

THE BOARD OF SUPERVISORS OF THE COUNTY OF STANISLAUS
ACTION AGENDA SUMMARY

DEPT: Chief Executive Office

BOARD AGENDA # *B-11

Urgent

Routine

AGENDA DATE December 18, 2007

CEO Concurs with Recommendation YES NO

(Information Attached)

4/5 Vote Required YES NO

SUBJECT:

Approval to Issue a Request for Proposals from the Pre-qualified Contractors for Design - Build Services and Other Professional Services Needed for the Empire Pool Project - Chief Executive Office

STAFF RECOMMENDATIONS:

1. Authorize staff to issue a Request for Proposals (RFQ-P) from the pre-qualified Construction firms for Design - Build Services for the Empire Pool, Authorize Staff to Review the Proposals and return to the Board of Supervisors for final selection.
2. Authorize the Project Manager to Negotiate and Sign Agreements for other Professional Services Required Such as Code Review, Estimating, Labor Compliance and Construction Management as long as they are within budget.

FISCAL IMPACT:

The Design Architect, Aquatic Design Group, has completed the phase of design, referred to as "Bridging" documents for the Empire Pool. This level of design prepares the project to receive construction proposals, using the Design Build approach for construction.

(Continued on Page 2)

BOARD ACTION AS FOLLOWS:

No. 2007-1003

On motion of Supervisor Mayfield, Seconded by Supervisor Grover
and approved by the following vote,

Ayes: Supervisors: Mayfield, Grover, Monteith, DeMartini, and Chairman O'Brien

Noes: Supervisors: None

Excused or Absent: Supervisors: None

Abstaining: Supervisor: None

1) X Approved as recommended

2) _____ Denied

3) _____ Approved as amended

4) _____ Other:

MOTION:



ATTEST: CHRISTINE FERRARO TALLMAN, Clerk

File No.

Approval to Issue a Request for Proposals for Design - Build Services for Empire Pool, Authorize the Project Manager to Negotiate and Sign Agreements for other Professional Services Required, And Authorize the Auditor Controller to Adjust the Project Budget.

FISCAL IMPACT: (Continued)

The current project budget *estimate* is \$2,970,750. This project will be funded by a \$1 million state parks grant, public facility fees, County funds from the tobacco tax fund and community fund raising donates and donated materials from local builders. The Parks Department also has secured a \$200,000 grant from the Stewardship Council. This approach to funding represents a unique partnership among Governmental agencies, local concerned citizens and the members of the local Building Industry.

To date, the Empire Community has collected approximately \$125,000 in cash contributions and is continuing their fundraising efforts.

The community and the staff are also pursuing in kind contributions from the Community. A local Plaster Company has generously offered to contribute the plaster for the project, also being considered is a possible donation from a local concrete finishing company which may place and finish the flatwork, a local Ready Mix plant which may donate ready mix concrete, the community may paint the facility, and the Parks Department may install the irrigation and seeding. When final negotiations are completed staff will report to the Board.

DISCUSSION:

The Board of Supervisors has given staff approval to proceed with the Empire Pool project. The community came together to create a community pool project adjacent to the new Empire park. This effort was spearheaded after a tragedy which occurred in the summer of 2003, when three young brothers, ages 8, 10, and 12, tragically drowned in the Tuolumne River. This tragic accident caused the community to come together to look at options to prevent this from happening again. The idea was to construct a swimming pool in Empire to provide a safe environment for both children and adults to swim and learn to swim. To date, the Empire Community has raised approximately \$171,000 and continues to raise funding and other donations for the pool project.

The County has had discussion with the Empire School District and the District has expressed an interest in teaching swimming lessons as a part of the school physical education program. The school would provide lifeguards and the instructors for these classes, which would be offered to 6th, 7th and 8th graders at Teel Middle School. The County is also looking for other options to partner with other organizations for the operation of the pool.

On October 3, 2006 the Board approved the selection of Aquatic Design Group as the Design Architect for the Empire Pool. The Board also authorized staff to explore the option of Design – Build as the project delivery system.

Approval to Issue a Request for Proposals for Design - Build Services for Empire Pool, Authorize the Project Manager to Negotiate and Sign Agreements for other Professional Services Required, And Authorize the Auditor Controller to Adjust the Project Budget.

The County has often used the Design – Build project Delivery System. 10th Street Place is a prime example of the Design – Build project delivery system. Other Design – Build projects include the Sheriff’s Office, The Ray Simon Peace Officers Standards and Training Facility, and the Kitchen – Laundry, Women’s Housing Unit at the Public Safety Center among others.

Under the Design – Build Project Delivery System the County hires an architect/engineer team to prepare concept drawings and performance specifications. The County’s architect for this phase can not submit a proposal for the final design team, but remains as a consultant to the County to ensure the quality of the project is met. The design build approach also requires the preparation of a Labor Compliance Program pursuant to 1771.5 of the Labor Code. The pre-qualification of contractors and preparation of a Request for Proposals that includes basic scope, cost range, method of evaluation, and importance of factors by weight. Also required is the establishment of a Selection Procedure for pre-qualified Contractors according to statutory criteria, either lump sum or best value. All of these steps have now been completed and it is appropriate to move the project forward to the stage of requesting proposals from the pre-qualified contractors.

In the next phase, under the Design – Build approach, the Selected Contractor will:

- Hire Architects/Engineers and Subcontractors
- Designs and Constructs the work according to the plans prepared by the Architect/ Engineer selected by the Contractor, while meeting the requirements of the County’s concept drawings and performance specification at a fixed price.
- Provides insurance, payment and performance bonds. Abide by subcontractor listing laws, and provide retention.

The Design – Build approach is made possible through the Public Contract Code Section 20133.

The Staff believes the Design – Build project delivery system best meets the needs of this particular project. The advantages of the Design – Build project Delivery system for this particular project include:

- The construction price can be fixed at \$2,500,100.
- The Contractors are given broader latitude to use their abilities to efficiently construct the project.
- Design and Construction of the project is faster, since the Contractor can be constructing the project while the design is being completed.

On this particular project, staff believes that fixing the cost of the project early is of prime importance.

