# Exhibit A

DWC Hearing Exhibits

#### LAW OFFICES

#### SCOTT J. THERRIEN

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#### 2300 PELLISSIER PLACE CITY OF INDUSTRY, CA 90601-1503

Facsimile 562.692.9342

E-mail: Scott@Therrienlaw.com

April 16, 2013

#### VIA EMAIL

Steve Quintanilla, Esq. City Attorney/Foundation Attorney City of Desert Hot Springs 65-950 Pierson Blvd Desert Hot Springs, CA 92240

Re: Doug Wall Construction's Request to Substitute Subcontractor Pacific Custom Pools, Inc.
Hearing Date: April 17, 2013
Hearing Time: 3:00 p.m.

Dear Mr. Quintanilla:

I write to supplement my letter of yesterday concerning Pacific Custom Pools, Inc.'s ("Pacific") previously submitted written objections to Doug Wall Construction's ("DWC") request to substitute Pacific as a subcontractor on the Desert Hot Springs Community Health and Wellness Center project (the "Project").

As part of its continuing response to the request for documents made by Pacific pursuant to the Public Records Act, this morning, the City provided copies of DWC's Applications for Payment for the Project. Based on the Applications for Payment submitted by DWC, each of which were signed by Doug Wall, the architect of record and were each apparently approved by the City, it is difficult to understand how DWC's request for substitution can be considered seriously.

The basis for DWC's substitution request is that Pacific "abandoned" the Project on or about January 11, 2013. In addition to being disputed by Pacific, this contention is completely contradicted by DWC's Applications for Payment submitted to the City.

For example, in its Application for Payment, Application # 17, for the period ending October 31, 2012, DWC and the architect of record represented to

Steve Quintanilla, Esq. April 16, 2013 Page 2

the City that Pacific's subcontract, which is identified under Code 1305 and 1315, was 100% complete. Moreover, it appears that the City's representative agreed with the represented percentage of completion and approved the Application for Payment in its entirety. (See Exhibit A attached.) Similarly, in its Application for Payment # 18, which covers the period through December 31, 2012 and appears to be the final billing, DWC and the architect of record confirmed that Pacific's percentage of completion for its subcontract was 100% as of December 31, 2012. It appears that the City's representative once again accepted this representation. (See Exhibit B attached).

Because DWC previously represented to the City that Pacific's subcontract was 100% complete as of October 31, 2012, DWC simply cannot establish that anything Pacific did or did not do in January 2013 could support a finding, under any circumstances, that Pacific failed or refused to perform its subcontract or that it substantially delayed or disrupted the progress of the work for purposes of substitution pursuant to *Cal. Pub. Works Contract Code* section 4107

For all the reasons set forth in Pacific's previously submitted objections to the request for substitution, my letter of yesterday and those set forth above, as well as those introduced at the hearing, Pacific submits that DWC's request for substitution must be denied.

Respectfully Submitted,

Scott J. Therrien Attorney for Pacific Custom Pools, Inc.

Enclosures cc: James F. Barger (with enclosures)

# **EXHIBIT A**

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# DOUG WALL CONSTRUCTION, INC.

78-450 Avenue 41 Bormuda Dunos, OA 92203 760/772-6446 \*760/772-9407

BILL TO: CDHS

Cily of Desert Hot Springs 65950 Pierson Bivd Desert Hot Springs, CA 92240 INVOICE #: 4073 INVOICE DATE: 10/25/2012 PERIOD TO: 10/31/2012 APPLICATION #: 17 CONTRACT DATE: 6/22/2012 DUE DATE: 12/1/2012

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JOB: 1041 Community Health & Wellness 11320 Cholia Drive Desett Hot Springs, CA 92240

## \*\*\*\*\* This Application \*\*\*\*\*

|      |                          | SCHEDULED         | PREVIOUS             | CURRENT   | • STORED  | TOTAL        | %      | BALANCE   | 1, an 1997 (1997) (1997) (1997) (1997) |
|------|--------------------------|-------------------|----------------------|-----------|-----------|--------------|--------|-----------|--|
| CODE | DISCRIPTION              | VALUE             | APPLICATIONS         | COMPLETED | MATERIALS | COMPLETED    | COMPL  | to Finish | RETAINAGE                              |
| 0110 | Mobilization             | \$348,084.00      | \$349,084.00         |           |           | \$348,084.00 | 100.00 |           | \$34,608.40                            |
| 0125 | Bonding                  | \$118,374.00      | \$118,374.00         |           |           | \$118,374.00 | 100.00 |           | \$11,837,40                            |
| 0130 | Blue Prints              | \$400.00          | \$400.00             |           |           | \$400.00     | 100.00 |           | \$40.00                                |
| 0151 | Temp Utilities           | \$3,800.00        | \$3,800.00           |           |           | \$3,800.00   | 100.00 |           | \$380.00                               |
| 0165 | Progressive Cleanup      | \$12,000.00       | \$12,000.00          |           | <b>t</b>  | \$12,000.00  | 100.00 |           | \$1,200.00                             |
| 0166 | Miso, Labor              | \$12,000.00       | \$12,000.00          |           | *         | \$12,000.00  | 100.00 |           | \$1,200.00                             |
| 0167 | Ske Preparation          | \$971.00          | \$971.00             |           |           | \$971.00     | 100.00 |           | \$97.10                                |
| D168 | Final Cleanup            | \$2,800.00        | \$2,800.00           |           | ٠         | \$2,800.00   | 100.00 |           | \$280.00                               |
| 0159 | Dumpster                 | \$1,800.00        | \$1,800,00           |           |           | \$1,800.00   | 100.00 |           | \$180.00                               |
| 0184 | Temp Trailer             | \$4,178.00        | \$4,178.00           |           |           | \$4,178.00   | 100.00 |           | \$417.80                               |
| 0165 | Temp Facilities          | \$1,800.00        | \$1,800.00           |           |           | \$1,800.00   | 100.00 |           | \$160,00                               |
| 0168 | Temp Power               | <b>\$6,260.00</b> | \$6,250.00           |           |           | \$8,250.00   | 100.00 |           | \$625.00                               |
| 0167 | Project Signage          | \$1,600.00        | \$1,500.00           |           |           | \$1,600.00   | 100.00 |           | \$160.00                               |
| 0210 | Survey                   | \$12,900,00       | \$12,800.00          |           |           | \$12,800.00  | 100.00 |           | \$1,280.00                             |
| 0224 | PM-10                    | \$8,000.00        | \$8,000.00           |           |           | \$6,000.00   | 100.00 |           | \$600.00                               |
| 0230 | SWPP                     | \$8,000.00        | \$8,000.00           |           |           | \$6,000.00   | 100.00 |           | \$600.00                               |
| 0283 | Temp Fence               | \$6,000.00        | \$6,000,00           |           | ٠         | \$8,800.00   | 100.00 |           | \$800.00                               |
| 0290 | Suparvision              | \$122,000.00      | \$122,000.00         |           | •         | \$122,000.00 | 100.00 |           | \$12,200.00                            |
| 0295 | Overbaad & Protit        | \$200,427.00      | \$200,427.00         |           | ٠         | \$200,427.00 | 100.00 |           | \$20,042.70                            |
| 0299 | tneurance                | \$95,883.00       | \$85,869.00          |           |           | \$95,883.00  | 100.00 |           | \$8,589.30                             |
| 0321 | Concrete Reinforcing     | \$121,000.00      | \$121,000.00         |           |           | \$121,000.00 | 100.00 |           | \$12,100,00                            |
| 0330 | Cast - In Flace Concrete | \$301,000.00      | \$301,000.00         |           |           | \$301,000.00 | 100.00 |           | \$30,100.00                            |
| 0410 | Masonry Structural       | \$677,004.00      | \$577,004.00         |           |           | \$577,004.00 | 100.00 |           | \$57,700.40                            |
| 0415 | Sile Masonry             | \$38,840.00       | \$30,640.00          |           |           | \$38,640.00  | 100.00 |           | \$3,864.00                             |
| 0420 | Retaining Walls          | \$41,200.00       | \$41,200.00          |           |           | \$41,200.00  | 100.00 |           | \$4,120.00                             |
| 0510 | Metal Galas & Fence      | \$71,300,00       | \$71,300.00          |           |           | \$71,300.00  | 100.00 |           | \$7,130.00                             |
| 0516 | Structural Sleet         | \$439,980.00      | <b>\$</b> 439,980.00 |           | •         | \$439,980.00 | 100.00 |           | \$43,998.00                            |
| 0520 | Sheel Decorative Metal   | \$115,750.00      | \$115,750.00         |           |           | \$116,760.00 | 100.00 |           | \$11,576.00                            |
| 0525 | Screens Perforated Matal | \$71,250.00       | \$71,250.00          |           |           | \$71,250.00  | 100.00 |           | \$7,125.00                             |
| 0806 | Rough Carpeniry          | \$599,898.00      | \$599,898.00         |           |           | \$599,898,00 | 100.00 |           | \$59,980.60                            |
| 0610 | Casework                 | \$58,800,00       | \$08,800.00          |           | ٠         | \$58,800.00  | 100.00 |           | \$5,880.00                             |
| 0710 | Roof Covar               | \$219,330.00      | \$219,380.00         |           |           | \$219,300.00 | 100.00 |           | \$21,938.00                            |
| 0711 | Insulation               | \$40,990.00       | \$48,990.00          |           |           | \$48,990.00  | 100.00 |           | \$4,899.00                             |
| 0712 | Waterproofing            | \$12,835.00       | \$12,835.00          |           |           | \$12,835.00  | 100.00 |           | \$1,283.50                             |
| 0792 | Sealants & Caulking      | \$1,600.00        | \$1,600.00           |           |           | \$1,600.00   | 100.00 |           | \$160.00                               |
| 0810 | Doors & Frames           | \$118,829.00      | \$116,829.00         |           |           | \$116,829,00 | 100.00 |           | \$11,882.90                            |
| 0011 | Overhead Doore           | \$8,500.00        | \$8,500,00           |           |           | \$8,500.00   | 100.00 |           | \$860.00                               |
|      |                          |                   |                      |           |           |              |        |           | 4400100                                |

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# DOUG WALL CONSTRUCTION, INC.

78-460 Avenue 41 Bermude Dunes, CA 92203 760/772-8446 \*760/772-9407

BILL TO: CDHS

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City of Desert Hot Springe 66950 Pierson Blvd Desert Hot Springs, CA 92240 INVOICE #: 4073 INVOICE DATE: 10/26/2012 PERIOD TO: 10/31/2012 APPLICATION #: 17 CONTRACT DATE: 6/22/2012 DUE DATE: 12/1/2012

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JOB: 1041 Community Health & Wellness 11320 Cholia Drive Desert Hot Springs, CA 92240

\*\*\*\*\* This Application \*\*\*\*\*

|             |                           | 8CHEDULED           | PREVIOUS            | CURRENT   | STORED | TOTAL        | 95     | BALANCE  | ومستعلق ويستعلق ويجالك و   |
|-------------|---------------------------|---------------------|---------------------|-----------|--------|--------------|--------|--|----------------------------|
| CODE        | DESCRIPTION               | VALUE               | APPLICATIONS        | COMPLETED |        | COMPLETED    | COMPL  | TO FINISH  | Retainage                  |
| 812         | Glazing                   | \$178,600,00        | \$178,600.00        | ,         |        | \$170,800.00 | 100.00 | and the second | \$17,860.00                |
| 813         | Skylights                 | \$15,000.00         | \$15,000.00         |           |        | \$15,000.00  | 100.00 |  | \$1,500.00                 |
| 905         | <b>Metal Grating Mats</b> | \$12,000.00         | <b>\$12,000.0</b> 0 |           |        | \$12,000,00  | 100,00 |  | \$1,200.00                 |
| 911         | Lath & Plaster            | \$185,000.00        | \$185,000.00        |           |        | \$185,000.00 | 100.00 |  | \$18,500.00                |
| 915         | T-Bar                     | \$135,000.00        | \$135,000.00        |           |        | \$135,000.00 | 100.00 |  | \$13,500,00                |
| 917         | Sheel Vinyl               | \$25,245.00         | \$25,245.00         |           |        | \$25,245.00  | 100.00 |  | \$2,524.50                 |
| 918         | Carpel                    | \$7,000.00          | \$7,000.00          |           |        | \$7,000.00   | 100.00 |  | \$700.00                   |
| 919         | Pelating                  | \$65,244.00         | \$85,244.00         |           |        | \$65,244.00  | 100.0D |  | \$6,624.40                 |
| 925         | Drywali                   | \$61,000.00         | <b>\$81,000.00</b>  |           |        | \$81,000.00  | 100.00 |  | \$6,100.00                 |
| 935         | Athletic Flooring         | \$75,819.00         | \$75,813.00         |           | 44     | \$75,813.00  | 100.00 |  | \$7,581,30                 |
| <b>9</b> 30 | Stained Concrete          | \$14,168.00         | \$14,168.00         |           | •      | \$14,168.00  | 100.00 |  | \$1,418.60                 |
| 940         | Acoustical Wall Panels    | \$16,275.00         | \$18,275.00         |           | ٠      | \$10,276.00  | 100.00 |  | \$1,627,50                 |
| 945         | Tectum Wall Panals        | \$23,000.00         | \$23,000.00         |           |        | \$23,000.00  | 100.00 |  | \$2,300.00                 |
| 950         | Corantic Tille            | \$23,900.00         | \$23,900.00         |           |        | \$23,900.00  | 100.00 |  | \$2,390.00                 |
| 955         | Wallcovering              | \$1,800.00          | \$1,800.00          |           |        | \$1,800.00   | 100.00 |  | \$180.00                   |
| 960         | Epoxy & Stain             | \$21,248.00         | \$21,248.00         |           |        | \$21,248,00  | 100.00 |  | \$2,124.80                 |
| 976         | Glass Partillon           | <b>\$19,94</b> 4.00 | \$19,944.00         |           |        | \$19,944.00  | 109.00 |  | \$1,984.40                 |
| 1040        | Signaga                   | \$25,403.00         | \$25,403.00         |           |        | \$25,403,00  | 100.00 |  | \$2,540.30                 |
| 1052        | Fire Protection           | \$1,800.00          | \$1,300.00          |           |        | \$1,300.00   | 100.00 |  | \$130.00                   |
| 1085        | Tollet Partilions         | \$17,233.00         | \$17,233.00         |           |        | \$17,233.00  | 100.00 |  | \$1,723.30                 |
| 1070        | Flag Pole / Speciatilies  | \$2,200.00          | \$2,200.00          |           |        | \$2,200,00   | 100.00 |  | \$220.00                   |
| 1075        | Lockera                   | \$6,484.00          | <b>\$8,484.0</b> 0  |           | *      | \$6,484.00   | 100.00 |  | \$84B,40                   |
| 1080        | Tollel Accessories        | \$11,470.00         | \$11,470.00         |           | *      | \$11,470,00  | 100.00 |  | \$1,147.00                 |
| 1105        | Appliances                | \$8,500.00          | \$8,600.00          |           | •      | \$8,500.00   | 100.00 | <b>\$0.00</b>  | \$850.00                   |
| 1116        | Alhielio Equipment        | \$88,304.00         | \$88,304.00         |           |        | \$88,304.00  | 100.00 | 40.00  | \$8,630,40                 |
| 1205        | Bike Reck                 | \$2,600.00          | \$2,600.00          |           |        | \$2,800.00   | 100.00 |  | \$280.00                   |
| 1215        | Fabrio Shada Structurea   | \$18,000.00         | \$18,000.00         |           | •      | \$18,000.00  | 100.00 |  | \$1,800.00                 |
| 1305        | Spray Ground              | \$242,264.00        | \$242,284,00        |           |        | \$242,284.00 | 100.00 | \$0.00   | \$24,228.40                |
| 1315        | Swimming Pools            | \$622,780.00        | \$622,780.00        |           | •      | \$822,780.00 | 100.00 | \$0.00   | \$62,278,00                |
| 1530        | Fire Sprinklere           | \$49,600.00         | \$49,600.00         |           | 1      | \$49,500.00  | 100.00 | 40140  | \$1,950.00                 |
| 1605        | Plumbing                  | \$295,000.00        | \$295,000,00        |           | 4      | \$295,000.00 | 100.00 |  |                            |
| 1705        | HVAC                      | \$430,500.00        | \$430,500.00        |           | •      | \$430,500.00 | 100.00 |  | \$29,500.00<br>\$43.050.00 |
| 1805        | Electrical                | \$769,900.00        | \$759,900,00        |           |        | \$759,800.00 | 100.00 |  | \$43,050,00                |
| 1810        | Low Vollage/Fire Alarm    | \$50,000.00         | \$50,000.00         |           | •      | \$50,000.00  | 100.00 |  | \$75,990.00                |
| 1905        | Earthwork Rough           | \$44,000.00         | \$44,000.00         |           |        | \$44,000.00  | 100.00 |  | \$5,000.00<br>\$4,400.00   |
| 1920        | Earthwork Fine            | \$16,000.00         | \$15,000.00         |           |        | \$15,000.00  | 100.00 |  | \$4,400.00<br>\$1,600.00   |
| 2115        | Sol) Pretreat             | \$2,300.00          | \$2,300.00          |           |        | \$2,800.00   | 100.00 |  | \$1,500.00                 |
|             |                           |                     |                     |           |        | 4-1000.00    | 100.00 |  | \$230.00                   |

# DOUG WALL CONSTRUCTION, INC. CA SLLK 4 43112 78-450 Avenue 41 Bornuda Dunes, CA 92203 780/772-8448 \*760/772-9407

INVOICE #: 4073 INVOICE DATE: 10/25/2012 PERIOD TO: 10/31/2012 APPLICATION #: 17 CONTRACT DATE: 6/22/2012 DUE DATE: 12/1/2012

BILL TO: CDHS **City of Desert Hot Springs** 65950 Plerson Blvd Desert Hot Springs, CA 92240

#### JOB: 1041 **Community Health & Wellness** 11320 Cholla Drive Desert Hot Springs, CA 92240

| ***** This Application ***** |                  |                |                |             |           |                |        |           |              |
|------------------------------|------------------|----------------|----------------|-------------|-----------|----------------|--------|-----------|--------------|
|                              |                  | SCHEDULED      | PREVIOUS       | CURRENT '   | 8TORED    | TOTAL          | %      | BALANCE   |              |
| CODE                         | DESCRIPTION      | VALUE          | APPLICATIONS   | COMPLETED . | MATERIALS | COMPLETED      | COMPL  | TO FINISH | RETAINAGE    |
| 2120                         | Landscaping      | \$128,852.00   | \$128,852.00   |             | 4         | \$128,852.00   | 100.00 | \$0.00    | \$12,685.20  |
| 2125                         | Sile Concrete    | \$139,000.00   | \$139,000.00   |             | +         | \$139,000.00   | 100.00 | ·         | \$13,900.00  |
| 2130                         | Inigation        | \$84,500.00    | \$84,500.00    |             |           | \$84,500.00    | 100.00 |           | \$8,450.00   |
| 2135                         | Asphait Onsile   | \$118,600.00   | \$116,600.00   |             |           | \$116,600,00   | 100.00 |           | \$11,669.00  |
| 2140                         | Pavement Marking | \$2,270.00     | \$2,270.00     |             |           | \$2,270.00     | 100.00 |           | \$227.00     |
| 2146                         | Waterproof       | \$12,835,00    | \$12,835.00    |             |           | \$12,835.00    | 100,00 |           | \$1,283,50   |
| 3005                         | Sile Drainago    | \$77,000.00    | \$77,000.00    |             |           | \$77,000.00    | 100.00 |           | \$7,700.00   |
| 3010                         | Sile Water       | \$71,000.00    | \$71,000.00    |             |           | \$71,000,00    | 100.00 |           | \$7,100.00   |
| 3016                         | Sanitary Sewer   | \$19,000.00    | \$19,000,00    |             |           | \$19,000.00    | 100,00 |           | \$1,900,00   |
|                              | TOTALS:          | \$8,017,111.00 | \$7,669,715.49 | \$0.00      | \$0.00    | \$8,017,111.00 | 100.00 | \$0.00    | \$801,711.10 |

| *    | <b>Completed Adjustment Credit</b> |                 |                |        |   | \$0.00          |        |        | \$0.00         |
|------|------------------------------------|-----------------|----------------|--------|---|-----------------|--------|--------|----------------|
| C001 | Change Ordar#1                     | \$3,257,707.38  | \$0.00         | \$0.00 | \$0.00                                  | \$3,257,707.38  | 100.00 | \$0.00 | \$325,770.74   |
|      | TOTALS:                            | \$11,274,818.38 | \$7,669,716.49 |        | ••••••••••••••••••••••••••••••••••••••• | \$11,274,818,38 |        | ·····  | \$1,127,461.84 |

| PREVIOUS RETAINAGE | \$33,264.20  |
|--------------------|--------------|
| CURRENT BILLING    | \$384,838.64 |
| NEW RETAINAGE      | \$42,759.00  |

|   | ORIGINAL CONTRACT SUM                  | \$8,017,111.00  |
|---|--|-----------------|
|   | CHANGE BY CHANGE ORDER                 | \$3,257,707.38  |
|   | CONTRACT SUM TO DATE                   | \$11,274,818,38 |
|   | TOTAL COMPLETED & STORED TO DATE       | \$11,274,818.38 |
|   | TOTAL RETAINAGE                        | \$1,127,481.84  |
|   | TOTAL EARNED LESS RETAINAGE            | \$10,147,336.54 |
| • | LESS PREVIOUS CERTIFICATES FOR PAYMENT |                 |

CONTRACTOR: DATE: ARCHITECT DATE:

CURRENT PAYMENT DUE

\$384,838.54 CALS The Fing .....

