of bids by bidders.
4104. Circumvention by a general contractor who bids as a prime contractor of the requirement under Section 4104 for him or her to list his or her subcontractors, by the device of listing another contractor who will in turn sublet portions constituting the majority of the work covered by the prime contract, shall be considered a violation of this chapter and shall subject that prime contractor to the penalties set forth in Sections 4110 and 4111.
4105. If a prime contractor fails to specify a subcontractor or if a prime contractor specifies more than one subcontractor for the same portion of work to be performed under the contract in excess of one-half of 1 percent of the prime contractor's total bid, the prime contractor agrees that he or she is fully qualified to perform that portion himself or herself, and that the prime contractor shall perform that portion himself or herself.

If after award of contract, the prime contractor subcontracts, except as provided for in Sections 4107 or 4109 , any such portion of the work, the prime contractor shall be subject to the penalties named in Section 4111.
4107. A prime contractor whose bid is accepted may not:
(a) Substitute a person as subcontractor in place of the subcontractor listed in the original bid, except that the awarding authority, or its duly authorized officer, may, except as otherwise provided in Section 4107.5 , consent to the substitution of another person as a subcontractor in any of the following situations:
(1) When the subcontractor listed in the bid, after having had a reasonable opportunity to do so, fails or refuses to execute a written contract for the scope of work specified in the subcontractor' s bid and at the price specified in the subcontractor's bid, when
that written contract, based upon the general terms, conditions, plans, and specifications for the project involved or the terms of that subcontractor's written bid, is presented to the subcontractor by the prime contractor.
(2) When the listed subcontractor becomes insolvent or the subject of an order for relief in bankruptcy.
(3) When the listed subcontractor fails or refuses to perform his or her subcontract.
(4) When the listed subcontractor fails or refuses to meet the bond requirements of the prime contractor as set forth in Section 4108.
(5) When the prime contractor demonstrates to the awarding authority, or its duly authorized officer, subject to the further provisions set forth in Section 4107.5 , that the name of the subcontractor was listed as the result of an inadvertent clerical exror.
(6) When the listed subcontractor is not licensed pursuant to the Contractors License Law.
(7) When the awarding authority, or its duly authorized officer, determines that the work performed by the listed subcontractor is substantially unsatisfactory and not in substantial accordance with the plans and specifications, or that the subcontractor is substantially delaying or disrupting the progress of the work.
(8) When the listed subcontractor is ineligible to work on a public works project pursuant to Section 1777.1 or 1777.7 of the Labor Code.
(9) When the awarding authority determines that a listed subcontractor is not a responsible contractor.

Prior to approval of the prime contractor's request for the substitution, the awarding authority, or its duly authorized officer, shall give notice in writing to the listed subcontractor of the prime contractor's request to substitute and of the reasons for the request. The notice shall be served by certified or registered mail to the last known address of the subcontractor. The listed subcontractor who has been so notified has five working days within which to submit written objections to the substitution to the awarding authority. Eailure to file these written objections constitutes the listed subcontractor's consent to the substitution.

If written objections are filed, the awarding authority shall give notice in writing of at least five working days to the listed subcontractor of a hearing by the awarding authority on the prime contractor's request for substitution.
(b) Permit a subcontract to be voluntarily assigned or transferred or allow it to be performed by anyone other than the original subcontractor listed in the original bid, without the consent of the awarding authority, or its duly authorized officer.
(c) Other than in the performance of "change orders" causing changes or deviations from the original contract, sublet or subcontract any portion of the work in excess of one-half of 1 percent of the prime contractor's total bid as to which his or her original bid did not designate a subcontractor.
4107.2. No subcontractor iisted by a prime contractor under section 4104 as furnishing and installing carpeting, shall voluntarily sublet his or her subcontract with respect to any portion of the labor to be performed unless he or she specified the subcontractor in his or her bid for that subcontract to the prime contractor.
4107.5. The prime contractor as a condition to assert a claim of inadvertent clerical error in the listing of a subcontractor shall within two working days after the time of the prime bid opening by the awarding authority give written notice to the awarding authority and copies of that notice to both the subcontractor he or she claims to have listed in error and the intended subcontractor who had bid to the prime contractor prior to bid opening.

Any listed subcontractor who has been notified by the prime contractor in accordance with this section as to an inadvertent clerical error shall be allowed six working days from the time of the prime bid opening within which to submit to the awarding authority and to the prime contractor written objection to the prime contractor' s claim of inadvertent clerical error. Failure of the listed subcontractor to file the written notice within the six working days shall be primary evidence of his or her agreement that an inadvertent clerical error was made.