As a result of the previous Board of Supervisors action to pre-qualify contractors, two Contractors, Titan Structures of Modesto, CA and Diede Construction, Inc of Lodi, CA have been pre-qualified. Staff believes either Contractor would satisfactorily design and

Approval to Issue a Request for Proposals for Design - Build Services for Empire Pool, Authorize the Project Manager to Negotiate and Sign Agreements for other Professional Services Required, And Authorize the Auditor Controller to Adjust the Project Budget.

construct the project. Staff is requesting authorization to request a proposal from each firm.

EVALUATION FACTORS

A. The County will evaluate each Proposal based upon the following factors, with the maximum number of points allocated to each factor as indicated in the Points Matrix below. If County is to award the Contract, it will be awarded to the qualifying Proposer whose Proposal receives the most points.

FACTORS	Maximum Points
1. Price (Base Design & Construction)	20
2. Technical Design & Construction Expertise	40
3. Life Cycle Costs over 15 Years	10
4. Skilled Labor Force Availability	10
5. Acceptable Safety Record	20
TOTAL (Maximum) 100 points	

The Contractor with the best proposal will be recommended to the Board of Supervisors for award of the design build construction contact.

Proposals will be received in early 2008 and construction is estimated to be complete in Spring 2009.

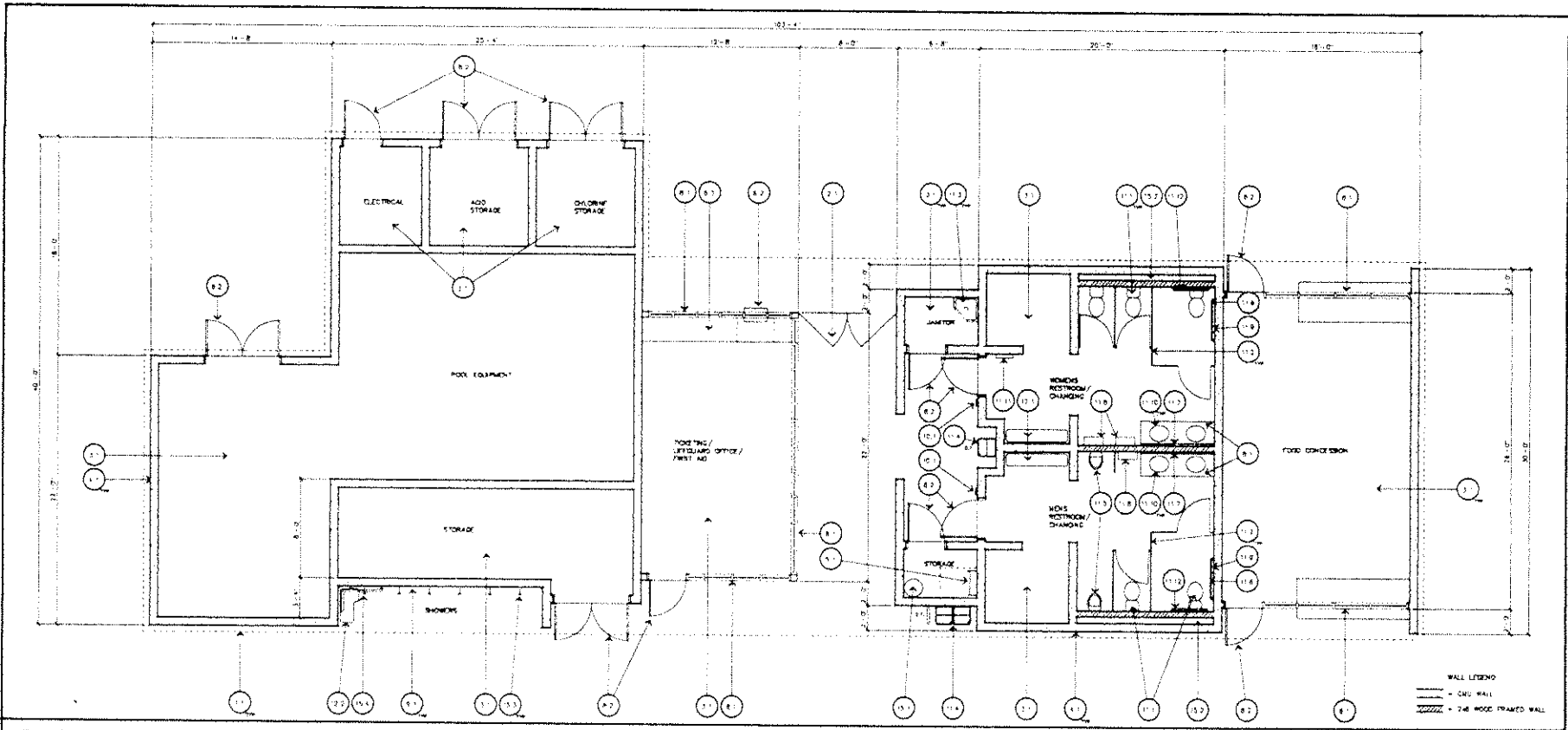
POLICY ISSUES:

The Board should determine whether approval of this recommendation is consistent with the Board's priorities of a safe community, effective partnerships and efficient delivery of public services.

STAFFING IMPACT:

Staff from the Chief Executive Office Capital Projects Division, the Stanislaus County Parks Department are working with the Empire MAC and Empire Pool Community Committee to deliver this project. There is no additional staffing impact.