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Thank you for your businessi

10/29/17

#### CONDITIONAL WAIVER AND RELEASE ON PROGRESS PAYMENT (CA CIVIL CODE \$8182)

#### NOTICE: THIS DOCUMENT WAIVES THE CLAIMANT'S LIEN, STOP PAYMENT NOTICE, AND PAYMENT BOND RIGHTS EFFECTIVE ON RECEIPT OF PAYMENT. A PERSON SHOULD NOT RELY ON THIS DOCUMENT UNLESS SATISFIED THAT THE CLAIMANT HAS RECEIVED PAYMENT.

Identifying Information:

Name of Glatmant DOUG WALL CONSTRUCTION INC

Name of Outlamer: CITY OF DESERT HOT SPRINGS

Job Location: 11320 CHOLLA DR, DESERT HOT SPRINGS, CA 92240

OWNER CITY OF DESERT HOT SPRINGS

Through Date: \_\_\_\_\_10-31-12

#### **Conditional Waiver and Release**

This document walvas and releases lian, stop payment notico, and payment boad rights the claiment has for labor and service provided, and equipatent and statistical delivered, to the evolution on this job through the Through Date of this document. Flights besod upon labor or service provided, and equipatent and statistical delivered, to the has been fully executed by the parties prior to the date that this document is eigned by the claiment, are waived and released by this document, unless listed as an Exception below. This document is effective only on the claiments receipt of payment from the financial institution on which the following check is drawn:

Maker of Check: CITY OF DESERT HOT SPRINGS

Amount of Chade \$ 384,838.54

Check Payable b: DOUG WALL CONSTRUCTION INC

Exceptions

This document does not affect any of the following:

- (1) Robottons.
- (2) Exites for which the claiment has not received payment.
- (3) The following progress payments for which the claimant has previously given a conditional waiver and release but has not received payment: Data[a] of waiver and release: 8/31/12 & 9/30/12

Amounila) of unpath progress payment(e); \$ 1,081,130.07

(4) Contract rights, Including:
 (A) a right based on revelation, ebandonment, or breach of contract, and
 (B) the right to recover compensation for work not companyated by the payment.

#### SIGNATURE

Claimant's Signature:

DOUG WALL, PRESIDENT

Date of Signature:

Claimant's Title:

10-29-12

O Portor Law Group, Inc. 2012

# **EXHIBIT B**

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# Doug WALL CONSTRUCTION, INC. CA HE LK 474012 78-450 Avenue 41 Bernuds Duncs, CA 92203 760/772-8446 \* 760/772-9407

INVOICE #: 4177 INVOICE DATE: 12/31/12 PERIOD TO: 12/31/12 APPLICATION #: 18 CONTRACT DATE: 06/22/11 DUE DATE: 01/30/13

JOB: 1041 Community Health & Wellness 11320 Cholla Drive Desert Hot Sprin, CA 92240

<<<< This Application >>>>

|      |                      | SCHEDULED  | وجيبي بيرجيب والمتشاف التكريب والمتراف فالمتكر المترافع فالمتكر والمترك والمتكر والمتكر والمتكر والمتكر والمتكر |                      |                     |                    |            |                      |                      |
|------|----------------------|------------|---|----------------------|---------------------|--------------------|------------|----------------------|----------------------|
| CODE | DESCRIPTION          | VALUE      | PREVIOUS<br>APPLICATIONS  | CURRENT<br>COMPLETED | STORED<br>MATERIALS | TOTAL<br>COMPLETED | %<br>COMPL | BALANCE<br>TO FINISH | RETAINAGE            |
| 0110 | Nobilization         | 348,084.00 | 348,084.00  |                      |                     | 348,084.00         | 100.0      |                      | 17,404.20            |
| 0125 | Ronding              | 118,374.00 | 118,374.00  |                      |                     | 118,374.00         | 100.0      |                      | 5,918.70             |
| 0130 | Blue Prints          | 400.00     | 400.00  |                      |                     | 400.00             | 100.0      |                      | 20.00                |
| 0161 | Temp Utilities       | 3,800.00   | 3.800.00  |                      |                     | 3,800.00           | 100.0      |                      | 190.00               |
| 0155 | Progressive Cleanup  | 12,000.00  | 12.000.00   |                      |                     | 12,000.00          | 300.0      |                      | 600.00               |
| 0156 | Misc. Labor          | 12.000.00  | 12,000.00   |                      |                     | 12,000.00          | 100.0      |                      | 600.00               |
| 0157 | Site Preperation     | 971.00     | 971.00  |                      |                     | 971.00             | 100.0      |                      | 48.55                |
| 0158 | Final Cleanup        | 2,800.00   | 2.800.00  |                      |                     | 2,800.00           | 100.0      |                      | 140.00               |
| 0159 | Dumpster             | 1,800.00   | 1,800.00  |                      |                     | 1.800.00           |            |                      | 90.00                |
| 0164 | Temp Trailer         | 4,178.00   | 4,178.00  |                      |                     | 4,178.00           |            |                      | 208.90               |
| 0165 | Temp. Facilities     | 1,800.00   | 1.800.00  |                      |                     | 1,800.00           |            |                      | 90.00                |
| 0166 | Yemp Power           | 6,250.00   | 6,250.00  |                      |                     | 6,250,00           |            |                      | 312.50               |
| 0167 | Project Signage      | 1,500.00   | 1,500.00  |                      |                     | 1,500.00           |            |                      | 75.00                |
| 0210 | Survey               | 12,900.00  | 12,900.00   |                      |                     | 12,900.00          |            |                      | 645.00               |
| 0224 | PM-10                | 6,000.00   | 6,000.00  |                      |                     | 6,000.00           |            |                      | 300.00               |
| 0230 | SHPP                 | 6.000.00   | 6,000.00  |                      |                     | 6,000.00           | 100.0      |                      | 300.00               |
| 0283 | Temp Fence           | 6,000.00   | 6,000.00  |                      |                     | 6,000.00           | 100.0      |                      | 300.00               |
| 0290 | Supervision          | 122.000.00 | 122,000.00  |                      |                     | 122,000.00         | 100.0      |                      | 6,100,00             |
| 0295 | Overhead & Profit    | 20D,427.00 | 200,427.00  |                      |                     | 200,427.00         |            |                      | 10,021.35            |
| 0299 | Insurance            | 85,863,00  | 85,863.00   |                      |                     | 85.863.00          | 100.0      |                      | 4.293.15             |
| 0321 | Concrete Reinforcing | 121,000.00 | 121,000.00  |                      |                     | 121,000.00         | 100.0      |                      | 4.253.15<br>6,050.00 |
| 0330 | Cast-In Place Concre | 301,000.00 | 301,000.00  |                      |                     | 301.000.00         | 100.0      |                      | 16,050.00            |
| 0410 | Masonry Structural   | 577,004.00 | 577,004.00  |                      |                     | 577,004.00         | 100.0      |                      |                      |
| 0415 | Site Masonry         | 38,640.00  | 38,640.00   |                      |                     | 38.640.00          |            |                      | 28,650,20            |
| 0420 | Retaining Nalls      | 41,200.00  | 41,200.00   |                      |                     | 41,200.00          | 100.0      |                      | 1,932.00             |
| 0510 | Hetal Gate & Fence   | 71,300.00  | 71,300.00   |                      |                     | 71,300.00          | 100.0      |                      | 2,050.00             |
| 0516 | Structural Steel     | 439,980,00 | 439,980.00  |                      |                     | 439,980,00         | 100.0      |                      | 3.565.00             |
| 0520 | SheetDecorativeXeta) | 115.750.00 | 115,750.00  |                      |                     | 115,750.00         | 100.0      |                      | 21,999.00            |
| )525 | ScreensPerforatedNet | 71,250.00  | 71,250,00   |                      |                     | 71.250.00          | 100.0      |                      | 5,787.50             |
| )605 | Rough Carpentry      | 599,896.00 | 599,896.00  |                      |                     | 599.895.00         | 100.0      |                      | 3.562.50             |
|      | Casework             | 58,800.00  | 58,800.00   |                      |                     | 58,800.00          | 100.0      |                      | 29,994.80            |
| 710  | Roof Cover           | 219,360.00 | 219,360,00  |                      |                     | 219,360.00         | 100.0      |                      | 2.940.00             |
| 711  | Insulation           | 48.990.00  | 48,990.00   |                      |                     | 48,990.00          | 100.0      |                      | 10,958.00            |
| 712  | Waterproofing        | 12,835.00  | 12,835.00   |                      |                     | 12,835.00          | 100.0      |                      | 2.449.50             |
| 792  | Sealants & Caulking  | 1.600.00   | 1,600,00  |                      |                     | 1.600.00           | 100.0      |                      | 641.75               |
| 610  | Doors & Frames       | 116,829,00 | 116,829.00  |                      |                     | 116,829.00         | 100.0      |                      | 80.00                |
| 811  | Overhead Doors       | 8,500.00   | 8,500.00  |                      |                     | 8,500.00           |            |                      | 5,841.45             |
| -    |                      |            |   |                      |                     | 0,000.00           | 100.0      |                      | 425.00               |

BILL TO: CDHS City of Desert Hot Springs 65950 Plerson Blvd Desert Ht Spring, CA 92240

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# DOUG WALL CONSTRUCTION, INC. CA BL LK # 143113 78-450 Avenue 41 Bermuda Dunes, CA 92203 760/772-8446 \* 760/772-9407

BILL TO: CDHS

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City of Desert Hot Springs 65950 Plerson Blvd Desert Ht Spring, CA 92240

## INVOICE #: 4177 INVOICE DATE: 12/31/12 PERIOD TO: 12/31/12 APPLICATION #: 18 CONTRACT DATE: 06/22/11 DUE DATE: 01/30/13 PAGE: 2

JOB: 1041 Community Health & Wellness 11320 Cholla Drive Desert Hot Sprin, CA 92240

# <<<< This Application >>>>

|        |                      | SCHEDULED   | PREVIOUS     | CURRENT   | STORED    | TOTAL      | %     | BALANCE   |                  |
|--------|----------------------|-------------|--------------|-----------|-----------|------------|-------|-----------|------------------|
| CODE   | DESCRIPTION          | VALUE       | APPLICATIONS | COMPLETED | MATERIALS | COMPLETED  | COMPL | TO FINISH | RETAINAGE        |
| 0812   | Glazing              | 178,600.00  | 178,600.00   |           |           | 178,600.00 | 100.0 |           | 8,930.0          |
| 0813   | Skylights            | 15,000.00   | 15,000.00    |           |           | 15,000.00  | 100.0 |           | 750.0            |
|        | Ketal Grating Hats   | 12,000.00   | 12,000.00    |           |           | 12,000.00  | 100.0 |           | 600.0            |
| 0911   | Lath & Plaster       | 185,000.00  | 185,000.00   |           |           | 185,000.00 | 100.0 |           | 9,250,0          |
| 0915   | T-Bar                | 135,000.00  | 135,000.00   |           |           | 135,080.00 | 100.0 |           | 6,750.0          |
|        | Sheet Vinyl          | 25,245.00   | 25,245.00    |           |           | 25,245.00  | 100.0 |           | 1,262.2          |
| 0918   | Carpet               | 7,000.00    | 7,000.00     |           |           | 7,000.00   | 100.0 |           | 350.0            |
| )919   | Painting             | 65,244.00   | 65,244.00    |           |           | 65,244.00  | 100.0 |           | 3,262,2          |
| 925    | Orywall              | 61.000.00   | 61,000.00    |           |           | 61,000.00  | 100.0 |           | 3,050.0          |
| )930   | Athletic Flooring    | 75,813.00   | 75,813.00    |           |           | 75,813.00  | 100.0 |           | 3,790.6          |
| 1935   | Stained Concrete     | 14,166.00   | 14,166.00    |           |           | 14,165.00  | 100.0 |           | 708.3            |
| )940   | Acoustic Wall Panels | 16,275.00   | 16,275.00    |           |           | 16,275.00  | 100.0 |           | 813.7            |
| )945   | Tectum Hall Panels   | 23.000.00   | 23,000,00    |           |           | 23,000.00  | 100.0 |           | 1,150,00         |
| 1950   | Ceramic Tile         | 23,900.00   | 23,900.00    |           |           | 23,900.00  | 100.D |           | 1,195.0          |
| 1955   | Wallcovering         | 1,800.00    | 1,800.00     |           |           | 1,800.00   | 100.0 |           | 90.0             |
|        | Epoxy & Stain        | 21,248.00   | 21,248.00    |           |           | 21,248.00  | 100.0 |           | 1.062.4          |
| 975    | Glass Partition      | 19,944.00   | 19,944.00    |           |           | 19,944.00  | 100.D |           | 997.2            |
| 040    | Signage              | 25.403.00   | 25,403.00    |           |           | 25,403.00  | 100.0 |           | 1,270.1          |
| 052    | Fire Protection      | 1,300.00    | 1,300.00     |           |           | 1,300.00   | 100.0 |           | 65.00            |
| .065   | Toilet Partitions    | 17,233.00   | 17,233.00    |           |           | 17.233.00  | 100.0 |           | 861.6            |
| .070   | Flagpole/Specialties | 2.200.00    | 2,200.00     |           |           | 2,200.00   | 100.0 |           | 110.00           |
| .075   | Lockers              | 6,484.00    | 5,484.00     |           |           | 6,484.00   | 100.0 |           | 324.20           |
| 080    | Toilet Accessories   | . 11,470.00 | 11,470.00    |           |           | 11,470.00  | 100.0 |           | 573.50           |
| 105    | Appliances           | 8,500.00    | 8,500.00     |           |           | 8,500.00   | 100.0 |           | 425.00           |
| .115 . | Athletic Equipment   | 86,304.00   | 86,304.00    |           |           | 86,304.00  | 100.0 |           | 4,315.20         |
| 205    | Bike Rack            | 2,600.00    | 2,600.00     |           |           | 2,600.00   | 100,0 |           | 4.313.20         |
| 215    | FabricShadeStructure | 18,000.00   | 18,000.00    |           |           | 18,000.00  | 100.0 |           | 900.00           |
| 305 :  | Spray Ground         | 242.264.00  | 242,264.00   |           |           | 242,264.00 | 100.0 |           | 12,113.19        |
| 315    | Swimming Pools       | 622,780.00  | 622,700.00   |           |           | 622,780.00 | 100.0 |           | 31,139.00        |
| 530    | Fire Sprinklers      | 49,500.00   | 49.500.00    |           |           | 49,500.00  | 100.0 |           | 2,475.00         |
| 605    | Plumbing             | 295,000.00  | 295,000.00   |           |           | 295,000.00 | 100.0 |           |                  |
| 705    | HVAC                 | 430,500.00  | 430,500.00   |           |           | 430,500.00 | 100.0 |           | 14.750.00        |
| B05 (  | Electrical           | 759,900.00  | 759,900.00   |           |           | 759,900.00 | 100.0 |           | 21.525.00        |
| B10 L  | LowVoltage/FireAlarm | 50,000.00   | 60,000,00    |           |           | 50,000.00  | 100.0 |           | 37,995.00        |
| 905 E  | Earthwork Rough      | 44.000.00   | 44,000,00    |           |           | 44,000.00  | 100.0 |           | 2,500.00         |
| 920 (  | Earthwork Fine       | 15.000.00   | 15,000.00    |           |           | 15,000.00  | 100.0 |           | 2,200.00         |
| 115 9  | Soll Pretreat        | 2,300:00    | 2.300.00     |           |           | 2,300.00   | 100.0 |           | 750.00<br>115.00 |

DOUG WALL CONSTRUCTION, INC. CA 81. Lk # 40112

78-450 Avenue 41 Bennuda Danes, CA 92203 760/772-8446 \* 760/772-9407

BILL TO: CDHS

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CONTRACTOR:

ARCHITECT:

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**City of Desert Hot Springs** 65950 Pierson Blvd Desert Ht Spring, CA 92240

| INVOICE #;     | 4177     |
|----------------|----------|
| INVOIGE DATE:  | 12/31/12 |
| PERIOD TO:     | 12/31/12 |
| APPLICATION #: | 18       |
| CONTRACT DATE: | 06/22/11 |
| DUE DATE:      | 01/30/13 |
| PAGE:          | 3        |

JOB: 1041 Community Health & Wellness 11320 Cholla Drive Desert Hot Sprin, CA 92240

| <<<< This Application >>>> |                  |                    |                          |                      |                     |                    |            |                      |                    |
|----------------------------|------------------|--------------------|--------------------------|----------------------|---------------------|--------------------|------------|----------------------|--------------------|
| CODE                       | DESCRIPTION      | SCHEDULED<br>VALUE | PREVIOUS<br>APPLICATIONS | CURRENT<br>COMPLETED | STORED<br>MATERIALS | TOTAL<br>COMPLETED | %<br>COMPL | BALANCE<br>TO FINISH | RETAINAGE          |
| 2120                       | Landscaping      | 126,052.00         | 126,052.00               |                      |                     | 126,852.00         |            |                      | 6,342.60           |
| 2125                       | Site Concrete    | 139,000,00         | 139,000.00               |                      |                     | 189.000.00         | 100,0      |                      | 6,950,00           |
| 2130                       | Irrigation       | 84,500.00          | 84,500.00                |                      |                     | 84,500.00          | -          |                      | 4,225,00           |
| 2135                       | Asphalt Onsite   | 116,600.00         | 116,600.00               |                      |                     | 116,600.00         |            |                      | 5,030.00           |
| 2140                       | Pavement Narking | 2.270.00           | 2,270.00                 |                      |                     | 2,270.00           | 100.0      |                      | 113.50             |
| 2145                       | Waterproof       | 12,835.00          | 12.835.00                |                      |                     | 12.835.00          | 100.0      |                      |                    |
| 3005                       | Site Drainage    | 77,000.00          | 77.000.00                |                      |                     | 77.000.00          | 100.0      |                      | 641.76             |
| 3010                       | Site Hater       | 71,000.00          | 71,000.00                |                      |                     | 71.000.00          | 100.0      |                      | 3,850.00           |
| 3015                       | Sanitary Sever   | 19,000.00          | 19,000,00                |                      |                     | 19,000.00          |            |                      | 3.659.00<br>950.00 |
|                            | TOTALS:          | 0,017,111.00       | 8.017.111.00             | 0.00                 | 0.00                |                    | 100.0      | 0.00                 | 400.855.64         |
| C001                       | CHANGE ORDER #1  | 3,257,707,38       | 3.257,707.38             |                      |                     | 9 967 707 00       | 100 0      |                      |                    |
|                            | CHANSE ORDER #2  | 731,881.35         | -1-01 (1 VI 1 VV         | 731,081.35           |                     | 3,267,707.3B       |            |                      | 162,085,37         |
|                            | CHANGE ORDER #3  | 560.382.23         |                          |                      |                     | 731,881,35         | 100.0      |                      | 36,694.07          |
|                            |                  | 63.306,000         |                          | 568,382.23           |                     | 568,382,23         | 100.0      |                      | 28,419.12          |
|                            | TOTALS:          | 12,676,081.95      | 11,274,818,38            | 1,300,263.58         | 0.00                | 12,575,081.96      | 100.0      | 0.00                 | 628,764.10         |

563.740.91 CURRENT BILLING......\$ 1,300,263.68 65,013.19 DATE:

DATE:

| ORIGINAL CONTRACT SUM                  | 8.017 111 00  |
|--|---------------|
| CHANGE BY CHANGE ORDER                 | A 557 070 DG  |
| CONTRACT SUM TO DATE                   | 12 676 0R1 US |
| TOTAL COMPLETED & STORED TO DATE       | 12,575,081 96 |
| TOTAL RETAINAGE.                       | 628 754 10    |
| TOTAL EARNED LESS RETAINAGE            | 11 946 327 86 |
| LESS PREVIOUS CERTIFICATES FOR PAYMENT | 10.711.077.47 |

CURRENT PAYNENT DUE...... \$ 1,235,250.39

Thank you for your business!