The awarding authority shall, after a public hearing as provided in Section 4107 and in the absence of compelling reasons to the contrary, consent to the substitution of the intended subcontractor:
(a) If (1) the prime contractor, (2) the subcontractor listed in error, and (3) the intended subcontractor each submit an affidavit to the awarding authority along with such additional evidence as the parties may wish to submit that an inadvertent clerical error was in fact made, provided that the affidavits from each of the three parties are filed within eight working days from the time of the prime bid opening, or
(b) If the affidavits are filed by both the prime contractor and the intended subcontractor within the specified time but the subcontractor whom the prime contractor claims to have listed in error does not submit within six working days, to the awarding authority and to the prime contractor, written objection to the prime contractor's claim of inadvertent clerical error as provided in this section.

If the affidavits are filed by both the prime contractor and the intended subcontractor but the listed subcontractor has, within six working days from the time of the prime bid opening, subritted to the awarding authority and to the prime contractor written objection to the prime contractor's claim of inadvertent clerical error, the awarding authority shall investigate the claizns of the parties and shall hold a public hearing as provided in Section 4107 to determine the validity of those claims. Any determination made shall be based on the facts contained in the declarations submitted under penaliy of perjury by all three parties and supported by testimony under oath and subject to cross-examination. The awarding authority may, on its own motion or that of any other party, admit testimony of other contractors, any bid registries or depositories, or any other party in possession of facts which may have a bearing on the decision of the awarding authority.
4107.7. If a contractor who enters into a contract with a public entity for investigation, removal or remedial action, or disposam relative to the release or presence of a hazardous material or hazardous waste fails to pay a subcontractor registered as a hazardous waste hauler pursuant to Section 25163 of the Health and Safety Code within 10 days after the investigation, removal or
remedial action, or disposal is completed, the subcontractor may serve a stop notice upon the public entity in accordance with Chapter 4 (commencing with Section 9350 ) of Title 3 of Part 6 of Division 4 of the Civil Code.
4108. (a) It shall be the responsibility of each subcontractor submitting bids to a prime contractor to be prepared to submit a faithful performance and payment bond or bonds if so requested by the prime contractor.
(b) In the event any subcontractor submitting a bid to a prime contractor does not, upon the request of the prime contractor and at the expense of the prime contractor at the established charge or premium therefor, furnish to the prime contractor a bond or bonds issued by an admitted surety wherein the prime contractor shall be named the obligee, guaranteeing prompt and faithful performance of the subcontract and the payment of all claims for labor and materials furnished or used in and about the work to be done and performed under the subcontract, the prime contractor may reject the bid and make a substitution of another subcontractor subject to Section 4107.
(c) (1) The bond or bonds may be required under this section only if the prime contractor in his or her written or published request for subbids clearly specifies the amount and requirements of the bond or bonds.
(2) If the expense of the bond or bonds required under this section is to be borne by the subcontractor, that requirement shall also be specified in the prime contractor's written or published request for subbids.
(3) The prime contractor's failure to specify bond requirements, in accordance with this subdivision, in the written or published request for subbids shall preclude the prime contractor from imposing bond requirements under this section.
4109. Subletting or subcontracting of any portion of the work in excess of one-half of 1 percent of the prime contractor's total bid as to which no subcontractor was designated in the original bid shall only be permitted in cases of public emergency or necessity, and then only after a finding reduced to writing as a public record of the awarding authority setting forth the facts constituting the emergency or necessity.
4110. A prime contractor violating any of the provisions of this chapter violates his or her contract and the awarding authority may exercise the option, in its own discretion, of (l) canceling his or her contract or (2) assessing the prime contractor a penalty in an amount of not more than 10 percent of the amount of the subcontract involved, and this penalty shall be deposited in the fund out of which the prime contract is awarded. In any proceedings under this section the prime contractor shall be entitled to a public hearing and to five days' notice of the time and place thercof.
4111. Violation of this chapter by a licensee under Chapter 9 (commencing with Section 7000) of Division 3 of the Business and

Professions Code constitutes grounds for disciplinary action by the Contractors State License Board, in addition to the penalties prescribed in Section 4110.
4112. The failure on the part of a contractor to comply with any provision of this chapter does not constitute a defense to the contractor in any action brought against the contractor by a subcontractor.
4113. As used in this chapter, the word "subcontractor" shall mean a contractor, within the meaning of the provisions of Chapter 9 (commencing with Section 7000) of Division 3 of the Business and Professions Code, who contracts directiy with the prime contractor.
"Prime contractor" shail mean the contractor who contracts directly with the awarding authority.
4114. The county board of supervisors, when it is the awarding authority, may delegate its functions under Sections 4107 and 4110 to any officer designated by the board.

The authorized officer shall make a written recommendation to the board of supervisors. The board of supervisors may adopt the recommendation without further notice or hearing, or may set the matter for a de novo hearing before the board.


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[^1]:    cc: Rick Daniels, City Manager Steve Quintanilla, City Attorney/Foundation Attorney
    Rudy Acosta, Construction Manager
    Doug Wall Construction