ATTACHMENTS AVAILABLE
FROM YOUR CLERK



FLOOR PLAN

NOT USED

NOT USED

- 1. WORKS**
- 1.1. USE OF EXISTING WORK
- 2. EXTERIOR**
- 2.1. SEE THE EXTERIOR WALL FINISH
- 3. INTERIOR**
- 3.1. SEE THE EXTERIOR WALL FINISH
- 4. FINISHES**
- 4.1. SEE THE EXTERIOR WALL FINISH
- 5. WALLS**
- 5.1. SEE THE EXTERIOR WALL FINISH
- 6. FLOORS**
- 6.1. SEE THE EXTERIOR WALL FINISH
- 7. CEILING**
- 7.1. SEE THE EXTERIOR WALL FINISH
- 8. ROOFING**
- 8.1. SEE THE EXTERIOR WALL FINISH
- 9. MECHANICAL**
- 9.1. SEE THE EXTERIOR WALL FINISH
- 10. ELECTRICAL**
- 10.1. SEE THE EXTERIOR WALL FINISH
- 11. SPECIALTY**
- 11.1. SEE THE EXTERIOR WALL FINISH
- 12. OTHER**
- 12.1. SEE THE EXTERIOR WALL FINISH
- 2. OTHERS**
- 2.1. SEE THE EXTERIOR WALL FINISH