Kisto 30 JAN 13 1130/13

#### LAW OFFICES

#### SCOTT J. THERRIEN

Telephone 562.692.8913

t

2300 PELLISSIER PLACE CITY OF INDUSTRY, CA 90601-1503 Faesimile 562.692.9342

E-mail: Scott@Therricnlaw.com

April 15, 2013

#### VIA EMAIL

Steve Quintanilla, Esq. City Attorney/Foundation Attorney City of Desert Hot Springs 65-950 Pierson Blvd Desert Hot Springs, CA 92240

> Re: Doug Wall Construction's Request to Substitute Subcontractor Pacific Custom Pools, Inc.
> Hearing Date: April 17, 2013
> Hearing Time: 3:00 p.m.

Dear Mr. Quintanilla:

I write to follow up on Pacific Custom Pools, Inc.'s ("Pacific") previously submitted written objections to Doug Wall Construction's ("DWC") request to substitute Pacific as a subcontractor on the Desert Hot Springs Community Health and Wellness Center project (the "Project").

Neither the prime contractor nor the Awarding Authority has the unfettered right to substitute a subcontractor merely because it deems it convenient or desirable to do so. Indeed, *Cal. Pub. Works Contract Code* section 4107 restricts the ability of the Awarding Authority to consent to a substitution to only those situations enumerated in Section 4107. Pacific respectfully submits that none of the enumerated situations exist in this matter and there is no justifiable basis to substitute Pacific, especially at this point in the Project.

Any "refusal" or "delay" complained of by DWC was caused solely by DWC's breach of its Contractual obligations to pay Pacific as agreed. DWC cannot refuse to pay Pacific in breach of its obligations under the Contract and then complain because Pacific is not working because it has not been paid. Therefore, to consent to the substitution of Pacific in this situation would be rewarding DWC for its own misconduct.

## Steve Quintanilla, Esq. April 15, 2013 Page 2

## BRIEF STATEMENT OF PACIFIC'S POSITION:

In or about April 2012, Pacific informed DWC that it intended to stop work because DWC was not paying Pacific in accordance with the terms of the Contract signed by the parties in July 2011. As a result, DWC and Pacific modified the Contract such that DWC agreed to pay and Pacific agreed to accept payments from DWC on a "pay as you go" basis for all payroll, materials and equipment to be supplied to the Project. (*See e.g.*, DWC's letter dated December 19, 2012, attached hereto as Exhibit A, wherein DWC acknowledges the "pay as you go" agreement.)

In December 2012, DWC unilaterally and wrongfully stopped paying Pacific for the work it had performed, refused to pay for material and equipment that had been supplied to the Project and refused to pay Pacific's subcontractors and vendors despite repeated promises and assurances that it would do so.<sup>1</sup> Moreover, on or about January 10, 2013, DWC informed Pacific that it would no longer honor the "pay as you go" agreement and in fact, would not pay Pacific any additional money or pay Pacific's subcontractors or vendors. As of January 10, 2013, DWC owed Pacific at teast \$148,442 for payroll and materials and equipment already incorporated into the Project after the "pay as you go" agreement was implemented.<sup>2</sup> To this day, DWC has not made any payments to Pacific or its suppliers or subcontractors since mid December 2012. DWC's failure to pay Pacific as agreed constituted a material breach of the parties' Contract.

It is fundamental provision of contract law that a breach of the agreement by one party excuses the other party's performance. See e.g., Brown v. Grimes, 192 Cal. App 4<sup>th</sup> 265, 277 (2011). Consistent with this concept, the DWC/Pacific Contract allowed Pacific to stop work if it was not paid as agreed. Since DWC breached the Contract by failing to pay Pacific as agreed, Pacific's performance was excused. Because Pacific's performance was excused by DWC's breach, the City should not support DWC's attempt to use its own misconduct as a basis to substitute Pacific as a subcontractor.

For example, as is set forth in the second page of Exhibit A, which was an attachment to the DWC's letter of December 19, 2012, DWC represented to Pacific that as of December 17, 2012, DWC had already submitted a check request for Systems Automated (a Pacific vendor) for the entire \$30,462.00 owed and Pacific's invoice for payroll. However, DWC never paid any part of those amounts to Pacific or to Systems Automated.

<sup>&</sup>lt;sup>2</sup> This amount is in addition to the \$150,996.06 DWC still owes Pacific for unpuid change orders.

Steve Quintanilla, Esq. April 15, 2013 Page 3

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Thank you for your courtesy and cooperation.

Please let me know if you have any questions or comments or would like additional information.

Respectfully Supmitted, u K Therrich

Attorney for Pacific Custom Pools, Inc.

Enclosure cc: James F. Barger (with enclosure)

# **EXHIBIT** A



CC: Doug Wall

Doug Well Construction, Inc. Re: Completion and current status Project: Desert Hot Springs Health and Wellness Center 12/19/2012

To: Jun Barger with Pacific Pools

I received your lotter by small today regarding your not returning to the project until after the 6th of January. As Dean our Site Superintendent has told you and I want to reiterate: The Grand Opening is scheduled for 1/11/13. At this Grand Opening, there will be Mayors. Gity 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 payroB 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 fim dated 12/13/12 E mail from fim dated 12/11/12 DWC recent laok ahead Schedule sent out on 12/10/12. Work to camplete list dated 12/17/12. Change Summary dated 9/25/12.

Respectfully, William Builer / Project Manager

> 78450 Ave 41, Bermuda Dunes, CA 92203 Tel: 760-772-8446 Fax: 760-772-9407

12/17/12 DWC INTERNAL LEDGER REGARDING PACIFIC POOLS

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| REVISED CONTRACT AMOUNT  | <b>\$916,474.6</b> 1                                   |                      |
|--|--|----------------------|
| LESS PREVIOUS PAYMENTS T DAT                                     | E  | <b>\$791,9</b> 87.24 |
| SUBTOTAL   | \$124,487.37   |                      |
| THIS REQUEST as of 12/3/12.                                      | \$52,215.26  |                      |
| BALANCE after the \$52,215.26 is                                 | \$72,272.11  |                      |
| Pacific Pools Invoice received                                   | 12/3/2012 Systems Automated<br>check request submitted | \$30,462.00          |
| Pacific Pools Invoice received<br>Pacific Pools Invoice received | 12/10/2012 Payroll<br>check request 12/17/12           | \$16,669.14          |
|  |  |                      |
| REVISED CONTRACT AMOUNT  |  | \$916,474.61         |
| LESS PREVIOUS PAYMENTS T DAT                                     | re after the \$\$2,215.26 is paid                      | \$844,202.50         |
| SUBTOTAL after the \$52,215.26 I                                 | \$72,272.11  |                      |
| THIS REQUEST as of 12/17/12                                      | \$47,131.14  |                      |
| BALANCE after this request is m                                  | ade  | \$25,140.97          |

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SUBMITTED BY WB Work to complete list is attached



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# GENERAL CONTRACTOR/SUBCONTRACTOR AGREEMENT

| CONTRACTOR                            | DOUG WALL<br>CONSTRUCTION, INC   | PROJECT NAME   | CITY OF DESERT HOT SPRINGS<br>COMMUNITY WELLNESS CENTER<br>11320 CHOLLA DRIVE, DESERT HOT<br>SPRINGS, CA 92240   |
|---------------------------------------|--|--|--|
| DWC CONTRACT JOB<br>NUMBER            | 1041   | OWNER<br>ARCHITECT<br>(DO NOT CONTACT THE ARCHITECT<br>WITHOUT EXPRESS PERMISSION FROM BILL<br>BUTLER) | The City of Desert Hot Springs<br>DLR GROUP WWCOT<br>490 S. FARRELL DRIVE, SUITE C-203<br>PALM SPRINGS, CA 92262 |
| SCHEDULE OF VALUES<br>CONTRACT AMOUNT | SPRAY GROUND<br>DWC COST CODE 1116<br>\$242,264.00<br>Swimming Pools<br>DWC COST CODE 1340<br>\$622,780.00<br>TOTAL CONTRACT<br>\$865,044.00 | PROJECT MANAGER<br>SUPERINTENDENT  | BILL BUTLER 760-610-3625<br>BILL@DWALLCONST.COM<br>To BE DETERMINED  |
| MONTHLY BILLING DATE                  | PENCIL DRAFT DUE<br>15TH OF EACH MONTH   | PROJECT START DATE   | 7/14/11  |
| DATE OF WORK ORDER                    | 6/30/11  | PROJECT COMPLETION DATE  | MAY 18 <sup>711</sup> 2012   |

| SUBCONTRACTOR | Pacific Custom Pools, Inc.<br>265 North Vinedo Avenue, Pasadena, CA 91107<br>Phone 626-795-3400 Fax 626-795-4003<br>Contact Josh Rapp<br>Contact Jim Bargen |  |
|---------------|---|--|
|               | Contact Jim Dargen  |  |

INITIAL Subcontractor



# **GENERAL CONTRACTOR-SUBCONTRACTOR CONTRACT**

THIS AGREEMENT, Made as of June 27th, In the Year of 2011,

| Between the General Contractor:                   |           | Doug Wall Construction, Inc.                 |  |
|---|-----------|--|--|
| and the Subcontractor: Pacific Custom Pools, Inc. |           | Custom Pools, Inc.                           |  |
| For the Project:                                  | CITY OF I | 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 RFI'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 <u>prevailing wages rates</u>, services, materials, installation, hoisting supplies, insurance, equipment, dust control, traffic control, scaffolding, 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

| INITIAL | V-3        |               |
|---------|------------|---------------|
|         | Contractor | Subcontractor |

with the applicable laws, regulations, ordinances, and building codes, and the provisions of this contract at no additional cost to Doug wall Construction, 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 \$865,044.00, 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.

With respect to monthly progress payments, on every 15th of each month, the 2.2 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 amount 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 all 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 lien, 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.



2.4 No progress payment, final payment or other payment under this Agreement shall be made without General Contractor's job superintendent's approval and unless 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.

Subcontractor agrees to pay when due all valid charges for labor performed and materials 2.6 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. Further, 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 SUPPLIERS, 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 lien forms referenced above, as-built plans for Subcontractor'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.

Subcontractor INITIAL Contractor

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 deemed 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 work 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

Subcontractor INITIAL INITIAL

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 shall 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 essential 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 project architect, or their officers or contractors or contractors 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 72 hours upon request. If hard pricing is not received and or agreed upon, the General

Subcontractor INITIAL\_ Contractor

Contractor may issue a notice to proceed to the Subcontractor. The Subcontractor shall provide unit costs, material breakdown, labor breakdown, and vendor back up for review and approval. All additional work will be hard priced unless the General Contractor authorizes time and material specifically on the notice 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.
- 4.5.1.1.2 Office rentals, material and equipment (desks, chairs, paper, pencils, calculators, file cabinets, etc.) for jobsite office.
- 4.5.1.1.3 Communications
- 4.5.1.1.4 Reproduction
- 4.5.1.1.5Travel
- 4.5.1.1.6 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).
- 4.5.1.1.8 Brochures and submittals, including copies for distribution.
- 4.5.1.1.9 Foreman 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 handling, 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: |                              | <u>    10%  </u> |  |
|--|------------------------------|------------------|--|
| 4.5.1.12.2                             | FOR DEDUCTIVE CHANGE ORDERS: | <10%>            |  |

INITIAL Contractor

Overhead and Profit Percentage on sub-subcontractors is limited 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 full responsibility for any loss or damage 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 property to install Subcontractor'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 FULL 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

INITIAL Subcontractor

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 deemed to be an

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.

absolute waiver of any and all claims and SUBCONTRACOTR SHALL ACCEPT FULL

5.12 Subcontractor shall promptly correct all work rejected by GENERAL CONTRACTOR as defective or as failing 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 non-conforming 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 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.

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**

#### **INSURANCE 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, AA@ 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 cancellation, 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 employee. 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 "ONGOING 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 certified copies of all such policies to GENERAL CONTRACTOR within thirty (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.

Subcontractor shall indemnify, defend and hold GENERAL CONTRACTOR, the 7.2 Manager and any subsidiary, parent or affiliate corporations of GENERAL CONTRACTOR, and all of their directors, officers, and employees (collectively AII indemnities@) harmless from all losses, claims, liabilities, injuries, costs and expenses that Indemnities may incur by reason of any injury or damage sustained to any person or property arising out of or occurring in connection with Subcontractor=s 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.



#### ARTICLE 9

#### 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, unless 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 California.

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 hereto 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; hence, in the event any provision of this Agreement is deemed to be ambiguous, it shall not be constructed against either party.

12.2 <u>Compliance With Laws.</u> Subcontractor shall observe and abide by and perform all of its obligations hereunder in accordance with all applicable laws, rules and regulations of all governmental authorities having jurisdiction.



12.3 <u>Captions and Titles</u>. The captions of sections, divisions, articles, paragraphs, subparagraphs, clauses and the like in the Agreement (including documents 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 <u>Governing Laws, Severable Provisions</u>. 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 California shall govern this Agreement.

12.5 <u>Discrepancies</u>. 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 <u>Bonds.</u> 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 <u>Independent Contractor</u>. The Work shall be performed by Subcontractor as an independent contractor at its sole risk, cost and expense.

12.8 <u>No Third Party Beneficiaries</u>. 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 <u>Assignments and Subcontracts</u>. 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 <u>Waiver</u>. 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 hereunder shall not release Subcontractor of any of its obligations hereunder.

12.11 <u>Knowledge</u>. 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.

INITIAL \_\_\_\_\_\_ INITIAL \_\_\_\_\_\_ INITIAL \_\_\_\_\_\_ ISubcontractor

### 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:

13 11 11 Pool General Requirements
13 11 53 Swimming Pool Special Equipment
13 11 54 Swimming Pool Equipment
13 11 60 Pool Electric Work
31 23 16 Excavation
03 10 00 Concrete Forming and Accessories
03 20 00 Concrete Reinforcing
03 37 13 Swimming Pool Shotcrete
07 16 14 Pool Cementitious Waterproofing
09 22 27 Swimming Pool Plaster
09 38 00 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.

| INITIAL_ | ws.        | INITIAL |   | P             |  |
|----------|------------|---------|---|---------------|--|
|          | Contractor |         | Ú | Subcontractor |  |

# **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 meeting 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.

INITIAL Contractor INITIAL Subcontractor

- 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 DAILY. 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 subcontractor.
- 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 normal 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 furnish 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 abnormally, 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 systems.
- 20) All materials and installations are to conform 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 solution.

INITIAL INITIAL Contractor Subcontractor

- 21) The GENERAL CONTRACTOR must approve key personnel assigned to the project. Such key personnel shall not be removed 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 Engineering 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** 

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

INITIAL INITIAL Contractor Subcontractor
## 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 <u>June 25th</u>, 2011 between Doug Wall Construction, Inc ("Wall") and Pacific Custom Pools, Inc. ("Subcontractor"). Defined terms are shown in boldface type when first used and first defined. Definitions are in the attached General Provisions. While Subcontractor is referred to herein as a ASubcontractor@, it is acting in effect as a general contractor to Wall for its scope of work hereunder. Wall and Subcontractor agree as follows:

1. <u>Description of Work and Contract Price</u>: Subcontractor agrees to perform the following Work per the Entire Agreement and has briefly described below:

(a) Project

CITY OF DESERT HOT SPRINGS COMMUNITY WELLNESS CENTER

Trade Description / SOV:

SPRAY GROUND DWC COST CODE 1116 \$242,264.00 Swimming Pools DWC COST CODE 1340 \$622,780.00

(b)

Contractor

INITIAL ubcontractor

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TOTAL CONTRACT \$865,044.00

(c) Scope of Work: Per exhibit A & B
13 11 11 Pool General Requirements
13 11 53 Swimming Pool Special Equipment
13 11 54 Swimming Pool Equipment
13 11 60 Pool Electric Work
31 23 16 Excavation
03 10 00 Concrete Forming and Accessories
03 20 00 Concrete Reinforcing
03 37 13 Swimming Pool Shotcrete
07 16 14 Pool Cementitious Waterproofing
09 22 27 Swimming Pool Plaster

09 38 00 Swimming Pool Tile

(d) <u>Contract Documents</u>: Per exhibit C& D

- (e) <u>Contract Price:</u> \$865,044.00
- 2. <u>Billing Schedule:</u> Pencil draft 15th of each month
- 3. <u>Disbursement Schedule</u>: Distributed within 72 hours after payment is received by Owner
- 4. <u>Retention</u>: 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

20 INITIAL INITIAL Contractor Subcontractor

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.

7. Performance Bond: (Check One)

6.

Performance bond waived Х

Wall's Initial

Amount of performance bond (if different than Contract Price): N/A \$

8. Labor and Materials Bond: (Check One) Labor and materials bond waived Х Amount of labor and materials bond (if different than Contract Price): N/A \$

## SECTIONS 8, 9, 10, 11, 12, 13 TO BE COMPLETE BY SUBCONTRACTOR

#### 9. Subcontractor Authorized Personnel Names & Phone Numbers:

Contact Estimating: James Barger Contact Site Forman: Contact Billing: July LOPCZ Contact Project Mana

1BD

Contact Project Manager:

nager: JAMOS Prarger 6/30/2012

10. Subcontractor's License Numbers: Contractors: A. B. US3, C27 U17244 State: CA City License:

Expiration:

Expiration:

11. Subcontractor's Insurance Carriers:

INITIAL INITIAL Subcontractor Contractor

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Liability: NAVI gators Automobile: State Fallen Worker's Comp: Martis

|             | 20/2012  |
|-------------|----------|
| Expiration: | 3/9/2012 |
| Expiration  | 8/23/11  |
| Expiration: | 3/17/12  |

12. Subcontractors Legal Status: (check one)\_

Subcontractor is a

Corporation

State \_\_\_\_

Partnership \_\_\_\_\_

Sole Proprietorship

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

ames F. Bargel

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

Federal I.D. Number: 953779766 Social Security Number:

#### 13. **Business Address and Address for Notices:**

Business Address: 265 N. Vipedo Aue (A 9110) Business Phone: 626795-3400 × 203

Mailing Address: SPARLE ) Fax No.: U26 795 4003

**Customer Service No:** 

**Emergency Phone:** 

Cell Phone: 625-4000

#### 14. List of Subcontractor's Material and Equipment Suppliers regarding this project:

22

BD

INITIAL Contractor

INITIAL

Business Address: 245 N. VI nodo Ave Mailing Address: SAME Pasadena CA 91107 Fax No .: 626 795 4003 Business Phone: 626 795-3400

## 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** 

Subcontractors Signature

William Butler **Printed Name** 

Signature

Fumes F= BARCIER Printed Name MA Sur exhibit "AA"

**Project Manager** Title

1.25-1 6/27/1 Date

7-12-2011

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INITIA Contractor

INITIAL

Desert Hot Springs Contract Changes.xisx

## EXHIBIT "AA" DOUG WALL CONSTRUCTION-DESERT HOT SPRINGS CONTRACT REVISIONS

- 1.4 Strike the words "permits, and fees required by law,"
- 2.6 Add language at the beginning of the paragraph "Provided the Subcontractor has been paid as agreed,"
- Add language at the end of the paragraph "Ail payment provisions shall be subject to 2.6."
- 2.11 Strike the entire paragraph
   Add language at the end of the paragraph "This paragraph shall not include failure of General Contractor to promptly release payments to
   3.6 Subcontractor."
   Insert language after "change related work, and or any additional work,

Insert language after "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." <u>"Should the General</u> <u>Contractor decide to issue a Notice to Proceed, the Subcontractor shall</u> <u>be allowed to include in the monthly billing amounts a part of this</u> change related/additional work."

4.5 Change "10%" to "15%"

4.2

6.1

- 4.5.1.12.1 Change "10%" to "15%"
- 4.5.1.12.2 Change "10%" to "15%"

5.13 Add language at the end of the paragraph "This section excludes failure by General Contractor to pay Subcontractor as agreed."

Add language at the end of the paragraph "All costs related to permits are not a part of this Contract."

## 12.6 Strike the entire paragraph

Pacific Custom Pools, Inc. 265 N. Vinedo Ave. Pasadena, CA 91107

## Exhibit "A" SCOPE OF WORK

:•

Strike the words "coping, decking"

Add language at the end of the section "Scope/Proposal dated May 24, 2011 shall be a part of this Section."

## Exhibit "B" STANDARD INCLUSIONS

Change "10%" to "15%"

## Exhibit "D" Liquidated and Delay Damages regarding FE an CO documents

Add language at the end of the paragraph "The General Contractor shall give notice to the Subcontractor of any delay caused by the Subcontractor. The Subcontractor shall be given ample time to correct the delay prior to General Contractor Imposing such damages. Should the General Contractor and Subcontractor not be able to agree on any part of this paragraph, paragraph 10.1 may be used to resolve disagreements."

Pacific Custom Pools, Inc. 265 N. Vinedo Ave. Pasadena, CA 91107

1

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-10/A-22) Nevada Contractor's License # 72587 (B-\$6,700,000) Arizona Contractor's License # 157318-001

## SCOPE/PROPOSAL

PACIFIC CUSTOM POOLS, INC. (PCP), a licensed contractor, with offices at the address above set forth, holder of a valid A,B,C-53 State of California license being #417294, A-10 &22 State of Nevada license being #34654(UNLIMITED) hereby agrees to construct and sell to:

## JOB NAMEDESERT HOT SPRINGS CENTERJOB ADDRESS:DESERT HOT SPRINGS, CA

## GENERAL CONTRACTOR: NA

The "POOL AND SPLASH DECK" and related equipment and work described below in a workmanlike manner, according to plans dated October 21, 2010 including the following specifications to meet plans and specs, on the terms and conditions set forth in this proposal. The terms and conditions are a part of the specifications.

#### SPECIFICATIONS FOR: MAIN POOL

DIMENSIONS: Surface Area  $\pm 6.334$  Sq.Ft.. Perimeter  $\pm .348'$ , Depths <u>3.0'</u> (min.) to <u>7.0'</u> (max.)

#### SPECIFICATIONS FOR: SPLASH DECK

DIMENSIONS: Surface Area ± 680 Sq.Ft.. Perimeter ± 114', Depths .5' (mln.) to .5' (max.)

## **PROPOSED WORK TO INCLUDE:**

#### **Preliminary Work/Engineering**

- Preparation of shop drawings
- Preparation of equipment submittals
- Standard engineering specs

#### Layout/Excavation

- Layout of pool/splash in supplied areas
- Excavated per engineering
- Soil to remain on site
- Site to be within 1/10th day of excavation
- Does not include any cementicious soil, caliche, or rock

#### **<u>Reinforcing Steel</u>**

- Complete structural rebar installation to meet engineered specifications
- Steel to be secured by heavy-duty tie wire to avoid rebar slippage
- Steel to be blocked-up to ensure even concrete/gunite distribution

## **Plumbing**

- Installation of piping to meet hydraulic specifications
- Piping from features to equipment areas as per plans and specs
- All piping to be Schedule 40 PVC
- Pressure test all piping
- Installation of filtration equipment as per plan and specs
- Water makeup system piping

## **Electrical**

- Grounding of all fixtures (i.e., lights, deck equipment) to structures using #8 solid bondwire by PCP
- Lights supplied/installed with hook-up to panel in equipment rooms (panels/clocks supplied by others)
- Hook-up all our equipment to MCC's (MCC's supplied in equipment room by PCP)
- All chemical system hook-ups from above referenced panels by PCP

## Gunite/Concrete

Placement of shell concrete as required to meet engineered specifications

## <u>Tile</u>

- 6<sup>a</sup> tile band in pool per plans and specs
- Waterline depth marker tile supplied and installed
- <u>Tile budget shall not exceed \$7.50 per Sq. Ft.(material)</u>
- Trim tile per plans and specs

## Plaster/Waterproofing

- Provide (2) coats plaster for pool interior surfaces
- Provide hand troweled finish to ensure non-slip surface

## Coping

Supplied/installed by others

## Decking

- Supplied/installed per plans and specs by others
- Supply/Install deck drains per plans and specs by others

## Clean-up

- Pacific to provide broom finish clean-up of features interiors prior to filling
- Removal of all of Pacific's construction debris from the site

## **Fittings**

- Supply/install drains and grates per plans and specs
- Supply/install return inlet fittings in walls per plans and specs

## **Mechanical Equipment Piping**

- Supply/install all circulation equipment and chemical systems
- Supply/install valves, pipe anchors, pipe hangers, etc.

## Start-Up

- Coordinate filling features
- Test and adjust returns for proper turnover and circulation
- Chemically balance system with <u>Owner's supplied chemicals</u>
- Provide written Instructions on pool/mechanical equipment

## <u>Notes</u>

<u>Plumbing</u>

- No piping elevations/sections were shown/we estimated no deeper than 2-3 feet •
- 0 Equipment room
- Not all sections shown •
- Not all details of room size/height/elevation
- No details of pipe penetration elevations
- No room ventilation was detailed/we exclude this
- No details of incoming utilities/we will assume all utilities (gas/steam/chilled
- water/electric/water/server) to equipment room with a point of connection for us Electrical
- We assume we go from panel/breakers in our mechanical room (panels supplied by others)
- ۰ Misc.
- No wet stamped structural details-we will need these
- We will assume all utilities provided to mechanical rooms

#### Exclusions

All County Building Department plan clieck costs/Health Department costs are excluded
 Site to be within 1/10th day of excavation

- e No demolition included
- All required environmental permits by owner
- Existing soil assumed to be structurally sound/no de-watering included
- No ram-hoe/breaker time included/Caliche excluded
- Any engineering/soils reports by others
- Mechanical room/vaults with doors by others
- All other electrical by others (maln runs landscape lighting, ect.)
- All venting of equipment areas by others •
- Deck and deck drainage by others
- No sub-drainage included
- All plping to be Schedule 40 PVC except 10' connections to heater
- Access to jobsite by owner
- Utilities provided by owner
- Water provided by owner during course of construction and to fill features
- Re-routes and relocating of utilities and structures by others
- Chemicals supplied by owner
- Continuous mobilization
- Those things not outlined above are excluded
- This proposal will become a part of the contract scope at time of award

## PRICE FOR FEATURES AS OULINED ABOVE:

| MAIN POOL  | \$622,780.00 |
|------------|--------------|
| SPLASH PAD | \$242,264.00 |
|            |              |

Submitted by James F. Barger Date May 24, 2011

Pacific Custom Pools, Inc.

#### EXHIBIT B-1

## 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 (08/2009) ref. Handbook 1344.1 Applicability

The Project or Program to which the construction work covered by this contract pertains is being assisted by the United States of America and the following Federal Labor Standards Provisions are included in this Contract pursuant to the provisions applicable to such Federal assistance.

A. 1. (i) Minimum Wages. All laborers and mechanics employed or working upon the site of the work, will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR Part 3), the full amount of wages and bona fide fringe banefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which la attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers end mechanics. Contributions made or costs reasonably anticipated for bona fide fringe banefits under Section I(b)(2) of the Davis-Bacon Act on behalf of taborers or mechanics are considered wages paid to such laborers or mechanics, subjact to the provisions of 29 CFR 6.5(a)(1)(iv); also, regular contributions made or costs incurred for more than a weekly period (but not less often than querterly) under plens, funds, or programs, which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period.

Such laborers and mechanics shall be paid the appropriate wage rale and fringa benefits on the wage determination for the classification of work ectually performed, without regard to skill, except as provided in 29 CFR 5.6(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate apecified for each classification for the time actually worked therein: Provided, That the employer's payroll records accurately set forth the time spant in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under 29 CFR 5.5(a)(1)(ii) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the contractor end its subcontractors at the sile of the work in a prominent and accessible, place where it can be easily seen by the workers.

(ii) (a) Any class of laborere or mechanics which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. HUD shall approve en additional classification and wage rate and fringe benefits therefore only when the following criteria have been mat:

(1) The work to be performed by the classification requested is not performed by a classification in the wage determination; and

(2) The classification is utilized in the area by the construction industry; and

(3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(b) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and HUD or its designee agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by HUD or its designee to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, D.C. 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action with 30 days of receipt and so advise HUD or its designee or will notify HUD or its designee within the 30-day period that additional time is necessary. (Approved by the Office of Management and Budget under OMB control number 1215-0140.)

(c) In the event the contractor, the laborera or mechanics is be employed in the classification or their representatives, and HUD or its designee do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), HUD or its designee shall refer the questions, including the views of all interested parties and the recommendation of HUD or its designee, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise HUD or its designee or will notify HUD or its designee within the 30-day period that additional time is necessary. (Approved by the Office of Management and Budget under OMB Control Number 1215-0140.)

(d) The wage rate (including fringe benefits where appropriate) determined pursuant to aubparagraphs (1)(i)(b) or (c) of this paragraph, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

(III) Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

(iv) If the contractor does not make paymente to a trustee or other third person, the contractor may consider as of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, Provided, That the Secretary of Labor has found, upon the written request of the contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program. (Approved by the Office of Management and Budget under OMB Controi Number 1215-0140.)

2. Withholding. HUD or its designee shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld from the contractor under this contract or any other Faderal contract with the same prime contractor, or any other Federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor so much of the accrued payments or advences as may be considered necessary to pay laborers and mechanics, including apprentices, trainees and heipers, employed by the contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee or heiper, employed or working on the site of the work, all or part of the wages required by the contract, HUD or its designee may, after written notice to the contractor, eponsor, applicant, or owner, take such ection as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased. HUD or its designee may, after written notice to the contractor, disburse such amounts withheld for and on account of the contractor or subcontractor to the respective employees to whom they are due. The Comptroller General shall make such disbursements in the case of direct Davis-Bacon Act contracts.

3. (I) Payrolis and basic records. Payrolis end basic records relating thereto shall be meintained by the contractor during the course of the

work and preserved for a period of three years thereafter for ali laborers and mechanics working at the site of the work. Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benafils or cash equivalents thareof of the types described in Section I(b)(2)(B) of the Davis-bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever 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 costs reasonably anticipated in providing banefits under a plan or program described in Section I(b)(2)(B) of the Davis-Bacon Act, the contractor shall maintain records which show that the commitment to provide such benafits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs. (Approved by the Office of Manegement and Budget under OMB Control Numbers 1215-0140 and 1215-0017.)

(ii) (a) The contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolis to HUD or its designee if the agency is a party to the contract, but if the agency is 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 its designee. The payrolls submitted shall set out eccurately and completely all of the information required to be maintained under 29 CFR 5.5(a)(3)(I) except that full social security numbers and home addresses shall not be included on weekly transmittals. Instead the payrolls shall only need to include an individually identifying number for each employee (e.g., the last four digits of the employee's eoclal security number). The required weekly payroll information may be submitted in any form desired. Optional Form WH-347 is evallable for this purpose from the Depertment of Labor Wage and Hour Division Web site: www.doi.gov/ese/whd/forms, or its successor site. The prime contractor is responsible for the submission of copies of payrolis by all subcontractors. Contractors and subcontractors shall meintain the full social security number and current address of each covered worker, and shall provide them upon request to HUD or its designee if the agency is a perty to the contract, but if the agency is not such a party. the contractor will submit the payrolis to the applicant sponsor, of owner, as the case may be, for transmission to HUD or its designee, the contractor, or the Wage and Hour Division of the Department of Labor for purposes of an investigation or audit of compliance with prevailing wage requirements. It is not a violation of this subparagraph for a prime contractor to require a subcontractor to provide addresses and social security numbers to the prime contractor for its own records, without weekly submission to HUD or its designee. (Approved by the Office of Management and Budgat under OMB Control Number 1215-0149.)

(b) Each peyroli submitted shall be accompanied by a "Statement of Compliance," signed by the contractor or subcontractor or his or her agent who pays or supervises the paymant of the persons employed under the contract and shall certify the following:

(1) That the payroll for the payroll period conteins the information required to be provided under 29 CFR 5.5 (a)(3)(i), the appropriate information is being maintained under 29 CFR 5.5(a)(3)(i), and that such information is correct and complete; Previous editions are obsolete Page 3 of 5 form HUD-4010 (03/2009) ref. Handbook 1344.1

(2) Thet each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroil period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in 29 CFR Pert 3; (3) That each laborer or mechanic has been paid not less that the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

(c) The weekly submission of a property executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by subparagraph A.3.(ii)(b).

(d) The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under Section 1001 of Title 18 and Section 231 of Title 31 of the United States Code.

(iii) The contractor or subcontractor shall make the records required under subparagraph A.3.(i) available for Inspection, copying, or transcription by authorized representatives of HUD or its designee or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to submit the required records or to make them available, HUD or its designee may, after written notice to the contractor, sponsor, applicant or owner, take such action as may be necessary to cause the auspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

#### 4. Apprentices and Trainees.

(I) Apprentices. Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide epprenticeship program registerad with the U.S. Department of Labor, Employment and Treining Administration, Office of Apprenticeship Training, Employer and Labor Sarvices, or with a State Apprenticeship Agency recognized by the Office, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Office of Apprenticeship Training, Employer and Labor Services or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable retio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage detarmination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the contractor's or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate spacified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the waga determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Office of Apprenticeship Training, Employer and Labor Services, or a State Apprenticeship Agency recognized by the Office, withdraws approval of an apprenticeship program, the contractor will no longar be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(II) Trainees. Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant ', to and individually registered in a progrem which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater then permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, exprassed as a percentage of the journeyman hourly rate epscified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention frings benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unlass the Administrator of the Wage and Hour Division determines that there is an apprenticeahlp progrem associated with the corresponding journeyman wage rate on the wage determination which providas for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not leas than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio parmitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(iii) Equal employment opportunity. The utilization of apprentices, trainees and journeymen under 29 CFR Part 5 shall be in conformity with the equel employment opportunity requirements of Executive Ordar 11246, as amended, and 29 CFR Part 30.

5. Compliance with Copeland Act requirements. The contractor shall comply with the requirements of 29 CFR Part 3 which are Incorporated by reference in this contract

6. Subcontracts. The contractor or subcontractor will insert in any subcontracta the clauses contained in subparagraphs 1 through 11 in this paragraph A and such other clauses as HUD or its designee may by appropriate instructions require, and a copy of the applicable prevailing wage decision, and also a clause raquing the aubcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be reaponable for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in this paragraph.

7. Contract termination; debarment. A breach of the contract clauses In 29 CFR 5.5 may be grounds for termination of the contract and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.

8. Compliance with Davis-Bacon and Related Act Requirements. All rulings and interpretations of the Davis-Bacon and Related Acis contained in 29 CFR Parts 1, 3, and 5 are herein incorporated by reference in this contract

9. Disputes concerning labor standards. Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputee shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR Parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and HUD or Ite designee, the U.S. Department of Labor, or the employees or their representatives.

10. (I) Certification of Eligibility. By entering into this contrad the contractor certifies that neither It (nor he or she) nor any person of firm who has an interest in the contractor's firm is a person or firm ineigible to be awarded Government contracts by virtue of Section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1) or to be awarded HUD contracts or participate in HUD programs pursuant to 24 CFR Part 24.

(ii) No part of this contract shall be subcontracted to any person of firm ineligible for award of a Government contract by virtue of Section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1) or to be ewarded HUD contracts or participate in

HUD programs pursuant to 24 CFR Part 24.

(III) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001. Additionally, U.S. Criminal Code, Section 1 01 0, Title 18, U.S.C., "Federal Housing Administration transactions", providee in part: "Whoever, for the purpose of . . influencing in any way the action of such Administration ..... makes, utters or publishes any elalement knowing the same to be faise ..... shall be fined not more than \$5,000 or imprisoned not more than twoyears, or both."

11. Complaints, Proceedings, or Testimony by Employees. No laborer or mechanic to whom the wage, salary, or other labor stendards provisions of this Contract are applicable shall be discharged or in any other manner discriminated egeinst by the Contractor or any subcontractor bacause auch employee has filed any complaint or instituted or caused to ba instituted any proceeding or has testified or is about to testily in any proceeding under or relating to the labor standards applicable under this Contract to his employer.

B. Contract Work Hours and Safety Standards Act. The provisions of this paragraph B are applicable where the amount of tha prime contract exceeds \$100,000. As used in this paregraph, the terms "laborers" and "mechanics" include watchmen and guards.

(1) Overtime requirements. No contractor or subcontractor contracting for any part of the contract work which may require or Involve the employment of leborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which the individual is employed on such work to work in excess of 40 hours in such workweek unless auch laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of 40 houra in such workweek.

(2) Violation; liability for unpaid wages; liquidated damages. in the event of any violation of the clause set forth in subparagraph (t) of this paragraph, the contractor and any subcontractor responsible therefore shall be llable for the unpaid wages. In addition, such contractor and subcontractor shall be liabla to the United States (in the case of work done under contract for the District of Columbia or a tarrilory, lo such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in subparagraph (1) of this paregraph, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of 40 hours without payment of the overtime wages required by the clause set forth in sub paragraph (1) of this paragraph. Previous editions are obsolate Page 5 of 5 form HUD-4010 (08/2009) ref. Handbook 1344.1

(3) Withholding for unpaid wages and liquidated damages. HUD or its designee shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contract, or any other Federally-assisted contract subject to the Contract Work Hours and Safety Standards Act which is held by the same prime contractor such sums as may be determined to be necessary to satisfy any llabililles of auch contractor or subcontractor for unpaid wages and

liquidated damagas as provided in the clause set forth in subparagraph (2) of this paragraph.

(4) Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses set forth in subparagraph (1) through (4) of this paragraph and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses sat forth in subparagraphs (1) through (4) of this paragraph.

C. Health and Safety. The provisions of this paragraph C are applicable where the amount of the prime contract exceeds \$100,000.

(1) No laborer or mechanic shall be required to work in surroundings or under working conditions which are unsanitary, hazardous, or dangerous to his health and safety as determined undar construction safety and health standards promulgated by the Secretary of Labor by regulation.

(2) The Contractor shall comply with all regulations issued by the Secretary of Labor pursuant to Title 29 Part 1926 and failure to comply may result in imposition of eanctions pursuant to the Contract Work Hours and Safety Standards Act, (Public Law 91-54, 83 Stat 96). 40 USC 3701 et seq.

(3) The contractor shall include the provisions of this paragraph in every subcontract so that such provisions will be binding on each subcontractor. The contractor shall take such action with respect to any subcontractor as the Secretary of Housing and Urban Development or the Secretary of Labor shall direct as a means of enforcing such provisions.

### Form HUD-4010 (June 2009)

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

The contractor shall submit weskly, for each week in which any contract work is performed, a copy of all payrolls to the (the applicant, sponsor, or owner), as tha case may be, for transmission to the County of Riverside – Economic Development Agency.

The payrolis submitted shall set out accurately and completely all of the information required to be maintained under 29 CFR 5.5(a)(3)(i), except that full social security numbers and home addresses shall not be included on weakly transmittals, instead the payrolis shall only need to include an individually identifying number for each employee (e.g., the last four digits of the employee's social security number). The required weakly payroli information may be submitted in any form desired by contractor or subcontractors provided said payroli complies with 29 CFR 5.5(a)(3)(i). Form WH-347 is available for this purpose from the Wage and Hour Division Web sits at http://www.dol.gov/esa/whd/forms/wh347inst.htm or its successor site.

The prime contractor is responsible for the submission of copies of payrolis by all subcontractors. Contractors and subcontractors shall maintain the full social security number and current address of each covered worker, and shall provide them upon request to the (applicant, sponsor, or owner), as the case may be, for transmission to the County of Riverside – Economic Davelopment Agency, the contractor, or the Wage and Hour Division of the Department of Labor for purposes of an investigation or audit of compliance with prevailing wage raquirements. It is not a violation of this section for a prime contractor to require a subcontractor to provide addresses and social security numbers to the prime contractor for its own records, who ut weekly submission to the sponsoring government agency (or the applicant, sponsor, or owner).