KEYNOTES

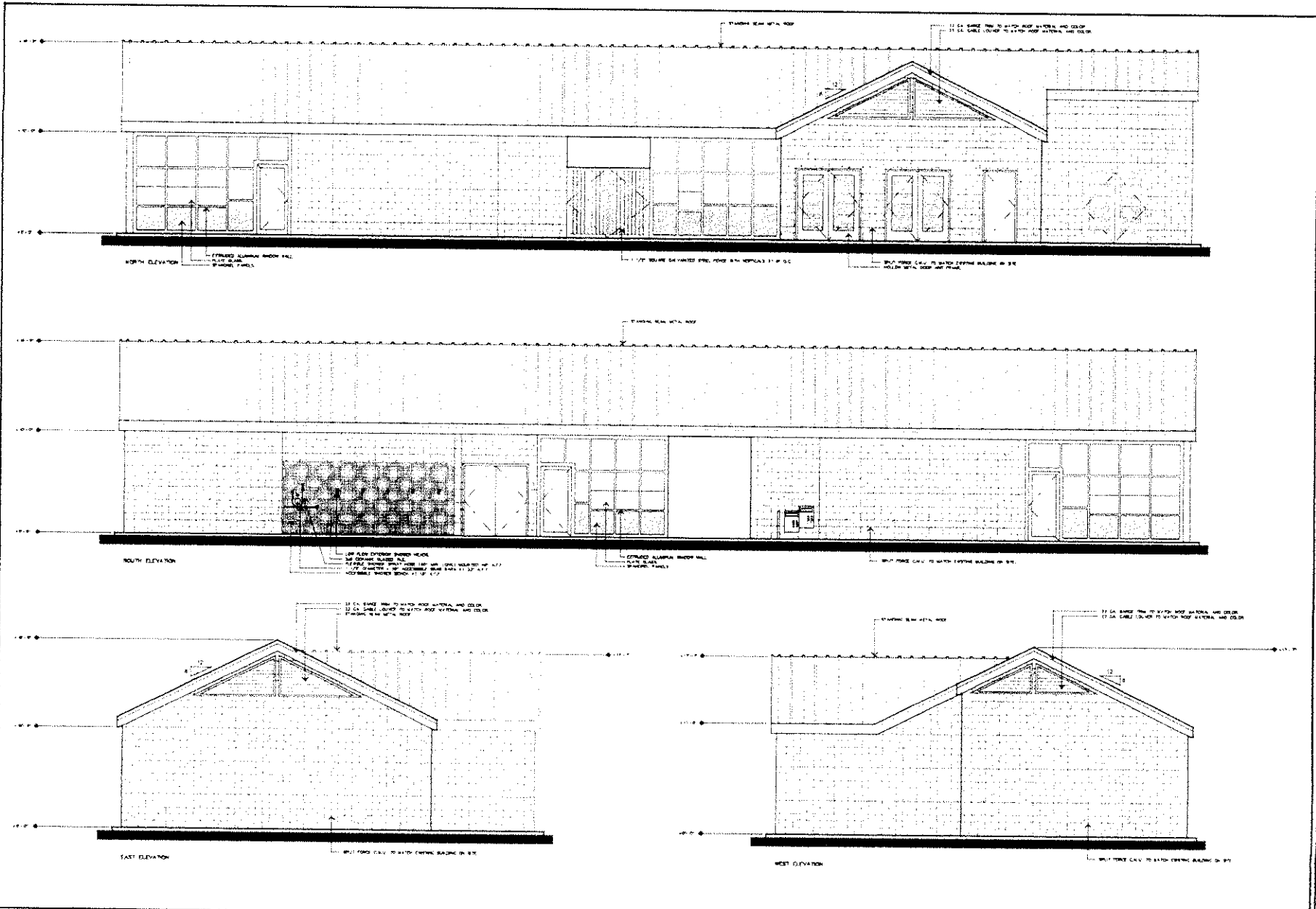
EMPIRE COMMUNITY POOL
 VESSENTE BOULEVARD
 EMPIRE, CALIFORNIA

1029 9th Street
 Modesto, CA 95354
 (209) 578-6636
 FAX (209) 578-0788

JD Grothe
 ARCHITECTS

DATE: 11/17/07
 SCALE: 1/8" = 1'-0"
 SHEET: 100
 NO: 58-27
 10/17/07

A2.1



EXTERIOR ELEVATION

EMPIRE COMMUNITY POOL
 ROSEBART COLLEGE PLAZA
 EMPIRE, CALIFORNIA

1029 15th Street
 Modesto CA 95134
 (209) 538-9536
 FAX: (209) 538-0138



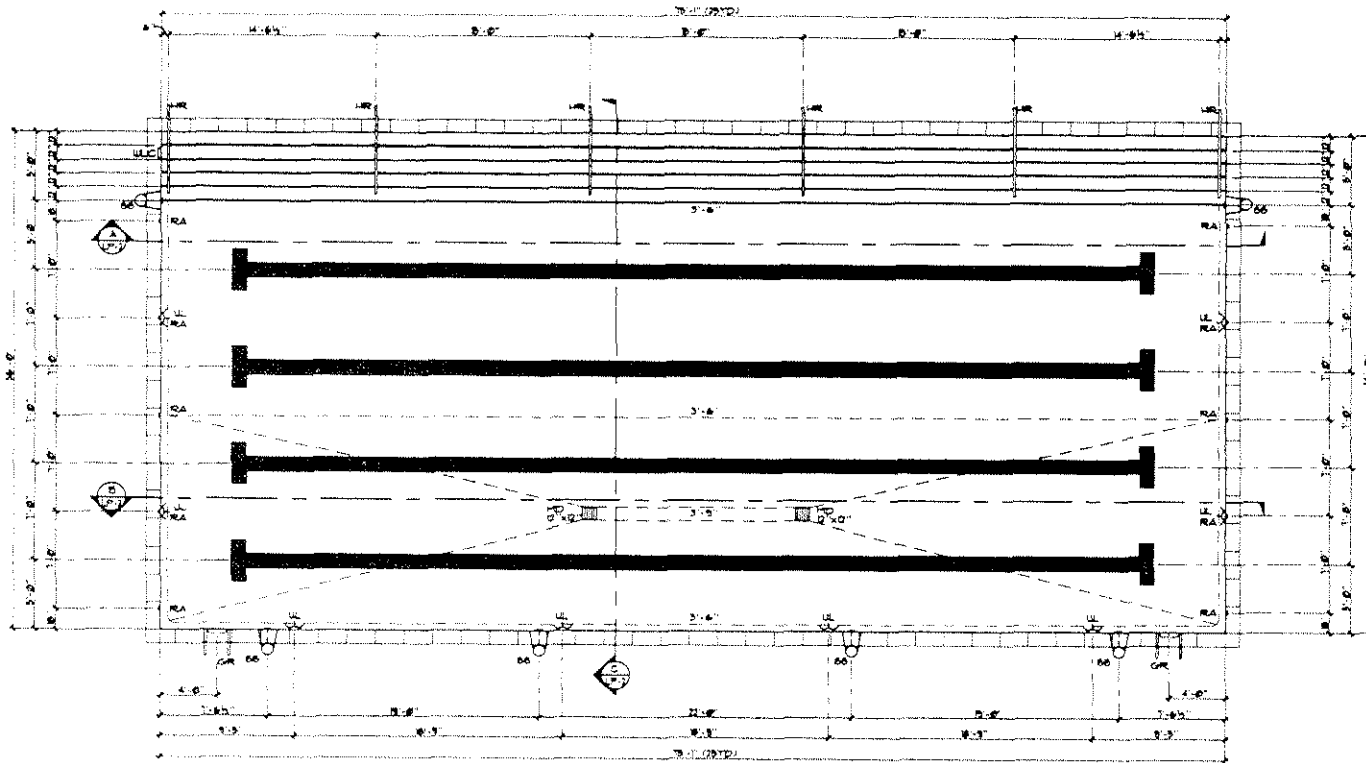
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Check	JG
Scale	AS SHOWN
Sheet	11-11-11

LAP POOL DATA

SURFACE AREA	-	2763 SQ. FT.
PERIMETER	-	222 FT.
DEPTH	-	3'-6" TO 3'-8"
VOLUME	-	65332 GAL.
6 HR TURNOVER	-	182 GPM

LEGEND

MD	-	MAIN DRAIN
HR	-	HANDRAIL
GR	-	GRABRAIL
SS	-	SURFACE SKIPPER
UL	-	UNDERWATER LIGHT
WLC	-	WATER LEVEL CONTROL



LAP POOL LAYOUT PLAN

A PRELIMINARY MASTER PLAN FOR
EMPIRE COMMUNITY POOL
 YOSEMITE BOULEVARD - EMPIRE CALIFORNIA

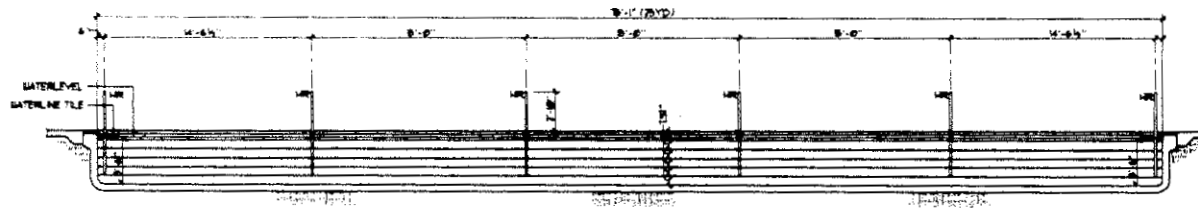
AQUATIC DESIGN GROUP - RJM DESIGN GROUP, INC. - GROTHE & SMITH ARCHITECTS



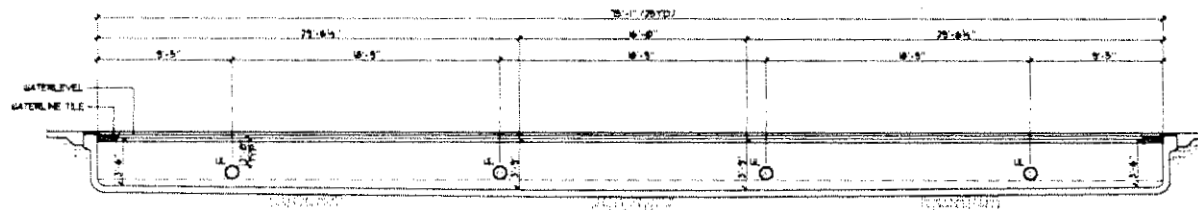
SCALE: 1/4" = 1'-0"

FEBRUARY 9, 2007

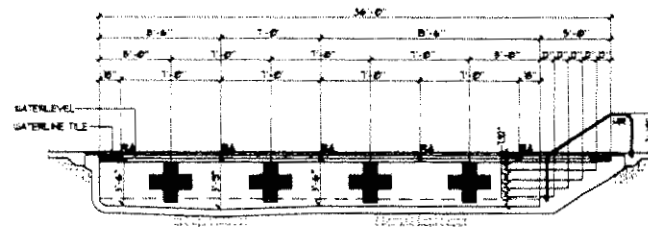
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LAP POOL SECTION