Submittal of Photocopled Payrolls:

The submittal of photocopies or other automated duplication of the contractor's regular payrolls containing all of the required information perlinent to the CDBG-funded project is sufficient to satisfy the payroll date requirements pursuant to 29 CFR 5.5 (a)(3)(II)(A).

## 1/7/2013 DWC response to Pacific Pools items 1-9

1.)DWC agrees that substitutions were submitted promptly by PCP to the City Response from DWC: Pacific Pools did provide their initial substitutions within the specified dead line. Pacific Pools did submit and resubmit promptly.

A The project Start date was 7/14/11.

- B The first submittals provided by Pacific Customs Pools were submitted before 7/21/11.
- C The project manual allowed 35 days after notice of award for substitutions to be made.
- D A review of the submittals were forwarded to Pacific Pools on 9/28/11.
- E A meeting between DWC and Pacific Pools was recorded on 10/6/11 to specify submittal status
- F Another round of submittal review was provided by DWC to Pacific Pools dated 10/24/11
- G A DWC spread sheet of the second round of submittals were provided by Pacific Pools dated 10/31/11.
- H Pacific Pools submitted a third time using additional substitution son 1/9/12, see e-mail dated 1/12/12.
- Letter from Rowley addressing the third round of submittals sent to Pacific Pools 2/7/12.
   2.)DWC agrees that documents at bid time did not list several possible products PCP could use Response from DWC: Agreed. The Pool specification were specific in design.

A Project Specification for pool work

B Pacific Pools sent a three page case law to DWC regarding "single source" case law on 1/3/12.

(reference subcontract agreement page 1) (reference four pages of DWC transmittal sheets) (reference specification section 01 33 00 pages 1,2,&3) (reference DWC spread sheets / three pages) (reference DWC spread sheet with notes / three pages) (reference DWC spread sheet / two pages) (reference DWC spread sheet / two pages) (reference attachments / two pages) (reference attachments / three pages)

(reference pool spec's / 57 pages) (reference attachments / three pages)

3.)DWC agrees that Knorr Pool Systems contacted DWC and the City directly to follow-up on products that were called out for on the plans-products that they represent Response from DWC: Knorr did contact the City in pursuit of acquiring the maintenance contract since the project began or sooner. Other items discussed are not sure. DWC did contact Knorr in October 2011 because Pacific Pools said that they never received submittals from Knorr. Knorr provided submittals directly to DWC that they had not previously provided to Pacific Pools on 10/21/11.

| Α | An e-mail from Pacific Pools regarding their original price request from Knorr dated 10/24/11. | (reference email and attachment / three pages)     |
|---|--|--|
| B | An e-mail from Pacific Pools of their original price proposal from Knorr dated 10/24/11.       | (reference email and attachments / thirteen pages) |
| С | Knorr sent DWC pricing on 10/27/11.  | (reference attachments / five pages)               |
| D | Knorr submittals sent directly to DWC od spcified products that DWC submitted                  | (reference attachments / six pages)                |
|   |  |  |

3.)DWC agrees that Knorr Pool Systems contacted DWC and the City directly to follow-up on products that were called out for on the plans-products that they represent Response from DWC: Agreed, Knorr followed up regarding their products, but it was initiated by DWC requesting submittals that Knorr would not proved to Pacific Pools. 4.)DWC agrees that Knorr submitted brochures and specs to DWC and the City without PCP's permission Response from DWC: Agreed, Knorr provided their product specification to DWC upon request without Pacific Pools permission. 5.)DWC agrees that Rowley International refused to allow substitutions requested by PCP

Response from DWC: Agreed, That Rowley would only allow substitutions that they believed tube equal or conform to their overall design intent

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Ъ o, 6.)DWC agrees that this went on for months after PCP submitted its substitutions Reference City Minutes and Pacific Pool comments dated 1/5/12 and 1/13/12. Reference item # 1-1 / three pages of Rowley's response to the third round of Pacific Pools Submittals (reference attachments / three pages)

(reference email and attachment / two pages)

Response from DWC: Agreed. Due mostly to "as equal" issues, resulting in disagreements regarding necessary break down data required, the submit process lasted for

the most part from 7/21/11 (Pacific Poots first round of submittals) until 2/7/12 (Rowley's third round response).

7.)DWC agrees that the City delayed the project several times including while considering rotation of the Pool

Response from DWC: Agreed. Notice was provided to Pacific Pools on 1/21/11 that the pool may change ratation, and a final design changing the pool rotation

(reference e-mail / one page)

۵ was provided to Pacific Pools the first week of January 2012.

An e-mail from DWC to Pacific Pools regarding notice to postpone trenching for redesign 11/21/11. 8.)DWC agrees that the City extended the project completion date by no fault of PCP

**Response from DWC: Agreed.** 

9.)DWC agrees that the Contract between DWC and PCP includes "Exhibit AA"

**Response from DWC: Agreed.** 

 From: Jim Barger <jim@pacificcustompools.com</td>

 Subject: Re: DHS DWC 24 Hour Notice

 Date: January 11, 2013 9:31:19 PM PST

 To: bill@dwallconst.com

 Cc: "doug@dwallconst.com

 <scott@therrienlaw.com</td>

 Bcc: Lulu LLopez <lulu@pacificcustompools.com</td>

Bill-interesting that Doug has handed this back to you. Oh well-that must be because he misled me to get what he wanted and now he wants you to clean up the mess. Makes no difference though at this point-we were used.

I will not respond to each item listed in you letter since it would be an easier task to simply ask if you had reviewed what was in the actual contract. Please review all earlier correspondence and the Contract with it's attachments including Exhibit "AA". By email dated January 7, 2013, Doug Wall had re-confirmed that Exhibit "AA" has been included in the Contract.

That Contract includes our original Scope/Proposal dated May 24, 2011. It is specific in nature and outlines what we agreed to include as our <u>Scope of Work</u>. That is the work that you bought from us. Carefully review the Exclusions Section near the bottom of the May 24, 2011 Scope as it says "Those things not outlined above are excluded". While you may reference DHS project specs, they are all inclusive and may contain many items that you as a General Contractor are responsible for that are not a part of our Contract with you.

Please reference Article 2, Sections 2.6 and 2.7 as amended and agreed upon. Also review inclusively all paragraphs of Article 3 including Section 3.6.

I believe Article 5, Section 5.13 will be a fair guideline for the present situation we are now discussing and should be discussed with Doug before you go and blow a bunch of steam off. We have NEVER been paid as agreed under Article 2 of the Contract. There are no billings nor payments that would resemble Section 2.2. There are countless pieces of correspondence that we have sent protesting DWC's complete abandonment of this Section. I would be willing to ague that there is little evidence at this point that anything DWC has done even resembles most of the terms of Article 2.

I will offer one last chance for PCP to help DWC. I will NO LONGER NEGOTIATE additional concessions beyond what I am offering here in this email:

1.)Pay all outstanding invoices that had been submitted to DWC-both Vendors and PCP payroll

2.)Pay all pending invoices for Vendors and PCP payroll to complete the project3.)Per Article 4 of the Contract, prepare for our review, comment, and execution proper writtenChange Orders including time extensions with compensation

4.)Moving forward, for those items in dispute by DWC/PCP, DWC and PCP shall meet to resolve or shall immediately file a request for a JAMS action.

Bill-I believe you have worked yourself into a corner after my email dated December 19, 2012 and your letter later that day. I also want to remind you of your phone message which I had saved for possible future use. The paper trail and call speaks for itself. This is a simple business decision-you can save money by letting us finish or you can waste money by finding someone else and having them get up to speed on the project. Either way, DWC is getting ready to spend money, that fact will not change. What will change is that if DWC moves in that direction, PCP will do the only thing it can do under the California Public Contract Code, we will file and enforce a Stop Notice which will include claims we plan to pursue in our action. We will also recommend that all our outstanding Vendors do the same. In the case of the Plasterer, I believe based on representations by DWC, we will also be looking at a fraud claim as well. PCP would never have taken that step had it know payment was not to be made as agreed. It was DWC that insisted that we go ahead with that work for the "Grand opening".

I will not impose the same 24 hour deadline on you that you have tried to impose on me. I am available by phone at any time and will keep your opportunity open to get PCP back on site up until this Monday close of business. I must warn you that while you are considering, your Pool system is at risk. Per my discussion today with Dean, I guess he is running and caring for the Pool right now. He has no idea what he has taken on-this isn't some backyard swimming pool.

I hope calmer heads will prevail here-that would be the smart choice. Give me a call if you'd like to discuss further.

On Jan 11, 2013, at 6:35 PM, bill@dwallconst.com wrote:

# DOUG WALL CONSTRUCTION, INC.

78-450 Avenue 41 Bernuda Dunes, CA 92203 760/772-8446 \*760/772-9407

BILL TO: CDHS

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City of Desert Hot Springs 65950 Pierson Blvd Desert Hot Springs, CA 92240 INVOICE #: 4073 INVOICE DATE: 10/25/2012 PERIOD TO: 10/31/2012 APPLICATION #: 17 CONTRACT DATE: 6/22/2012 DUE DATE: 12/1/2012

JDB: 1041 Community Health & Wellness 11320 Cholia Drive Desert Hot Springs, CA 92240

## \*\*\*\*\*\* This Application \*\*\*\*\*

|      |                          | SCHEDULED            | PREVIOU8     | CURRENT   | STORED    | TOTAL        | %      | BALANCE   |                         |
|------|--------------------------|----------------------|--------------|-----------|-----------|--------------|--------|-----------|-------------------------|
| CODE | DESCRIPTION              | VALUE                | APPLICATIONS | COMPLETED | MATERIALS | COMPLETEO    | COMPL  | TO FINISH | RETAINAGE               |
| 0110 | Mobilization             | \$348,084.00         | \$348,084.00 |           |           | \$346,084.00 | 100.00 |           | \$34,808.40             |
| 0125 | Bonding                  | \$1 18,374.00        | \$118,374.00 |           |           | \$118,374.00 | 100.00 |           | \$11,837.40             |
| 0130 | Blue Prinis              | \$400.00             | \$400.00     |           |           | \$400.00     | 100.00 |           | \$40.00                 |
| 0151 | Temp Ullilles            | \$3,800.00           | \$3,800.00   |           |           | \$3,800.00   | 100.00 |           | \$380.00                |
| 0165 | Progressive Cleanup      | \$12,000.00          | \$12,000.00  |           | ٠         | \$12,000.00  | 100.00 |           | \$1,280.00              |
| 0156 | Misc. Labor              | \$12,000.00          | \$12,000.00  |           | •         | \$12,000.00  | 100.00 |           | \$1,200.00              |
| 0157 | Sire Preparation         | <b>\$971.00</b>      | \$971.00     |           |           | \$971.00     | 100.00 |           | \$97.10                 |
| 0158 | Final Cleanup            | \$2,800.00           | \$2,800.00   |           | ŧ         | \$2,800.00   | 100.00 |           | \$280.00                |
| 0159 | Dumpster                 | \$1,800.00           | \$1,800.00   |           |           | \$1,800.00   | 100.00 |           | \$180.00                |
| 0164 | Temp Trailer             | \$4,178.00           | \$4,178.00   |           |           | \$4,178.00   | 100.00 |           | \$417.80                |
| 0165 | Temp Facililles          | \$1,800.00           | \$1,800.00   |           |           | \$1,800.00   | 100.00 |           | \$180.00                |
| 0166 | Temp Power               | \$6,250.00           | \$8,250.00   |           |           | \$6,250.00   | 100.00 |           | \$625.00                |
| 0167 | Project Signage          | \$1,500.00           | \$1,500.00   |           |           | \$1,500.00   | 100.00 |           | \$150.00                |
| 0210 | Survey                   | \$12,900.00          | \$12,900.00  |           |           | \$12,900.00  | 100.00 |           | \$1,290.00              |
| 0224 | PM-10                    | \$6,000.00           | \$6,000.00   |           |           | \$6,000.00   | 100.00 |           | \$600.00                |
| 0230 | SWPP                     | \$6,000.00           | \$6,000.00   |           |           | \$6,000.00   | 100.00 |           | \$600.00                |
| 0283 | Телтр Fence              | \$6,000.00           | \$6,000.00   |           | •         | \$6,000.00   | 100.00 |           | \$600.00                |
| 0280 | Supervision              | \$122,000.00         | \$122,000.00 |           | •         | \$122,000.00 | 100.00 |           | \$12,200.00             |
| 0295 | Overhead & Profil        | \$200,427.00         | \$200,427.00 |           | •         | \$200,427.00 | 100.00 |           | \$20,042.70             |
| 0299 | Insurance                | \$85,863.00          | \$85,863.00  |           |           | \$85,863.00  | 100.00 |           | \$8,586.30              |
| 0321 | Concrete Reinforcing     | \$121,000.00         | \$121,000.00 |           |           | \$121,000,00 | 100.00 |           | \$12,100.00             |
| 0330 | Cast - In Place Concrete | \$301,000.00         | \$301,000.00 |           |           | \$301,000.00 | 100.00 |           | \$30,100.00             |
| 0410 | Masonry Structural       | \$577,004.00         | \$577,004.00 |           |           | \$577,004.00 | 100.00 |           | \$57,700.40             |
| 0415 | Sile Masonry             | \$38,640.00          | \$38,640.00  |           |           | \$38,640.00  | 100.00 |           | \$3,864.00              |
| 0420 | Retaining Wells          | \$41,200.00          | \$41,200.00  |           |           | \$41,200.00  | 100.00 |           | \$4,120.00              |
| 0510 | Metal Gates & Fence      | \$71,300.00          | \$71,300.00  |           |           | \$71,300.00  | 100.00 |           | \$7,130.00              |
| 0515 | Structural Steel         | \$439,980.00         | \$439,980.00 |           |           | \$439,980.00 | 100.00 |           | \$43,998.00             |
| 0520 | Sheel Decorative Metal   | <b>\$115,750.0</b> 0 | \$115,750.00 |           | •         | \$115,750.00 | 100.00 |           | \$11,575.00             |
| 0525 | Screens Perforated Metal | \$71,250.00          | \$71,250.00  |           |           | \$71,250.00  | 100.00 |           | \$7,125.00              |
| 0605 | Rough Carpentry          | \$599,896.00         | \$599,896.00 |           |           | \$599,898.00 | 100.00 |           | \$59,989.60             |
| 0810 | Casework                 | \$58,800.00          | \$58,800.00  |           | *         | \$58,800,00  | 100.00 |           | \$5,880.00              |
| 0710 | Roof Cover               | \$219,360.00         | \$219,380.00 |           |           | \$219,360.00 | 100.00 |           | \$21,936.00             |
| 0711 | Insulation               | \$48,990.00          | \$48,990.00  |           |           | \$48,990.00  | 100.00 |           | \$4,899.0D              |
| 0712 | Waterproofing            | \$12,835.00          | \$12,835.00  |           |           | \$12,835.00  | 100.00 |           | \$1,283.50              |
| 0792 | Sealants & Caulking      | \$1,600.00           | \$1,600.00   |           |           | \$1,600.00   | 100.00 |           | \$160.00                |
| 0810 | Doors & Frames           | \$116,829.00         | \$118,829.00 |           |           | \$116,829.00 | 100.00 |           | \$11,682.90             |
| 0811 | Overhead Doors           | \$8,500.00           | \$8,500.00   |           |           | \$8,500.00   | 100.00 |           | \$11,052.80<br>\$850.00 |
|      |                          |                      |              |           |           | 4-41400100   | 100.00 |           | 4000.00                 |

# DOUG WALL CONSTRUCTION, INC.

CA SL Lk # 74312 78-450 Avenue 41 Bermuda Dunss, CA 92203 760/772-8446 \*760/772-9407

BILL TO: CDHS

0 6000

'n

City of Desert Hot Springs 65950 Pierson Blvd Desert Hot Springs, CA 92240

INVOICE #: 4073 INVOICE DATE: 10/25/2012 PERIOD TO: 10/31/2012 APPLICATION #: 17 CONTRACT DATE: 6/22/2012 DUE DATE: 12/1/2012

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JOB: 1041 Community Health & Weilness 11320 Cholia Drive Desert Hot Springs, CA 92240

## \*\*\*\*\* This Application \*\*\*\*\*

|            |                         | SCHEDULED         | PREVIOUS            | CURRENT   | ' STORED  | TOTAL        | %      | BALANCE   |             |
|------------|-------------------------|-------------------|---------------------|-----------|-----------|--------------|--------|-----------|-------------|
| CODE       | DESCRIPTION             | VALUE             | APPLICATIONS        | COMPLETED | MATERIALS | COMPLETED    | COMPL  | TO FINISH | RETAINAGE   |
| 812        | Glazing                 | \$178,600.00      | \$178,600.00        |           |           | \$178,800.00 | 100.00 |           | \$17,860.00 |
| 813        | Skylights               | \$15,000.00       | \$15,000.00         |           |           | \$15,000.00  | 100.00 |           | \$1,500.00  |
| 905        | Metal Grating Mats      | \$12,000.00       | \$12,000.00         |           |           | \$12,000.00  | 100.00 |           | \$1,200.00  |
| 911        | Lath & Plaster          | \$185,000.00      | \$185,000.00        |           |           | \$185,000.00 | 100.00 |           | \$18,500.00 |
| <b>915</b> | T-Bar                   | \$135,000.00      | \$135,000,00        |           |           | \$135,000.00 | 100.00 |           | \$13,600.00 |
| 917        | Sheet Vinyl             | \$25,245.00       | \$25,245.00         |           |           | \$25,245.00  | 100.00 |           | \$2,624.50  |
| 918        | Carpei                  | \$7,000.00        | \$7,000.00          |           |           | \$7,000.00   | 100.00 |           | \$700.00    |
| 919        | Painting                | \$65,244.00       | \$85,244.00         |           |           | \$85,244.00  | 100.00 |           | \$6,524.40  |
| 925        | Drywall                 | \$61,000.00       | <b>\$61,00</b> 0.00 |           |           | \$61,000.00  | 100.00 |           | \$6,100.00  |
| 935        | Athletic Flooring       | \$75,813.00       | \$75,813.00         |           | 44        | \$75,813.00  | 100.00 |           | \$7,581.30  |
| 930        | Stained Concrete        | \$14,166.00       | \$14,166.00         |           | ٠         | \$14,166.00  | 100.00 |           | \$1,416.60  |
| 940        | Acoustical Wall Panels  | \$16,275.00       | \$18,275.00         |           | •         | \$16,275.03  | 100.00 |           | \$1,627.50  |
| 945        | Tectum Wall Panels      | \$23,000.00       | \$23,000.00         |           |           | \$23,000.00  | 100.00 |           | \$2,300.00  |
| 950        | Ceramic Tile            | \$23,900.00       | \$23,900.00         |           |           | \$23,800.00  | 100.00 |           | \$2,390.00  |
| 955        | Wallcovering            | \$1,800.00        | \$1,800.00          |           |           | \$1,800.00   | 100.00 |           | \$180.00    |
| 960        | Epoxy & Stain           | \$21,248.00       | \$21,248.00         |           |           | \$21,248.00  | 100.00 |           | \$2,124.80  |
| 975        | Glass Partition         | \$19,844.00       | \$19,944.00         |           |           | \$19,944.00  | 100.00 |           | \$1,994.40  |
| 1040       | Signage                 | \$25,403.00       | \$25,403.00         |           |           | \$25,403.00  | 100.00 |           | \$2,540.30  |
| 1052       | Fire Protection         | \$1,300.00        | \$1,300.00          |           |           | \$1,300.00   | 103.00 |           | \$130.00    |
| 1065       | Tollet Partitions       | \$17,233.00       | \$17,233.00         |           | *         | \$17,233.00  | 100.00 |           | \$1,723.30  |
| 1070       | Flag Pole / Speciallies | <b>\$2,200.00</b> | \$2,200.00          |           | •         | \$2,200.00   | 100.00 |           | \$220.00    |
| 1075       | Lockers                 | \$6,484.00        | \$6,484.00          |           | ٠         | \$6,484.00   | 100.00 |           | \$648.40    |
| 1080       | Tollet Accessories      | \$11,470.00       | \$11,470.00         |           |           | \$11,470.00  | 100.00 |           | \$1,147.00  |
| 1105       | Appliances              | \$8,500.00        | \$8,500.00          |           | 4         | \$8,500.00   | 100.00 | \$0.00    | \$850.00    |
| 1115       | Athletic Equipment      | \$86,304.00       | \$86,304.00         |           |           | \$86,304.00  | 100.00 |           | \$8,630,40  |
| 1205       | Bike Rack               | \$2,600.00        | \$2,600.00          |           | ٠         | \$2,600.00   | 100.00 |           | \$260.00    |
| 1215       | Fabric Shade Structures | \$18,000.00       | \$18,000.00         |           | •         | \$18,000.00  | 100.00 |           | \$1,800.00  |
| 1305       | Spray Ground            | \$242,284.00      | \$242,284.00        |           | ٠         | \$242,264.00 | 100.00 | \$0.00    | \$24,228.40 |
| 1315       | Swimming Pools          | \$622,780.00      | \$622,780.00        |           | •         | \$622,780.00 | 100.00 | \$0.00    | \$62,278.00 |
| 1530       | Fire Sprinklers         | \$49,600.00       | \$49,600.00         |           | •         | \$49,500.00  | 100.00 |           | \$4,950.00  |
| 1605       | Plumbing                | \$295,000.00      | \$295,000.00        |           | *         | \$295,000.00 | 100.00 |           | \$29,500.00 |
| 1705       | HVAC                    | \$430,500.00      | \$430,500,00        |           | ٠         | \$430,500.00 | 100.00 |           | \$43,050.00 |
| 1805       | Electrical              | \$759,900.00      | \$759,900.00        |           | ٠         | \$759,900.00 | 100.00 |           | \$75,890.00 |
| 1810       | Low Voltage/Fire Alarm  | \$50,000.00       | \$50,000.00         |           | •         | \$50,000.00  | 100.00 |           | \$5,000.00  |
| 1905       | Earthwork Rough         | \$44,000.00       | \$44,000.00         |           |           | \$44,000.00  | 100.00 |           | \$4,400.00  |
| 1920       | Earthwork Fine          | \$15,000.00       | \$15,000.00         |           |           | \$15,000.00  | 100.00 |           | \$1,500.00  |
| 2115       | Soil Pretreat           | \$2,300.00        | \$2,300.00          |           |           | \$2,300.00   | 100.00 |           | \$230.00    |
|            |                         |                   |                     |           |           |              |        |           | Ara+100     |