LAP POOL SECTION



LAP POOL SECTION

A PRELIMINARY MASTER PLAN FOR
EMPIRE COMMUNITY POOL
 YOSEMITE BOULEVARD - EMPIRE CALIFORNIA

FEBRUARY 9, 2007

AQUATIC DESIGN GROUP - RJM DESIGN GROUP, INC. - GROTHE & SMITH ARCHITECTS



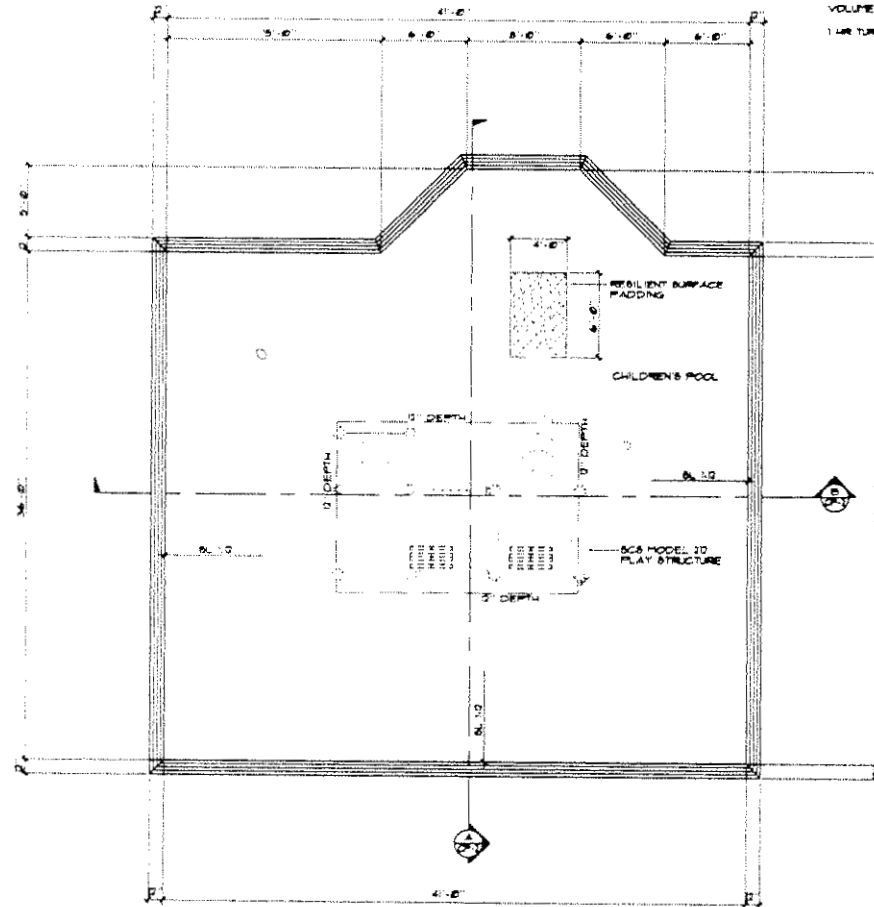
SCALE: 1/4" = 1'-0"

CHILDREN'S POOL DATA

SURFACE AREA	•	1240 SQ. FT.
PERIMETER	•	155 FT.
DEPTH	•	0'-0" TO 1'-0"
VOLUME	•	8380 GAL.
1 HR. TURNOVER	•	136 GPM

LEGEND

MD	•	MAN DRAIN
DM	•	DEPTH MARKER
FI	•	FLOOR INLET
GO	•	GUTTER OUTLET
GO/AV	•	CLEAN-OUT/AIR VENT
NR	•	NO RUNNING
ND	•	NO DIVING



CHILDREN'S POOL LAYOUT PLAN

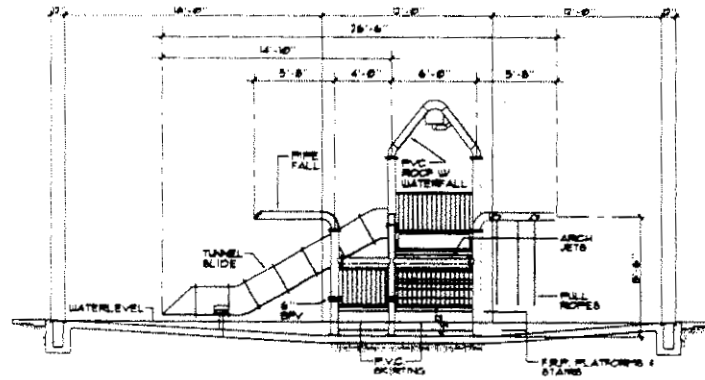
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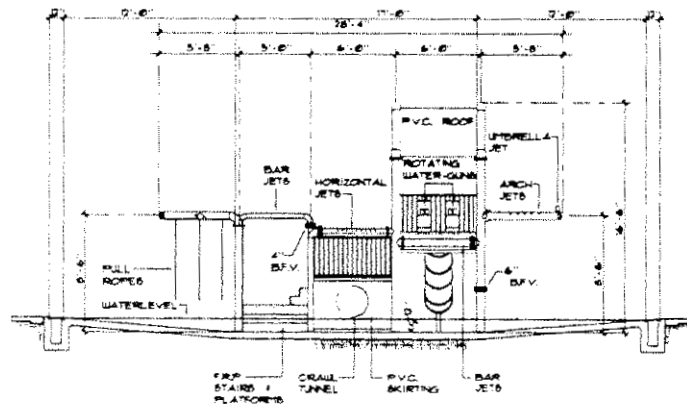
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SCALE: 1/4" = 1'-0"



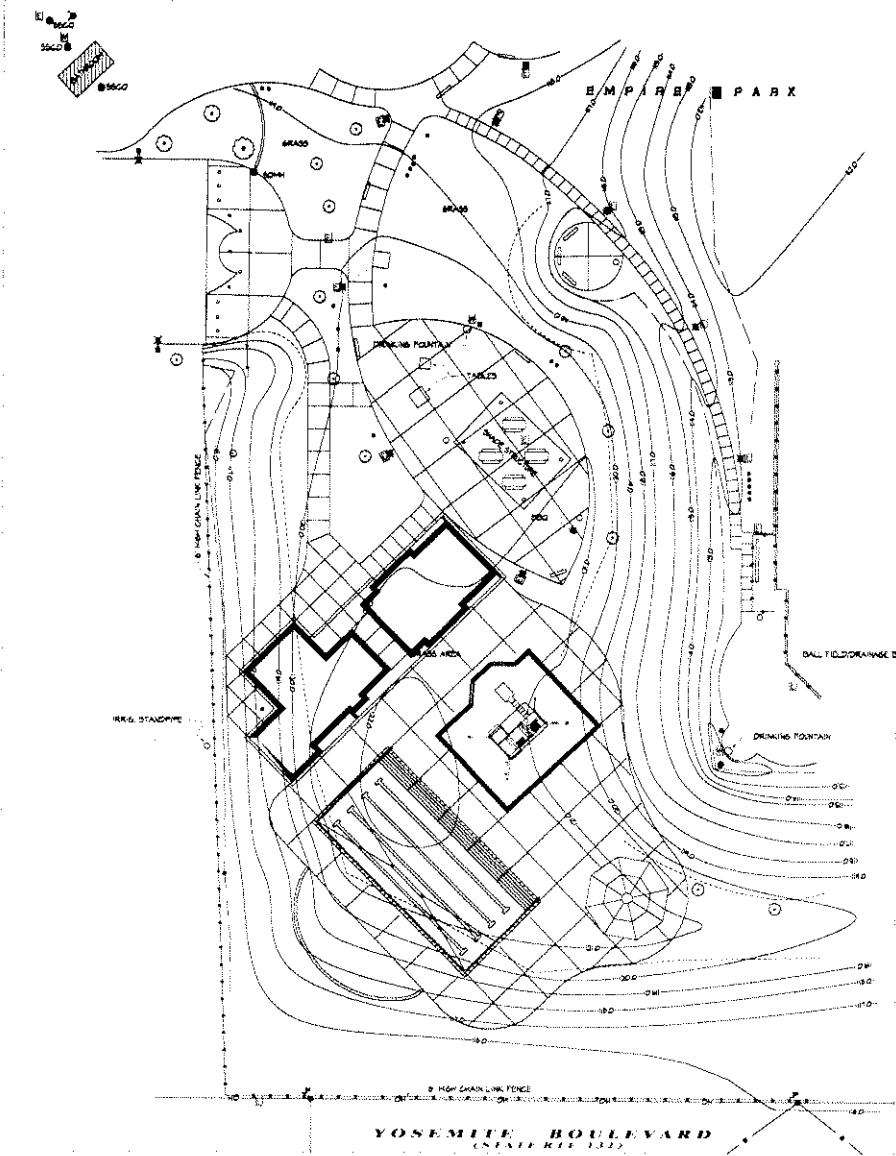
CHILDREN'S POOL SECTION



CHILDREN'S POOL SECTION

A PRELIMINARY MASTER PLAN FOR
EMPIRE COMMUNITY POOL
 YOSEMITE BOULEVARD · EMPIRE CALIFORNIA





A PRELIMINARY MASTER PLAN FOR
EMPIRE COMMUNITY POOL
 YOSEMITE BOULEVARD - EMPIRE CALIFORNIA

AQUATIC DESIGN GROUP - RJM DESIGN GROUP, INC. - GROTHE & SMITH ARCHITECTS



SCALE: 1" = 20'

OCTOBER 30, 2007

**AGREEMENT
FOR
PROFESSIONAL SERVICES**

This Agreement For Professional Services is made and entered into by and between the **County of Stanislaus** ("County") and **PB Americas, Inc.**, whose address is 3840 Rosin Court, Suite 200, Sacramento, CA 95834 ("Consultant"), on **May 20, 2008**.

Introduction

WHEREAS, the County has a need for professional services relating to the Labor Compliance Program for construction of the **Empire Community Swimming Pool**; and

WHEREAS, the Consultant is specially trained, experienced and competent to perform and has agreed to provide such services;

NOW, THEREFORE, in consideration of the mutual promises, covenants, terms and conditions hereinafter contained, the parties hereby agree as follows:

Terms and Conditions

1. **Scope of Work**

1.1 The Consultant shall furnish to the County upon execution of this Agreement or receipt of the County's written authorization to proceed, those services and work set forth in **Exhibit A (Scope of Work)** which is attached hereto and, by this reference, made a part hereof.

1.2 All documents, drawings and written work product prepared or produced by the Consultant under this Agreement, including without limitation electronic data files, are the property of the Consultant; provided, however, the County shall have the right to reproduce, publish and use all such work, or any part thereof, in any manner and for any purposes whatsoever and to authorize others to do so. If any such work is copyrightable, the Consultant may copyright the same, except that, as to any work which is copyrighted by the Consultant, the County reserves a royalty—free, non—exclusive, and irrevocable license to reproduce, publish, and use such work, or any part thereof, and to authorize others to do so, provided that any use of such work for any purposes other than those provided in this Agreement shall be without risk or liability to Consultant.

1.3 Services and work provided by the Consultant under this Agreement will be performed in a timely manner in accordance with a schedule of work set forth in **Exhibit B (Schedule)**.

1.4 The Consultant shall provide services and work under this Agreement consistent with the requirements and standards established by applicable federal, state and County laws, ordinances, regulations and resolutions. The Consultant represents and warrants that it will

perform its work in accordance with generally accepted industry standards and practices for the profession or professions that are used in performance of this Agreement and that are in effect at the time of performance of this Agreement.

1.5 If the Consultant deems it appropriate to employ a subconsultant in connection with the performance of the services under this Agreement, the Consultant will so advise the County and seek the County's prior approval of such employment.

2. Compensation

2.1 The Consultant shall be compensated on a **NOT TO EXCEED Amount of Eighteen Thousand Eight Hundred Twenty Four and No/100 (\$18,824.00) Dollars** for services as provided in **Exhibit C (Payment Schedule)** attached hereto. Consultant's costs, which are normally considered to be "reimbursable expenses," such as copying charges, travel and hotel expenses are included within the hourly rate charged by Consultant and Consultant shall not be entitled to separate or additional reimbursement of any reimbursable expenses.

2.2 Except as expressly provided in this Agreement, Consultant shall not be entitled to nor receive from County any additional consideration, compensation, salary, wages or other type of remuneration for services rendered under this Agreement, including, but not limited to, meals, lodging, transportation, drawings, renderings or mockups. Specifically, Consultant shall not be entitled by virtue of this Agreement to consideration in the form of overtime, health insurance benefits, retirement benefits, disability retirement benefits, sick leave, vacation time, paid holidays or other paid leaves of absence of any type or kind whatsoever.