# DOUG WALL CONSTRUCTION, INC.

CA SELE # 14312 78-450 Avenue 41 Bermuda Dunes, CA 92203 760/772-8446 \*760/772-9407

BILL TO: CDHS Cily of Desert Hot Springs

65950 Pierson Blvd Desert Hot Springs, CA 92240

#### INVOICE #: 4073 INVOICE DATE: 10/25/2012 PERIOD TO: 10/31/2012 APPLICATION #: 17 CONTRACT DATE: 6/22/2012 DUE DATE: 12/1/2012

JOB: 1011 Community Health & Wellness 11320 Cholla Drive Desert Hot Springs, CA 92240

| a manatangé tinga |                  |                | ***** This     | Applicatio | n *****   |                |        |                  |              |
|-------------------|------------------|----------------|----------------|------------|-----------|----------------|--------|------------------|--------------|
|                   | -                | SCHEDULED      | PREVIOUS       | CURRENT    | STORED    | TOTAL          | %      | BALANCE          |              |
| CODE              | DESCRIPTION      | VALUE          | APPLICATIONS   | COMPLETED  | MATERIALS | COMPLETED      | COMPL  | <b>TO FINISH</b> | RETAINAGE    |
| 2120              | Landscaping      | \$126,852.00   | \$126,852.00   |            | +         | \$126,852.00   | 100.00 | \$0.00           | \$12,685.20  |
| 2125              | Sile Concrete    | \$139,000.00   | \$139,000.00   |            | *         | \$139,000.00   | 100.00 |                  | \$13,900.00  |
| 2130              | noitegini        | \$84,500.00    | \$84,500.00    |            |           | \$84,500.00    | 100.00 |                  | \$8,450.00   |
| 2135              | Asphalt Onsite   | \$116,600.00   | \$116,600.00   |            |           | \$116,600.00   | 100.00 |                  | \$11,660.00  |
| 2140              | Pavement Marking | \$2,270.00     | \$2,270.00     |            |           | . \$2,270.00   | 100.00 |                  | \$227.00     |
| 2145              | Waterproof       | \$12,835.00    | \$12,835.00    |            |           | \$12,835.00    | 100.00 |                  | \$1,283.50   |
| 3005              | Site Drainage    | \$77,000.00    | \$77,000.00    |            |           | \$77,000.00    | 100.00 |                  | \$7,700.00   |
| 3010              | Site Water       | \$71,000.00    | \$71,000.00    |            |           | \$71,000.00    | 100.00 |                  | \$7,100.00   |
| 3015              | Sanitary Sewer   | \$19,000.00    | \$19,000.00    |            |           | \$19,000.00    | 100.00 |                  | \$1,900.00   |
|                   | TOTALS:          | \$8,017,111.00 | \$7,669,715.49 | \$0.00     | \$0.00    | \$8,017,111.00 | 100.00 | \$0.00           | \$801,711.10 |

| •    | Completed Adjustment Credit |                 |                |        |        | \$0.00          |        |        | \$0.00         |
|------|-----------------------------|-----------------|----------------|--------|--------|-----------------|--------|--------|----------------|
| C001 | Change Order # 1            | \$3,257,707.38  | \$0.00         | \$0.00 | \$0.03 | \$3,257,707.38  | 109.00 | \$0.00 | \$325,770.74   |
|      | TOTALS:                     | \$11,274,818.38 | \$7,669,715.49 |        |        | \$11,274,818.38 |        |        | \$1,127,481.84 |

| PREVIOUS RETAINAGE | \$33,264.20  |
|--------------------|--------------|
| CURRENT BILLING    | \$384,838.54 |
| NEW RETAINAGE      | \$42,759.00  |

| 4.20     | ORIGINAL CONTRACT SUM   | \$8,017,111.00  |
|----------|---|-----------------|
| 8.54     | CHANGE BY CHANGE ORDER  | \$3,257,707.38  |
| 9.00     | CONTRACT SUM TO DATE  | \$11,274,818.38 |
|          | TOTAL COMPLETED & STORED TO DATE                                      | \$11,274,818.38 |
|          | TOTAL RETAINAGE   | \$1,127,481.84  |
| Isladia  | TOTAL EARNED LESS RETAINAGE   | \$10,147,336.54 |
| 10/25/12 | TOTAL EARNED LESS RETAINAGE<br>LESS PREVIOUS CERTIFICATES FOR PAYMENT | \$9,762,498.00  |

DATE: CONTRACTOR: ARCHITECT DATE:

11/10

12. 12 Fry 12. 1Ang 28 NAV 12

Thank you for your business!

### CONDITIONAL WAIVER AND RELEASE ON PROGRESS PAYMENT (CA CIVIL CODE \$8132)

## NOTICE: THIS DOCUMENT WAIVES THE CLAIMANT'S LIEN, STOP PAYMENT NOTICE, AND PAYMENT BOND RIGHTS EFFECTIVE ON RECEIPT OF PAYMENT. A PERSON SHOULD NOT RELY ON THIS DOCUMENT UNLESS SATISFIED THAT THE CLAIMANT HAS RECEIVED PAYMENT.

Identifying Information:

Name of Claimant: DOUG WALL CONSTRUCTION INC

Name of Customer: CITY OF DESERT HOT SPRINGS

Job Location 11320 CHOLLA DR, DESERT HOT SPRINGS, CA 92240

Owner CITY OF DESERT HOT SPRINGS

Through Date: \_\_\_\_\_10-31-12

#### **Conditional Waiver and Release**

This document walves and releases ties, stop paymant noise, and payment band rights the claiment has for labor and service provided, and equipment and material delivered, to the customer on this job through the Through Date of this document. Rights based upon labor or service provided, or equipment or material delivered, pursuant to a written change order that has been fully executed by the parties prior to the date that this document is eigned by the claiment, are waived and released by this document, unless listed as an Exception below. This document is effective only on the claiments receipt of payment from the Enercial Institution on which the following check is drawn:

Mater of Check CITY OF DESERT HOT SPRINGS

Amount of Chack: \$ 384,838.54

Check Psyable to: DOUG WALL CONSTRUCTION INC

Exceptions

This document does not affect any of the following:

- (1) Retantions.
- (2) Extras for which the claimant has not received payment.
- (3) The following progress payments for which the claimant has proviously given a conditional watver and release but has not received payment: Data(a) of watver and release: 8/31/12 & 9/30/12

Amount(s) of unpets progress payment(s): \$ 1,081,130.97

(4) Contract rights, including:
 (A) a right based on rescission, abandemment, or breach of contract, and
 (B) the right to recover compensation for work not compensated by the payment.

#### SIGNATURE

Claimant's Signature;

Claimant's Title:

Date of Signature:

DOUG WALL, PRESIDENT

10-29-12

@ Porter Law Group, Inc. 2012

CUSTOMER #: CDHS INVOICE #: 4134 INVOICE DÀTE: 10/31/12 DUE DATE: 11/30/12

BILL TO:

3

City of Desert Hot Springs 65950 Pierson Blvd Desert Ht Spring, CA 92240 JOB: 1041 Community Health & Wellness 11320 Cholla Drive Desert Hot Sprin, CA 92240

| JOB # | CODE         | DESCRIPTION                        | RETENTION |              |           |
|-------|--------------|------------------------------------|-----------|--------------|-----------|
| ·     |              | on billed.                         | BALANCE   | %            | AMOUNT    |
| 1041  | 0110         | Mobilization                       | 04 000 40 | 50 0         |           |
| 1041  | 0125         | Bonding                            | 34,808.40 | 50.0         | 17,404.20 |
| 1041  | 0130         | Blue Prints                        | 11,837.40 | 50.0         | 5,918.70  |
| 1041  | 0150         | Temp Utilities                     | 40.00     | 50.0         | 20.00     |
| 1041  | 0155         | -                                  | 380.00    | 50.0         | 190.00    |
| 1041  | 0155         | Progressive Cleanup<br>Misc. Labor | 1,200.00  | 50.0         | 600.00    |
| 1041  | 0150<br>0157 |                                    | 1,200.00  | 50.0         | 600.00    |
| 1041  | 0157         | Site Preperation                   | 97.10     | 50.0         | 48.55     |
| 1041  |              | Final Cleanup                      | 280.00    | 50.0         | 140.00    |
|       | 0159         | Dumpster                           | 180.00    | 50.0         | 90.00     |
| 1041  | 0164         | Temp Trailer                       | 417.80    | 50.0         | 208.90    |
| 1041  | 0165         | Temp. Facilities                   | 180.00    | 50.0         | 90.00     |
| 1041  | 0166         | Temp Power                         | 625.00    | 50.0         | 312.50    |
| 1041  | 0167         | Project Signage                    | 150.00    | 50.0         | 75.00     |
| 1041  | 0210         | Survey                             | 1,290.00  | 50.0         | 645.00    |
| 1041  | 0224         | PM-10                              | 600.00    | 50.0         | 300.00    |
| 1041  | 0230         | SWPP                               | 600.00    | 50.0         | 300.00    |
| 1041  | 0283         | Temp Fence                         | 600.00    | 50.0         | 300.00    |
| 1041  | 0290         | Supervision                        | 12,200.00 | 50.0         | 6,100.00  |
| 1041  | 0295         | Overhead & Profit                  | 20,042.70 | 50.0         | 10,021.35 |
| 1041  | 0299         | Insurance                          | 8,586.30  | 50.0         | 4,293.15  |
| 1041  | 0321         | Concrete Reinforcing               | 12,100.00 | 50.0         | 6,050.00  |
| 1041  | 0330         | Cast-In Place Concre               | 30,100.00 | 50.0         | 15,050.00 |
| 1041  | 0410         | Masonry Structural                 | 57,700.40 | 50.0         | 28,850.20 |
| 1041  | 0415         | Site Masonry                       | 3,864.00  | 50.0         | 1,932.00  |
| 1041  | 0420         | Retaining Walls                    | 4,120.00  | 50.0         | 2,060.00  |
| 1041  | 0510         | Metal Gate & Fence                 | 7,130.00  | 50.0         |           |
| 1041  | 0515         | Structural Steel                   | 43,998.00 | 50.0         | 3,565.00  |
| 1041  | 0520         | SheetDecorativeMetal               | 11,575.01 | 50.0         | 21,999.00 |
| 1041  | 0525         | ScreensPerforatedMet               | 7,125.01  | 50.0<br>50.0 | 5,787.51  |
| 1041  | 0605         | Rough Carpentry                    | 59,989.60 |              | 3,562.51  |
|       |              |                                    | 23,363.00 | 50.0         | 29,994.80 |

CUSTOMER #: CDHS INVOICE #: 4134 INVOICE DATE: 10/31/12 DUE DATE: 11/30/12 PAGE: 2

BILL TO: City of Desert Hot Springs 65950 Pierson Blvd Desert Ht Spring, CA 92240

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JOB: 1041 Community Health & Wellness 11320 Cholla Drive Desert Hot Sprin, CA 92240

| JOB # | CODE | DESCRIPTION          | RETENTION<br>BALANCE | RETE<br>% | INTION DUE |
|-------|------|----------------------|----------------------|-----------|------------|
| 1041  | 0610 | Casework             | 5,880.00             | 50.0      | 2,940.00   |
| 1041  | 0710 | Roof Cover           | 21,936.00            | 50.0      | 10,968.00  |
| 1041  | 0711 | Insulation           | 4,899.00             | 50.0      | 2,449.50   |
| 1041  | 0712 | Waterproofing        | 1,283.50             | 50.0      | 641.75     |
| 1041  | 0792 | Sealants & Caulking  | 160.00               | 50.0      | 80.00      |
| 1041  | 0810 | Doors & Frames       | 11,682.91            | 50.0      | 5,841.46   |
| 1041  | 0811 | Overhead Doors       | 850.00               | 50.0      | 425.00     |
| 1041  | 0812 | Glazing              | 17,860.00            | 50.0      | 8,930.00   |
| 1041  | 0813 | Skylights            | 1,500.00             | 50.0      | 750.00     |
| 1041  | 0905 | Metal Grating Mats   | 1,200.00             | 50.0      | 600.00     |
| 1041  | 0911 | Lath & Plaster       | 18,500.00            | 50.0      | 9,250.00   |
| 1041  | 0915 | T-Bar                | 13,500.00            | 50.0      | 6,750.00   |
| 1041  | 0917 | Sheet Vinyl          | 2,524.50             | 50.0      | 1,262.25   |
| 1041  | 0918 | Carpet               | 700.00               | 50.0      | 350.00     |
| 1041  | 0919 | Painting             | 6,524.40             | 50.0      | 3,262.20   |
| 1041  | 0925 | Drywall              | 6,100.00             | 50.0      | 3,050.00   |
| 1041  | 0930 | Athletic Flooring    | 7,581.30             | 50.0      | 3,790.65   |
| 1041  | 0935 | Stained Concrete     | 1,416.60             | 50.0      | 708.30     |
| 1041  | 0940 | Acoustic Wall Panels | 1,627.50             | 50.0      | 813.75     |
| 1041  | 0945 | Tectum Wall Panels   | 2,300.00             | 50.0      | 1,150.00   |
| 1041  | 0950 | Ceramic Tile         | 2,390.00             | 50.0      | 1,195.00   |
| 1041  | 0955 | Wallcovering         | 180.00               | 50.0      | 90.00      |
| 1041  | 0960 | Epoxy & Stain        | 2,124.80             | 50.0      | 1,062.40   |
| 1041  | 0975 | Glass Partition      | 1,994.40             | 50.0      | 997.20     |
| 1041  | 1040 | Signage              | 2,540.31             | 50.0      | 1,270.16   |
| 1041  | 1052 | Fire Protection      | 130.00               | 50.0      | 65.00      |
| 1041  | 1065 | Toilet Partitions    | 1,723.30             | 50.0      | 861.65     |
| 1041  | 1070 | Flagpole/Specialties | 220.00               | 50.0      | 110.00     |
| 1041  | 1075 | Lockers              | 648.40               | 50.0      | 324.20     |
| 1041  | 1080 | Toilet Accessories   | 1,147.00             | 50.0      | 573.50     |
| 1041  | 1105 | Appliances           | 850.00               | 50.0      | 425.00     |

CUSTOMER #: CDHS INVOICE #: 4134 INVOICE DATE: 10/31/12 DUE DATE: 11/30/12 PAGE: 3

BILL TO:

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City of Desert Hot Springs 65950 Pierson Blvd Desert Ht Spring, CA 92240 JOB: 1041 Community Health & Wellness 11320 Cholla Drive Desert Hot Sprin, CA 92240

| 1004 |      |                      | RETENTION  |      | ENTION DUE |
|------|------|----------------------|------------|------|------------|
| JOB# | CODE | DESCRIPTION          | BALANCE    | %    | AMOUNT     |
| 1041 | 1115 | Athletic Equipment   | 8,630.40   | 50.0 | 4,315.20   |
| 1041 | 1205 | Bike Rack            | 260.00     | 50.0 | 130.00     |
| 1041 | 1215 | FabricShadeStructure | 1,800.00   | 50.0 | 900.00     |
| 1041 | 1305 | Spray Ground         | 24,226,39  | 50.0 | 12,113.20  |
| 1041 | 1315 | Swimming Pools       | 62,278.00  | 50.0 | 31,139.00  |
| 1041 | 1530 | Fire Sprinklers      | (4,950.00  | 50.0 | 2,475.00   |
| 1041 | 1605 | Plumbing             | 29,500.00  | 50.0 | 14,750,00  |
| 1041 | 1705 | HVAC                 | 43,050_00_ | 50.0 | 21,525.00  |
| 1041 | 1805 | Electrical           | 75,990.00  | 50.0 | 37,995.00  |
| 1041 | 1810 | LowVoltage/FireAlarm | 5,000.00   | 50.0 | 2,500.00   |
| 1041 | 1905 | Earthwork Rough      | 4,400.00   | 50.0 | 2,200.00   |
| 1041 | 1920 | Earthwork Fine       | 1,500.00   | 50.0 | 750.00     |
| 1041 | 2115 | Soil Pretreat        | 230.00     | 50.0 | 115.00     |
| 1041 | 2120 | Landscaping          | 12,685.20  | 50.0 | 6,342.60   |
| 1041 | 2125 | Site Concrete        | 13,900.00  | 50.0 | 6,950.00   |
| 1041 | 2130 | Irrigation           | 8,450.00   | 50.0 | 4,225.00   |
| 1041 | 2135 | Asphalt Onsite       | 11,660.00  | 50.0 | 5,830.00   |
| 1041 | 2140 | Pavement Marking     | 227.00     | 50.0 | 113.50     |
| 1041 | 2145 | Waterproof           | 1,283.50   | 50.0 | 641.75     |
| 1041 | 3005 | Site Drainage        | 7,700.00   | 50.0 | 3,850.00   |
| 1041 | 3010 | Site Water           | 7,100.00   | 50.0 | 3,550.00   |
| 1041 | 3015 | Sanitary Sewer       | 1,900.00   | 50.0 | 950.00     |
| 1041 | C001 | CHANGE ORDER #1      | 325,770.74 | 50.0 | 162,885.37 |
|      |      |                      | RETENTION  | DUE: | 563,740.96 |

## Thank you for your business!

## CONDITIONAL WAIVER AND RELEASE ON PROGRESS PAYMENT

**PROJECT:** Community Health & Wellness

Upon receipt by the undersigned of a check from City of Desert Hot Springs in the sum of \$563,740.96 payable to DOUG WALL CONSTRUCTION INC and when the check has been properly endorsed and has been paid by the bank on which it is drawn, this document becomes effective to release any mechanic's lien, stop notice, any state or federal statutory bond right, any private bond right, any claim for payment and any rights under any similar ordinance, rule or statute related to claim or payment rights for persons in the undersigned's position, the undersigned has on the job of City of Desert Hot Springs located at 11320 Cholla Drive, Desert Hot Sprin, CA 92240 to the following extent.