2.3 The Consultant shall provide the County with a monthly or a quarterly statement, as services warrant, of fees earned and costs incurred for services provided during the billing period, which the County shall pay in full within 30 days of the date each invoice is approved by the County. The statement will generally describe the services performed, the applicable rate or rates, the basis for the calculation of fees, and a reasonable itemization of costs.

2.4 County will not withhold any Federal or State income taxes or Social Security tax from any payments made by County to Consultant under the terms and conditions of this Agreement. Payment of all taxes and other assessments on such sums is the sole responsibility of Consultant. County has no responsibility or liability for payment of Consultant's taxes or assessments.

3. Term

3.1 The term of this Agreement shall be from the date of this Agreement until completion of the agreed upon services unless sooner terminated as provided below.

3.2 Should either party default in the performance of this Agreement or materially breach any of its provisions, the other party, at that party's option, may terminate this Agreement by giving written notification to the other party.

3.3 The County may terminate this agreement upon 15 days prior written notice. Termination of this Agreement shall not affect the County's obligation to pay for all fees earned and reasonable costs necessarily incurred by the Consultant, subject to any applicable setoffs.

3.4 At the option of the County, this Agreement may terminate on the occurrence of (a) bankruptcy or insolvency of Consultant, or (b) sale of Consultant's business.

4. Representatives.

Each party shall designate a representative, authorized to act on the party's behalf with respect to this Agreement. Consultant hereby designates Kathleen Smith, Project Manager. Owner hereby designates Patricia Hill Thomas. The parties or such authorized representatives shall render required decisions promptly, to avoid unreasonable delay in the progress of Consultant's services. Each party may delegate all or some of its representative's role and function to some other representative.

5. Required Licenses, Certificates and Permits

Any licenses, certificates or permits required by the federal, state, county or municipal governments for Consultant to provide the services and work described in Exhibit A must be procured by Consultant and be valid at the time Consultant enters into this Agreement. Further, during the term of this Agreement, Consultant must maintain such licenses, certificates and permits in full force and effect. Licenses, certificates and permits may include but are not limited to driver's licenses, professional licenses or certificates and business licenses. Such licenses, certificates and permits will be procured and maintained in force by Consultant at no expense to the County.

6. Office Space, Supplies, Equipment, Etc.

Unless otherwise provided in this Agreement, Consultant shall provide such office space, supplies, equipment, vehicles, reference materials and telephone service as is necessary for Consultant to provide the services under this Agreement. The Consultant - not the County - has the sole responsibility for payment of the costs and expenses incurred by Consultant in providing and maintaining such items.

7. Insurance

7.1 Consultant shall take out, and maintain during the life of this Agreement, insurance policies with coverage at least as broad as follows:

7.1.1 General Liability. Commercial general liability insurance covering bodily injury, personal injury, property damage, products and completed operations with limits of no less than One Million Dollars (\$1,000,000) per incident or occurrence. If Commercial General Liability Insurance or other form with a general aggregate limit is used, either the general aggregate limit shall

apply separately to any act or omission by Consultant under this Agreement or the general aggregate limit shall be twice the required occurrence limit.

7.1.2 Professional Liability Insurance. Professional errors and omissions (malpractice) liability insurance with limits of no less than One Million Dollars (\$1,000,000) aggregate. Such professional liability insurance shall be continued for a period of no less than one year following completion of the Consultant's work under this Agreement.

7.1.3 Automobile Liability Insurance. If the Consultant or the Consultant's officers, employees, agents or representatives utilize a motor vehicle in performing any of the work or services under this Agreement, owned/non-owned automobile liability insurance providing combined single limits covering bodily injury and property damage liability with limits of no less than One Million Dollars (\$1,000,000) per incident or occurrence.

7.1.4 Workers' Compensation Insurance. Workers' Compensation insurance as required by the California Labor Code. In signing this contract, the Consultant certifies under section 1861 of the Labor Code that the Consultant is aware of the provisions of section 3700 of the Labor Code which requires every employer to be insured against liability for workmen's compensation or to undertake self-insurance in accordance with the provisions of that code, and that the Consultant will comply with such provisions before commencing the performance of the work of this Agreement.

7.2 Any deductibles, self-insured retentions or named insureds must be declared in writing and approved by County. At the option of the County, either: (a) the insurer shall reduce or eliminate such deductibles, self-insured retentions or named insureds, or (b) the Consultant shall provide a bond, cash, letter of credit, guaranty or other security satisfactory to the County guaranteeing payment of the self-insured retention or deductible and payment of any and all costs, losses, related investigations, claim administration and defense expenses. The County, in its sole discretion, may waive the requirement to reduce or eliminate deductibles or self-insured retentions, in which case, the Consultant agrees that it will be responsible for and pay any self-insured retention or deductible and will pay any and all costs, losses, related investigations, claim administration and defense expenses related to or arising out of the Consultant's defense and indemnification obligations as set forth in this Agreement.

7.3 The Consultant shall obtain a specific endorsement to all required insurance policies, except Workers' Compensation insurance and Professional Liability insurance, naming the County and its Board, officers, officials and employees as additional insureds regarding: (a) liability arising from or in connection with the performance or omission to perform any term or condition of this Agreement by or on behalf of the Consultant, including the insured's general supervision of its subcontractors; (b) services, products and completed operations of the Consultant; (c) premises owned, occupied or used by the Consultant; and (d) automobiles owned, leased, hired or borrowed by the Consultant. For Workers' Compensation insurance, the insurance carrier shall agree to waive all rights of subrogation against the County, its officers,

officials and employees for losses arising from the performance of or the omission to perform any term or condition of this Agreement by the Consultant.

7.4 The Consultant's insurance coverage shall be primary insurance regarding the County and County's Board, officers, officials, agents, and employees. Any insurance or self-insurance maintained by the County or County's Board, officers, officials and employees shall be excess of the Consultant's insurance and shall not contribute with Consultant's insurance.

7.5 Any failure to comply with reporting provisions of the policies shall not affect coverage provided to the County or its officers, officials and employees.

7.6 The Consultant's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

7.7 Each insurance policy required by this section shall be endorsed to state that coverage shall not be canceled by either party except after thirty (30) days' prior written notice has been given to County. The Consultant shall promptly notify, or cause the insurance carrier to promptly notify, the County of any change in the insurance policy or policies required under this Agreement, including, without limitation, any reduction in coverage or in limits of the required policy or policies.