This release covers a progress payment for labor, services, equipment or materials furnished to the jobsite or to City of Desert Hot Springs through 10/31/12 only and does not cover any retentions retained before or after the release date; extras furnished before the release date for which payment has not been received; extras or items furnished after the release date or pending modifications and changes. Rights based upon work performed or items furnished under a written change order which has been fully executed by the parties prior to the release date are covered by this release unless specifically reserved by the claimant in this release. This release of any mechanic's lien, stop notice or bond right shall not otherwise affect the contract rights, including rights between parties to the contract based upon a rescission, abandonment, or breach of the contract, or the right of the undersigned to recover compensation for furnished labor, services, equipment, or material covered by this release if that furnished labor, services, equipment or material was not compensated by the progress payment.

The undersigned warrants that he either has already paid or will use the monies he receives from this progress payment to promptly pay in full all of his laborers, subcontractors, materialmen and suppliers for all work, materials, equipment or services provided for or to the above-referenced project up to the date of this waiver.

Before any recipient of this document relies on it, said party should verify evidence of payment to the undersigned.

DATE: 10/29/12

DOUG WALL CONSTRUCTION INC ionature

DATE: March 7, 2013



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

## RECOMMENDATION

That the Desert Hot Springs Health and Wellness 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 agua solar system, system controller 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

DATE: April 17, 2013



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

## RECOMMENDATION

Approve Doug Wall Construction (prime contractor) request to substitute the swimming pool subcontractor at the Community Health and Wellness/John Furbee Aquatic Center Project

## DISCUSSION

At the meeting of March 7, 2013, the Foundation Board acted in accordance with Public Contract Code (Section 4107(a).(9) to grant the prime contractor's (Doug Wall Construction-DWC) request to determine Pacific Custom Pools (PCP), the John Furbee Aquatic Center swimming pool subcontractor, a 'non-responsible subcontractor' and mailed PCP notification of such on March 12, 2013. PCP had five (5) working days, from the date of the notification, in which to submit a letter of objection to the Board's pending action for substitution. On March 19, 2013, the City received a letter of objection from PCP. Per the Public Contract Code, the receipt of the objection letter now requires that the awarding authority (Foundation Board) conduct a public hearing to discuss and act on the matter of the actual subcontractor substitution request. Five day minimum notice of today's hearing has been provided to the subcontractor in accordance with Public Works Contract Code Section 4107(a).(.9).

Since the Board's last meeting, both parties have expressed (to staff) their desire to address the Board at this meeting to tell "their side of the story". In general, DWC maintains their justification to request the substitution of the pool subcontractor as follows:

- 1. PCP demobilized their construction crews from the Project site on January 11, 2013 leaving a considerable amount of work remaining to complete the pool construction.
- 2. The timing of PCP's action to demobilize was deliberate and severely jeopardized the pool water quality and work in place by leaving critical and necessary components uninstalled. These included; the chemical tanks, the solar heating system, the control panel, the 'UV' purification system and pool equipment required for the automatic operation of the pool systems and splash pad features. Without the listed items, acid and chlorine cannot run into the system for purification and balance of the pool water and; the pool water cannot be heated and; the splash pad water cannot be purified and; the splash pad play features cannot operate. Negative consequences included; the potential loss of the pool water due to algae growth and; potential replacement of pool water and; potential damage to freshly applied pool plaster and; failure to meet public opening date.
- 3. On January 11, 2013, Doug Wall Construction (DWC) provided PCP a '24 hour notice to complete work' for their remaining portion of the work to be completed "per their contract and the project plans/specifications".
- 4. PCP responded to DWC on January 11, 2013 (via email) that they were "reassigning their crews to other projects".
- 5. On January 14, 2013, DWC served PCP with a 'Notice of Non-Compliance' and since, has not received any correspondence from PCP as to their intent to comply.

- 6. PCP's actions required the City to initiate its pool maintenance contract earlier than originally scheduled in order to preserve the water quality and clean the pool. Without an automatically functioning pool filtration system, the pool maintenance has been performed manually as a result of not having the items listed in No. 2 (above) installed.
- 7. PCP's action to de-mobilize forced DWC to initiate immediate action to preserve the pool by soliciting bids and contracting with a substitute pool contractor to complete unfinished pool work. Had not DWC taken this action, the negative consequences (listed in item 2) would have resulted and, the installation of the remaining pool equipment would add a minimum 60 additional days to the completion schedule.
- 8. DWC has determined at least two conditions of Public Works Contract Code Section 4107 have been satisfied as; 4107.(a)(3), "listed subcontractor fails or refuses to perform his or her subcontract" and, 4107.(a)(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). Note: 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.

PCP maintains their objection to the DWC request for subcontractor substitution, in a letter to the City dated 3/12/2013 and a subsequent Stop Payment Notice, as follows:

- 1. PCP has never refused to perform under the terms of the contract between DWC and PCP.
- 2. PCP has never delayed or disrupted the progress of the work rather DWC has disrupted the work of PCP by refusing to honor the contract between DWC and PCP.
- 3. PCP has followed their letter of objection with a 'Stop Payment Notice' on March 13, 2013 claiming unpaid sums owed by DWC to PCP.

PCP has not supported items 1-3 with sufficient documentation to justify its rationale for demobilizing from the Project. Additionally, at no time since their demobilization, has PCP demonstrated any intention to return to complete the unfinished work. Instead, the primary focus of their follow up communications has been to initiate actions necessary to resolve their contract delay claims. Additionally, PCP has failed to make payments to several of their own material suppliers and subcontractors who worked on this Project via contract to PCP. Apparently, PCP is instructing that they work directly with the City for payment of their respective amounts owed by PCP.

## SUMMARY

Staff supports the request from DWC to substitute the pool subcontractor and recommends that the Foundation Board approve the substitution. DWC initiated actions to process a substitution of subcontractor when convinced that PCP had demobilized permanently from the Project. The timing of PCP's departure critically jeopardized the freshly applied plaster material and pool water. DWC's options were vetted with the pool design engineer (Rowley International), a local pool contractor (the Pool Guy) and a national operator of pool maintenance systems (Knorr Systems Inc.) all who advised that complete installation of the remaining equipment and purification systems was critical and time sensitive for safe operation of the pool. Staff discussed with DWC the formal actions required to execute a subcontractor substitution request. Staff, acting as the Project's duly authorized officer, advised DWC to proceed only "at its own risk" with a substitute pool subcontractor to preserve the integrity of the pool work in place. DWC has coordinated efforts with the City's pool maintenance contractor, in the absence of an operational automated system to manually maintain the pool water, pool and splash pad.

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DWC conducted a competitive bid process to select a qualified substitute pool contractor to complete the unfinished work and has selected Condor Pools.

Furthermore, PCP's objections to the substitution request are not supported by staff due to lack of relevance and supportive documentation from PCP.

## **FISCAL IMPACT**

The prime contractor, Doug Wall Construction has not claimed additional costs to the Project associated with this action at this time. PCP's claims for delays have no relevance in the action to process a subcontractor substitution. However, if necessary, claims for delays may be brought before the Board as a separate matter in the near future.

## EXHIBITS

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- 1) Staff Report-March 7, 2013 Meeting
- 2) Notice of Public Hearing to PCP-April 10, 2013
- 3) Doug Wall Construction-Letter from Attorney Marc S. Homme
- 4) PCP Letter of Objection
- 5) Public Works Contract Code-Section 4100-4114 (See 4107)
- 6) 04/15/13 Letter from Law Offices of Scott Therrien

## DOUG WALL CONSTRUCTION, INC. CA St Lik # 745112 78-450 Avenue 41 Bermuda Dunes, CA 92203 760/772-8446 \* 760/772-9407

BILL TO: CDHS

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City of Desert Hot Springs 65950 Pierson Blvd Desert Ht Spring, CA 92240 INVOICE #: 4177 INVOICE DATE: 12/31/12 PERIOD TO: 12/31/12 APPLICATION #: 18 CONTRACT DATE: 06/22/11 DUE DATE: 01/30/13

JOB: 1041 Community Health & Wellness 11320 Cholla Drive Desert Hot Sprin, CA 92240

## <<<< This Application >>>>

|      |                      |                    |                          |                      |                     |                    |            |                      | · ······           |
|------|----------------------|--------------------|--------------------------|----------------------|---------------------|--------------------|------------|----------------------|--------------------|
| COD  | DESCRIPTION          | SCHEDULED<br>VALUE | PREVIOUS<br>APPLICATIONS | CURRENT<br>COMPLETED | STORED<br>MATERIALS | TOTAL<br>COMPLETED | %<br>COMPL | BALANCE<br>TO FINISH | RETAINAGE          |
| 0110 | Mobilization         | 348,084.00         | 348,084.00               |                      |                     | 348,084.00         | 100.0      |                      | 17,404.20          |
| 0125 | Bonding              | 118,374.00         | 118,374.00               |                      |                     | 118,374.00         | 100.0      |                      | 5,918,70           |
| 0130 | Blue Prints          | 400.00             | 400.00                   |                      |                     | 400.00             | 100.0      |                      | 20.00              |
| 0151 | Temp Utilities       | 3,800.00           | 3,800.00                 |                      |                     | 3,800.00           | 100.0      |                      | 190.00             |
| 0155 | Progressive Cleanup  | 12,000.00          | 12,000.00                |                      |                     | 12,000.00          | 100.0      |                      | 600.00             |
| 0156 | Hisc. Labor          | 12.000.00          | 12,000.00                |                      |                     | 12.000.00          | 100.0      |                      | 600.00             |
| 0157 | Site Preperation     | 971.00             | 971.00                   |                      |                     | 971.00             | 100.0      |                      | 48.55              |
| 0158 | Final Cleanup        | 2,800.00           | 2.800.00                 |                      |                     | 2,800.00           | 100.0      |                      | 140.00             |
| 0159 | Dumpster             | 1,800.00           | 1.800.00                 |                      |                     | 1,800.00           | 100.0      |                      | 90.00              |
| 0164 | Temp Trailer         | 4,178.00           | 4,178.00                 |                      |                     | 4,178.00           | 100.0      |                      | 208.90             |
| 0165 | Temp. Facilities     | 1.800.00           | 1,800.00                 |                      |                     | 1,800.00           | 100.0      |                      | 90.00              |
| 0166 | Temp Power           | 6,250.00           | 6,250.00                 |                      |                     | 6,250.00           | 100.0      |                      | 312.50             |
| 0167 | Project Signage      | 1.500.00           | 1,500.00                 |                      |                     | 1.500.00           | 100.0      |                      | 75.00              |
| 0210 | Survey               | 12,900.00          | 12.900.00                |                      |                     | 12,900.00          | 100.0      |                      | 645.00             |
| 0224 | PM-10                | 6.000.00           | 6,000.00                 |                      |                     | 6.000.00           | 100.0      |                      | 300.00             |
| 0230 | Shpp                 | 6.000.00           | 6.000.00                 |                      |                     | 6,000.00           |            |                      | 300.00             |
| 0283 | Temp Fence           | 6.000.00           | 6,000.00                 |                      |                     | 6,000.00           | 100.0      |                      | . 300.00           |
| 0290 | Supervision          | 122,000.00         | 122,000.00               |                      |                     | 122,000.00         | 100.0      |                      | 6,100.00           |
| 0295 | Overhead & Profit    | 200,427.00         | 200,427.00               |                      |                     | 200,427.00         |            |                      | 10.021.35          |
| 0299 | Insurance            | 85,863.00          | 85,863.00                |                      |                     | 85,863.00          | 100.0      |                      | 4,293.15           |
| 0321 | Concrete Reinforcing | 121,000.00         | 121,000.00               |                      |                     | 121,000.00         | 100.0      |                      | 6,050.00           |
| 0330 | Cast-In Place Concre | 301,000.00         | 301,000.00               |                      |                     | 301,000.00         | 100.0      |                      | 15.050.00          |
| 0410 | Masonry Structural   | 577,004.00         | 577,004.00               |                      |                     | 577.004.00         |            |                      | 28.850.20          |
| 0415 | Site Masonry         | 38,640.00          | 38,640,00                |                      |                     | 38,640.00          |            |                      | 1,932.00           |
| 0420 | Retaining Walls      | 41.200.00          | 41,200,00                |                      |                     | 41,200.00          |            |                      | 2.060.00           |
| 0510 | Metal Gate & Fence   | 71,300.00          | 71,300.00                |                      |                     | 71,300.00          |            |                      | 3.565.00           |
| 0515 | Structural Steel     | 439,980.00         | 439,980.00               |                      |                     | 439,980.00         |            |                      | 21,999.00          |
| 0520 | SheetDecorativeHetal | 115,750.00         | 115,750.00               |                      |                     | 115.750.00         |            |                      | 5.787.50           |
| 0525 | ScreensPerforatedHet | 71,250.00          | 71,250.00                |                      |                     | 71,250.00          | 100.0      |                      | 3.562.50           |
| 0605 | Rough Carpentry      | 599,896.00         | 599,896,00               |                      |                     | 599,896.00         | 100.0      |                      | 29,994,80          |
| 0610 | Casework             | 58,800.00          | 58,800,00                |                      |                     | 58,800.00          | 100.0      |                      | 2,940.00           |
| 0710 | Roof Cover           | 219,360.00         | 219.360.00               |                      |                     | 219,360.00         | 100.0      |                      | 10,968.00          |
| 0711 | Insulation           | 48,990.00          | 48,990.00                |                      |                     | 48.990.00          | 100.0      |                      | 2.449.50           |
| 0712 | Waterproofing        | 12,835.00          | 12,835.00                |                      |                     | 12,835.00          | 100.0      |                      | 641.75             |
| 0792 | Sealants & Caulking  | 1.600.00           | 1,600.00                 |                      |                     | 1,600.00           | 100.0      |                      | 80.00              |
| 0810 | Doors & Frames       | 116,829.00         | 116,829.00               |                      |                     | 116,829.00         | 100.0      |                      | 5,841.45           |
| 0811 | Overhead Doors       | 8,500.00           | 8,500.00                 |                      |                     | B,500.00           | 100.0      |                      | 5.841.45<br>425.00 |
| -    |                      |                    | -,                       |                      |                     | 0,000.00           | 100.0      |                      | 423.00             |

## DOUG WALL CONSTRUCTION, INC. CA SELLE & FANILE 78-450 Avenue 41 Bermuda Dunes, CA 92203

Bernuda Dunes, CA 92203 760/772-8446 \* 760/772-9407

BILL TO: CDHS

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City of Desert Hot Springs 65950 Pierson Blvd Desert Ht Spring, CA 92240

## INVOICE #: 4177 INVOICE DATE: 12/31/12 PERIOD TO: 12/31/12 APPLICATION #: 18 CONTRACT DATE: 06/22/11 DUE DATE: 01/30/13 PAGE: 2

JOB: 1041

Community Health & Weliness 11320 Cholla Drive Desert Hot Sprin, CA 92240

## <<<< This Application >>>>

| CODI              | DESCRIPTION          | SCHEDULED<br>VALUE | PREVIOUS<br>APPLICATIONS | CURRENT<br>COMPLETED | STORED<br>MATERIALS | TOTAL<br>COMPLETED | %<br>COMPL | BALANCE<br>TO FINISH | RETAINAGE         |
|-------------------|----------------------|--------------------|--------------------------|----------------------|---------------------|--------------------|------------|----------------------|-------------------|
| 0812              | Glazing              | 178,600.00         |                          |                      |                     | 178,600.00         | 100.0      |                      | 8,930.00          |
| 0813              | Skylights            | 15,000.00          | 15,000.00                |                      |                     | 15,000.00          | 100.0      |                      | 750.00            |
| 0905              | Metal Grating Mats   | 12,000.00          | 12,000.00                |                      |                     | 12.000.00          | 100.0      |                      | 600.00            |
| 0911              | Lath & Plaster       | 185.000.00         | 185,000.00               |                      |                     | 185,000.00         | 100.0      |                      | 9,250.00          |
| 0915              | T-8ar                | 135.000.00         | 135,000.00               |                      |                     | 135,000,00         | 100.0      |                      | 6,750.00          |
| 0917              | Sheet Vinyl          | 25,245.00          | 25,245.00                |                      |                     | 25,245.00          | 100.0      |                      | 1,262.25          |
| 0918              | Carpet               | 7,000.00           | 7.000.00                 |                      |                     | 7,000,00           | 100.0      |                      | 350.00            |
| 0919              | Painting             | 65,244.00          | 65,244.00                |                      |                     | 65.244.00          | 100.0      |                      | 3.262.20          |
| 0925              | Orywall              | 61.000.00          | 61.000.00                |                      |                     | 61,000.00          | 100.0      |                      | 3.050.00          |
| 0930              | Athletic Flooring    | 75,813.00          | 75,813.00                |                      |                     | 75.813.00          | 100.0      |                      | 3,790.65          |
| 0935              | Stained Concrete     | 14,166.00          | 14,166.00                |                      |                     | 14,166.00          | 100.0      |                      | 708.30            |
| 0 <b>940</b>      | Acoustic Wall Panels | 16,275.00          | 16,275,00                |                      |                     | 16,275.00          | 100.0      |                      | 813.75            |
| 0945              | Tectum Wall Panels   | 23,000.00          | 23,000.00                |                      |                     | 23.000.00          | 100.0      |                      | 1,150.00          |
| 0950              | Ceramic Tile         | 23,900.00          | 23,900.00                |                      |                     | 23,900.00          | 100.0      |                      | 1,195.00          |
| 1 <del>9</del> 55 | Wallcovering         | 1,800,00           | 1,800.00                 |                      |                     | 1,800.00           | 100.0      |                      | 90.00             |
| 0960              | Epoxy & Stain        | 21,248.00          | 21,248.00                |                      |                     | 21,248.00          | 100.0      |                      | 1.062.40          |
| 1975              | Glass Partition      | 19,944.00          | 19,944.00                |                      |                     | 19,944.00          | 100.0      |                      | 997.20            |
| 040               | Signage              | 25,403.00          | 25,403.00                |                      |                     | 25,403.00          | 100.0      |                      |                   |
| 1052              | Fire Protection      | 1.300.00           | 1,300.00                 |                      |                     | 1,300.00           | 100.0      |                      | 1,270.15<br>65.00 |
| 065               | Toilet Partitions    | 17,233.00          | 17,233.00                |                      |                     | 17.233.00          | 100.0      |                      | 861.65            |
| 070               | Flagpole/Specialties | 2,200.00           | 2,200.00                 |                      |                     | 2,200.00           | 100.0      |                      |                   |
| 075               | Lockers              | 6,484.00           | 6,484.00                 |                      |                     | 6,484.00           | 100.0      |                      | 110.00            |
| 080               | Toilet Accessories   | . 11.470.00        | 11,470.00                |                      |                     | 11,470.00          | 100.0      |                      | 324.20            |
| 105               | Appliances           | 8,500,00           | 8,500.00                 |                      |                     | 8,500.00           | 100.0      |                      | 573.50            |
| 115               | Athletic Equipment   | 86,304.00          | 86,304.00                |                      |                     | 86,304.00          | 100.0      |                      | 425.00            |
| 205               | Bike Rack            | 2,600.00           | 2,600.00                 |                      |                     | 2,600.00           | 100.0      |                      | 4,315.20          |
| 215               | FabricShadeStructure | 18.000.00          | 18,000.00                |                      |                     | 18,000.00          | 100.0      |                      | 130.00            |
| 305               | Spray Ground         | 242,264.00         | 242,264.00               |                      |                     | 242,264,00         | 100.0      |                      | 900.00            |
| 315               | Swimming Pools       | 622,780.00         | 622,780.00               |                      |                     | 622.780.00         | 100.0      |                      | 12,113.19         |
| 530               | Fire Sprinklers      | 49,500.00          | 49,500.00                |                      |                     | 49,500.00          | 100.0      |                      | 31,139.00         |
| 605               | Plumbing             | 295,000.00         | 295.000.00               |                      |                     | 295.000.00         | 100.0      |                      | 2,475.00          |
| 705               | HVAC                 | 430,500.00         | 430,500.00               |                      |                     |                    |            |                      | 14,750.00         |
| 805               | Electrical           | 759,900.00         | 759,900.00               |                      |                     | 430,500.00         | 100.0      |                      | 21,525.00         |
| 810               | LowVoltage/FireAlarm | 50,000,00          | 50,000,00                |                      |                     | 759,900.00         | 100.0      |                      | 37,995.00         |
| 905               | Earthwork Rough      | 44,000.00          | 44.000.00                |                      |                     | 50,000.00          | 100.0      |                      | 2,500.00          |
| 920               | Earthwork Fine       | 15,000.00          | 15.000.00                |                      |                     | 44,000.00          | 100.0      |                      | 2.200.00          |
| 115               | Soil Pretreat        | 2,300100           | 2.300.00                 |                      |                     | 15,000.00          | 100.0      |                      | 750.00            |
|                   |                      | 2,000.00           | 2.000.00                 |                      |                     | 2,300.00           | 100.0      |                      | 115.00            |

# DWC

## DOUG WALL CONSTRUCTION, INC.

78-450 Avenue 41 Bennuda Dunes, CA 92203 760/772-8446 \* 760/772-9407

BILL TO: CDHS

CONTRACTOR:

ARCHITECT:

City of Desert Hot Springs 65950 Pierson Blvd Desert Ht Spring, CA 92240 INVOICE #: 4177 INVOICE DATE: 12/31/12 PERIOD TO: 12/31/12 APPLICATION #: 18 CONTRACT DATE: 06/22/11 DUE DATE: 01/30/13 PAGE: 3

JOB: 1041 Community Health & Wellness 11320 Cholla Drive Desert Hot Sprin, CA 92240

|       | <<<< This Application >>>> |                    |                          |                      |                     |                    |            |                      |            |
|-------|----------------------------|--------------------|--------------------------|----------------------|---------------------|--------------------|------------|----------------------|------------|
| CODE  | DESCRIPTION                | SCHEDULED<br>VALUE | PREVIOUS<br>APPLICATIONS | CURRENT<br>COMPLETED | STORED<br>MATERIALS | TOTAL<br>COMPLETED | %<br>COMPL | BALANCE<br>TO FINISH | RETAINAGE  |
| 2120  | Landscaping                | 126,852.00         | 126,852.00               |                      |                     | 126,052.00         | 100.0      |                      | 6,342,60   |
| 2125  | Site Concrete              | 139,000.00         | 139,000.00               |                      |                     | 139,000.00         | 100,0      |                      | 6,950,00   |
| 2130  | Irrigation                 | 84,500.00          | 84,500.00                |                      |                     | 84,500.00          | 100.0      |                      | 4,225.00   |
| 2135  | Asphalt Onsite             | 116,600.00         | 116,600.00               |                      |                     | 116,600,00         | 100.0      |                      | 5,830,00   |
| 2140  | Pavement Harking           | 2,270.00           | 2,270.00                 |                      |                     | 2,270.00           |            |                      | 113.50     |
| 2145  | Waterproof                 | 12,835.00          | 12,835.00                |                      |                     | 12.835.00          | 100.0      |                      | 641.75     |
| 3005  | Site Drainage              | 77,000.00          | 77,000.00                |                      |                     | 77.000.00          |            |                      | 3,850.00   |
| 3010  | Site Hater                 | 71,000.00          | 71,000.00                |                      |                     | 71,000.00          |            |                      | 3,550.00   |
| 3015  | Sanitary Sever             | 19,000.00          | 19,000.00                |                      |                     | 19,000.00          |            |                      | 950.00     |
|       | TOTALS:                    | 8.017,111.00       | 8.017,111.00             | 0.00                 | 0.00                | 8,017,111.00       | 100.0      | 0.00                 | 400,855.54 |
| C0 01 | CHANGE ORDER #1            | 3,257,707.38       | 3,257,707,38             |                      |                     | 3,257,707,38       | 100.0      |                      | 100 000 03 |
| C002  | CHANSE ORDER #2            | 731.881.35         |                          | 731.881.35           |                     | 731.881.35         |            |                      | 162.885.37 |
|       | CHANGE ORDER #3            | 568.382.23         |                          | 568,382.23           |                     |                    |            |                      | 36,594.07  |
|       |                            |                    |                          |                      |                     | 558,382.23         | 100.0      |                      | 28,419.12  |
|       | TOTALS:                    | 12,575,081.96      | 11,274,818,38            | 1,300,263.58         | 9.00                | 12,575,081.96      | 100.0      | 0.00                 | 628,754.10 |

 PREVIOUS RETAINAGE......\$
 563.740.91

 CURRENT BILLING......\$
 1.300.263.58

 NEW RETAINAGE......\$
 65.013.19

DATE :

DATE

| ORIGINAL CONTRACT SUM\$                  | 9 017 111 00  |
|--|---------------|
| CHANGE BY CHANGE ORDER                   | 0,017,111.00  |
| CONTRACT CIBI TO DATE                    | 4.55/,9/0.96  |
| CONTRACT SUM TO DATE                     | 12,575,081.96 |
| TOTAL COMPLETED & STORED TO DATE         | 12,575,081.96 |
| TOTAL RETAINAGE\$                        | 628,754,10    |
| TOTAL EARNED LESS RETAINAGE\$            | 11,946,327.86 |
| LESS PREVIOUS CERTIFICATES FOR PAYMENT\$ | 10.711.077.47 |

CURRENT PAYMENT DUE......\$ 1.235.250.39

## Thank you for your business!

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CUSTOMER #: CDHS INVOICE #: 4134 INVOICE DATE: 10/31/12 DUE DATE: 11/30/12

BILL TO: City of Desert Hot Springs 65950 Pierson Blvd

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Desert Ht Spring, CA 92240

JOB: 1041 Community Health & Wellness 11320 Cholla Drive Desert Hot Sprin, CA 92240

| JOB # | CODE | DESCRIPTION          | RETENTION |      |           |
|-------|------|----------------------|-----------|------|-----------|
|       |      |                      | BALANCE   | %    | AMOUNT    |
| 10.41 |      | n billed.            |           |      |           |
| 1041  | 0110 | Mobilization         | 34,808.40 | 50.0 | 17,404.20 |
| 1041  | 0125 | Bonding              | 11,837.40 | 50.0 | 5,918.70  |
| 1041  | 0130 | Blue Prints          | 40.00     | 50.0 | 20.00     |
| 1041  | 0151 | Temp Utilities       | 380.00    | 50.0 | 190.00    |
| 1041  | 0155 | Progressive Cleanup  | 1,200.00  | 50.0 | 600.00    |
| 1041  | 0156 | Misc. Labor          | 1,200.00  | 50.0 | 600.00    |
| 1041  | 0157 | Site Preperation     | 97.10     | 50.0 | 48.55     |
| 1041  | 0158 | Final Cleanup        | 280.00    | 50.0 | 140.00    |
| 1041  | 0159 | Dumpster             | 180.00    | 50.0 | 90.00     |
| 1041  | 0164 | Temp Trailer         | 417.80    | 50.0 | 208.90    |
| 1041  | 0165 | Temp. Facilities     | 180.00    | 50.0 | 90.00     |
| 1041  | 0166 | Temp Power           | 625.00    | 50.0 | 312.50    |
| 1041  | 0167 | Project Signage      | 150.00    | 50.0 | 75.00     |
| 1041  | 0210 | Survey               | 1,290.00  | 50.0 | 645.00    |
| 1041  | 0224 | PM-10                | 600.00    | 50.0 | 300.00    |
| 1041  | 0230 | SWPP                 | 600.00    | 50.0 | 300.00    |
| 1041  | 0283 | Temp Fence           | 600.00    | 50.0 | 300.00    |
| 1041  | 0290 | Supervision          | 12,200.00 | 50.0 | 6,100.00  |
| 1041  | 0295 | Overhead & Profit    | 20,042.70 | 50.0 | 10,021.35 |
| 1041  | 0299 | Insurance            | 8,586.30  | 50.0 | 4,293.15  |
| 1041  | 0321 | Concrete Reinforcing | 12,100.00 | 50.0 | 6,050.00  |
| 1041  | 0330 | Cast-In Place Concre | 30,100.00 | 50.0 | 15,050.00 |
| 1041  | 0410 | Masonry Structural   | 57,700.40 | 50,0 | 28,850.20 |
| 1041  | 0415 | Site Masonry         | 3,864.00  | 50.0 | 1,932.00  |
| 1041  | 0420 | Retaining Walls      | 4,120.00  | 50.0 | 2,060.00  |
| 1041  | 0510 | Metal Gate & Fence   | 7,130.00  | 50.0 | 3,565.00  |
| 1041  | 0515 | Structural Steel     | 43,998.00 | 50.0 | 21,999.00 |
| 1041  | 0520 | SheetDecorativeMetal | 11,575.01 | 50.0 | 5,787.51  |
| 1041  | 0525 | ScreensPerforatedMet | 7,125.01  | 50.0 | 3,562.51  |
| 1041  | 0605 | Rough Carpentry      | 59,989.60 | 50.0 | 29,994.80 |

CUSTOMER #: CDHS INVOICE #: 4134 INVOICE DATE: 10/31/12 DUE DATE: 11/30/12 PAGE: 2

BILL TO:

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> City of Desert Hot Springs 65950 Pierson Blvd Desert Ht Spring, CA 92240

JOB: 1041 Community Health & Wellness 11320 Cholla Drive Desert Hot Sprin, CA 92240

| JOB # | 005E |                      | RETENTION |      | NTION DUE      |
|-------|------|----------------------|-----------|------|----------------|
|       | CODE | DESCRIPTION          | BALANCE   | %    | AMOUNT         |
| 1041  | 0610 | Casework             | 5,880.00  | 50.0 | 2,940.00       |
| 1041  | 0710 | Roof Cover           | 21,936.00 | 50.0 | 10,968.00      |
| 1041  | 0711 | Insulation           | 4,899.00  | 50.0 | 2,449.50       |
| 1041  | 0712 | Waterproofing        | 1,283.50  | 50.0 | 641,75         |
| 1041  | 0792 | Sealants & Caulking  | 160.00    | 50.0 | 80.00          |
| 1041  | 0810 | Doors & Frames       | 11,682.91 | 50.0 | 5,841.46       |
| 1041  | 0811 | Overhead Doors       | 850.00    | 50.0 | 425.00         |
| 1041  | 0812 | Glazing              | 17,860.00 | 50.0 | 8,930.00       |
| 1041  | 0813 | Skylights            | 1,500.00  | 50.0 | 750.00         |
| 1041  | 0905 | Metal Grating Mats   | 1,200.00  | 50.0 | 600.00         |
| 1041  | 0911 | Lath & Plaster       | 18,500.00 | 50.0 | 9,250.00       |
| 1041  | 0915 | T-Bar                | 13,500.00 | 50.0 | 6,750.00       |
| 1041  | 0917 | Sheet Vinyl          | 2,524.50  | 50.0 | 1,262.25       |
| 1041  | 0918 | Carpet               | 700.00    | 50.0 | 350.00         |
| 1041  | 0919 | Painting             | 6,524.40  | 50.0 | 3,262.20       |
| 1041  | 0925 | Drywall              | 6,100.00  | 50.0 | 3,050.00       |
| 1041  | 0930 | Athletic Flooring    | 7,581.30  | 50.0 | 3,790.65       |
| 1041  | 0935 | Stained Concrete     | 1,416.60  | 50.0 | 708.30         |
| 1041  | 0940 | Acoustic Wall Panels | 1,627.50  | 50.0 | 813.75         |
| 1041  | 0945 | Tectum Wall Panels   | 2,300.00  | 50.0 | 1,150.00       |
| 1041  | 0950 | Ceramic Tile         | 2,390.00  | 50.0 | 1,195.00       |
| 1041  | 0955 | Wallcovering         | 180.00    | 50.0 | 90.00          |
| 1041  | 0960 | Epoxy & Stain        | 2,124.80  | 50.0 | 1,062.40       |
| 1041  | 0975 | Glass Partition      | 1,994.40  | 50.0 | <b>9</b> 97.20 |
| 1041  | 1040 | Signage              | 2,540.31  | 50.0 | 1,270.16       |
| 1041  | 1052 | Fire Protection      | 130.00    | 50.0 | 65.00          |
| 1041  | 1065 | Toilet Partitions    | 1,723.30  | 50.0 | 861.65         |
| 1041  | 1070 | Flagpole/Specialties | 220.00    | 50.0 | 110.00         |
| 1041  | 1075 | Lockers              | 648.40    | 50.0 | 324.20         |
| 1041  | 1080 | Toilet Accessories   | 1,147.00  | 50.0 | 573.50         |
| 1041  | 1105 | Appliances           | 850.00    | 50.0 | 425.00         |
|       |      |                      |           |      |                |

CUSTOMER #: CDHS INVOICE #: 4134 INVOICE DATE: 10/31/12 DUE DATE: 11/30/12 PAGE: 3

BILL TO: City of Desert Hot Springs 65950 Pierson Blvd Desert Ht Spring, CA 92240

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JOB: 1041 Community Health & Wellness 11320 Choila Drive Desert Hot Sprin, CA 92240

|      |              |                      | RETENTION  | <b>RETENTION DUE</b> |            |
|------|--------------|----------------------|------------|----------------------|------------|
| JOB# | CODE         | DESCRIPTION          | BALANCE    | %                    |            |
| 1041 | 1115         | Athletic Equipment   | 8,630.40   | 50.0                 | 4,315.20   |
| 1041 | 1205         | Bike Rack            | 260.00     | 50.0                 | 130.00     |
| 1041 | 1215         | FabricShadeStructure | 1,800.00   | 50.0                 | 900.00     |
| 1041 | 1305         | Spray Ground         | 24,226.39  | 50.0                 | 12,113.20  |
| 1041 | 1315         | Swimming Pools       | 62,278.00  | 50.0                 | 31,139.00  |
| 1041 | 1530         | Fire Sprinklers      | 4,950.00   | 50.0                 | 2,475.00   |
| 1041 | 1605         | Plumbing             | 29,500.00  | 50.0                 | 14,750.00  |
| 1041 | 1705         | HVAC                 | 43,050.00  | 50.0                 | 21,525.00  |
| 1041 | 1805         | Electrical           | 75,990.00  | 50.0                 | 37,995.00  |
| 1041 | 1810         | LowVoltage/FireAlarm | 5,000.00   | 50.0                 | 2,500.00   |
| 1041 | <b>190</b> 5 | Earthwork Rough      | 4,400.00   | 50.0                 | 2,200.00   |
| 1041 | 1920         | Earthwork Fine       | 1,500.00   | 50.0                 | 750.00     |
| 1041 | 2115         | Soil Pretreat        | 230.00     | 50.0                 | 115.00     |
| 1041 | 2120         | Landscaping          | 12,685.20  | 50.0                 | 6,342.60   |
| 1041 | 2125         | Site Concrete        | 13,900.00  | 50.0                 | 6,950.00   |
| 1041 | 2130         | Irrigation           | 8,450.00   | 50.0                 | 4,225.00   |
| 1041 | 2135         | Asphalt Onsite       | 11,660.00  | 50.0                 | 5,830.00   |
| 1041 | 2140         | Pavement Marking     | 227.00     | 50.0                 | 113.50     |
| 1041 | 2145         | Waterproof           | 1,283.50   | 50.0                 | 641.75     |
| 1041 | 3005         | Site Drainage        | 7,700.00   | 50.0                 | 3,850.00   |
| 1041 | 3010         | Site Water           | 7,100.00   | 50.0                 | 3,550.00   |
| 1041 | 3015         | Sanitary Sewer       | 1,900.00   | 50.0                 | 950.00     |
| 1041 | C001         | CHANGE ORDER #1      | 325,770.74 | 50.0                 | 162,885.37 |
|      |              |                      | RETENTION  | DUE:                 | 563,740.96 |

## Thank you for your business!

## CONDITIONAL WAIVER AND RELEASE ON PROGRESS PAYMENT

**PROJECT:** Community Health & Wellness

Upon receipt by the undersigned of a check from City of Desert Hot Springs in the sum of \$563,740.96 payable to DOUG WALL CONSTRUCTION INC and when the check has been properly endorsed and has been paid by the bank on which it is drawn, this document becomes effective to release any mechanic's lien, stop notice, any state or federal statutory bond right, any private bond right, any claim for payment and any rights under any similar ordinance, rule or statute related to claim or payment rights for persons in the undersigned's position, the undersigned has on the job of City of Desert Hot Springs located at 11320 Cholla Drive, Desert Hot Sprin, CA 92240 to the following extent.

This release covers a progress payment for labor, services, equipment or materials furnished to the jobsite or to City of Desert Hot Springs through 10/31/12 only and does not cover any retentions retained before or after the release date; extras furnished before the release date for which payment has not been received; extras or items furnished after the release date or pending modifications and changes. Rights based upon work performed or items furnished under a written change order which has been fully executed by the parties prior to the release date are covered by this release unless specifically reserved by the claimant in this release. This release of any mechanic's lien, stop notice or bond right shall not otherwise affect the contract rights, including rights between parties to the contract based upon a rescission, abandonment, or breach of the contract, or the right of the undersigned to recover compensation for furnished labor, services, equipment, or material covered by this release if that furnished labor, services, equipment or material was not compensated by the progress payment.

The undersigned warrants that he either has already paid or will use the monies he receives from this progress payment to promptly pay in full all of his laborers, subcontractors, materialmen and suppliers for all work, materials, equipment or services provided for or to the above-referenced project up to the date of this waiver.

Before any recipient of this document relies on it, said party should verify evidence of payment to the undersigned.

DATE: 10/29/12

DOUG WALL CONSTRUCTION INC

\* This document is current through the 2013 Supplement \*\*\*
(All 2012 legislation, 2012 Governor's Reorg. Plan No. 2 and all
propositions approved by the electorate at the June and
November 2012 elections)

PUBLIC CONTRACT CODE Division 2. General Provisions Part 1. Administrative Provisions Chapter 7. Contract Clauses

## **GO TO CALIFORNIA CODES ARCHIVE DIRECTORY**

Cal Pub Contract Code § 7107 (2013)

## § 7107. Release of retention after completion; Payment of subcontractors' share

(a) This section is applicable with respect to all contracts entered into on or after January 1, 1993, relating to the construction of any public work of improvement.

(b) The retention proceeds withheld from any payment by the public entity from the original contractor, or by the original contractor from any subcontractor, shall be subject to this section.

(c) Within 60 days after the date of completion of the work of improvement, the retention withheld by the public entity shall be released. In the event of a dispute between the public entity and the original contractor, the public entity may withhold from the final payment an amount not to exceed 150 percent of the disputed amount. For purposes of this subdivision, "completion" means any of the following:

(1) The occupation, beneficial use, and enjoyment of a work of improvement, excluding any operation only for testing, startup, or commissioning, by the public agency, or its agent, accompanied by cessation of labor on the work of improvement.

(2) The acceptance by the public agency, or its agent, of the work of improvement.

(3) After the commencement of a work of improvement, a cessation of labor on the work of improvement for a continuous period of 100 days or more, due to factors beyond the control of the contractor.

(4) After the commencement of a work of improvement, a cessation of labor on the work of improvement for a continuous period of 30 days or more, if the public agency files for record a notice of cessation or a notice of completion.

(d) Subject to subdivision (e), within seven days from the time that all or any portion of the retention proceeds are received by the original contractor, the original contractor shall pay each of its subcontractors from whom retention has been withheld, each subcontractor's share of the retention received. However, if a retention payment received by the original contractor is specifically designated for a particular subcontractor, payment of the retention shall be made to the designated subcontractor, if the payment is consistent with the terms of the subcontract.

(e) The original contractor may withhold from a subcontractor its portion of the retention proceeds if a bona fide dispute exists between the subcontractor and the original contractor. The amount withheld from the retention payment shall not exceed 150 percent of the estimated value of the disputed amount.

(f) In the event that retention payments are not made within the time periods required by this section, the public entity or original contractor withholding the unpaid amounts shall be subject to a charge of 2 percent per month on the improperly withheld amount, in lieu of any interest otherwise due. Additionally, in any action for the collection of funds wrongfully withheld, the prevailing party shall be entitled to attorney's fees and costs.

(g) If a state agency retains an amount greater than 125 percent of the estimated value of the work yet to be completed pursuant to Section 10261, the state agency shall distribute undisputed retention proceeds in accordance with subdivision (c).

However, notwithstanding subdivision (c), if a state agency retains an amount equal to or less than 125 percent of the estimated value of the work yet to be completed, the state agency shall have 90 days in which to release undisputed retentions.

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(h) Any attempted waiver of the provisions of this section shall be void as against the public policy of this state.