7.8 Insurance shall be placed with California admitted insurers (licensed to do business in California) with a current rating by Best's Key Rating Guide of no less than A-VII; provided, however, that if no California-admitted insurance company provides the required insurance, it is acceptable to provide the required insurance through a United States domiciled carrier that meets the required Best's rating and that is listed on the current List of Eligible Surplus Line Insurers maintained by the California Department of Insurance. Lesser ratings must be approved in writing by the County prior to the commencement of work under this Agreement.

7.9 Consultant shall require that all of its subcontractors are subject to the insurance and indemnity requirements stated herein, or shall include all subcontractors as additional insureds under its insurance policies.

7.10 At least ten (10) days prior to the date the Contractor begins performance of its obligations under this Agreement, Contractor shall furnish County with certificates of insurance, and with original endorsements, showing coverage required by this Agreement, including, without limitation, those that verify coverage for subcontractors of the Contractor. The certificates and endorsements for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf. All certificates and endorsements shall be received and, in County's sole and absolute discretion, approved by County. County reserves the right to require complete copies of all required insurance policies and endorsements, at any time.

7.11 The limits of insurance described herein shall not limit the liability of the Consultant and Consultant's officers, employees, agents, representatives or subcontractors.

8. Defense and Indemnification

8.1 To the fullest extent permitted by law, Consultant shall indemnify, hold harmless and defend the County and its agents, officers and employees from and against all claims, damages, losses, judgments, liabilities, expenses and other costs, including litigation costs and attorneys' fees, arising out of, resulting from, or in connection with the performance of this Agreement by the Consultant or Consultant's officers, employees, agents, representatives or subcontractors and resulting in or attributable to personal injury, death, or damage or destruction to tangible or intangible property, including the loss of use. Notwithstanding the foregoing, Consultant's obligation to indemnify the County and its agents, Board, officers and employees for any judgment, decree or arbitration award shall extend only to the percentage of negligence or responsibility of the Consultant in contributing to such claim, damage, loss and expense.

8.2 Consultant's obligation to defend, indemnify and hold the County and its agents, officers and employees harmless under the provisions of this paragraph is not limited to or restricted by any requirement in this Agreement for Consultant to procure and maintain a policy of insurance.

8.3 Subject to the limitations in 42 United States Code section 9607 (e), and unless otherwise provided in a Scope of Services approved by the parties:

(a) Consultant shall not be responsible for liability caused by the presence or release of hazardous substances or contaminants at the site, unless the release results from the negligence of Consultant or its subcontractors;

(b) No provision of this Agreement shall be interpreted to permit or obligate Consultant to assume the status of "generator," "owner," "operator," "arranger," or "transporter" under state or federal law; and

(c) At no time, shall title to hazardous substances, solid wastes, petroleum contaminated soils or other regulated substances pass to Consultant.

9. Status of Consultant

9.1 All acts of Consultant and its officers, employees, agents, representatives, subcontractors and all others acting on behalf of Consultant relating to the performance of this Agreement, shall be performed as independent contractors and not as agents, officers or employees of County. Consultant, by virtue of this Agreement, has no authority to bind or incur any obligation on behalf of County. Except as expressly provided in Exhibit A, Consultant has no authority or responsibility to exercise any rights or power vested in the County. It is understood by both Consultant and County that this Agreement shall not be construed or considered under any circumstances, to create an employer-employee relationship, partnership, or a joint venture.

9.2 At all times during the term of this Agreement, the Consultant and its officers, employees, agents, representatives or subcontractors are, and shall represent and conduct themselves as, independent contractors and not employees of County.

9.3 Consultant shall determine the method, details and means of performing the work and services to be provided by Consultant under this Agreement. Consultant shall be responsible to County only for the requirements and results specified in this Agreement and, except as expressly provided in this Agreement, shall not be subjected to County's control with respect to the physical action or activities of Consultant in fulfillment of this Agreement. Consultant has control over the manner and means of performing the services under this Agreement. If necessary, Consultant has the responsibility for employing other persons or firms to assist Consultant in fulfilling the terms and obligations under this Agreement.

9.4 If in the performance of this Agreement any third persons are employed by Consultant, such persons shall be entirely and exclusively under the direction, supervision and control of Consultant. All terms of employment including hours, wages, working conditions, discipline, hiring and discharging, or any other term of employment or requirements of law, shall be determined by the Consultant.

9.5 Consultant is permitted to provide services to others during the same period service is provided to County under this Agreement; provided, however, such services do not conflict directly or indirectly with the performance of the Consultant's obligations under this Agreement.

9.6 It is further understood and agreed that Consultant must issue W-2 forms or other forms as required by law for income and employment tax purposes for all of Consultant's assigned personnel under the terms and conditions of this Agreement.

9.7 As an independent contractor, Consultant hereby indemnifies and holds County harmless from any and all claims that may be made against County based upon any contention by any third party that an employer-employee relationship exists by reason of this Agreement.

10. Records and Audit

10.1 Consultant shall prepare and maintain all writings, documents and records prepared or compiled in connection with the performance of this Agreement for a minimum of four (4) years from the termination or completion of this Agreement. This includes any handwriting, typewriting, printing, photo static, photographing and every other means of recording upon any tangible thing, any form of communication or representation including letters, words, pictures, sounds or symbols or any combination thereof.

10.2 Any authorized representative of County shall have access to any writings as defined above for the purposes of making audit, evaluation, examination, excerpts and transcripts during the period such records are to be maintained by Consultant. Further, County has the right at all reasonable times to audit, inspect or otherwise evaluate the work performed or being performed under this Agreement.

11. Nondiscrimination

During the performance of this Agreement, Consultant and its officers, employees, agents, representatives or subcontractors shall not unlawfully discriminate in violation of any federal, state or local law, rule or regulation against any employee, applicant for employment or person receiving services under this Agreement because of race, religion, color, national origin, ancestry, physical or mental handicap, medical condition (including genetic characteristics), marital status, age, political affiliation, sex, or sexual orientation. Consultant and its officers, employees, agents, representatives or subcontractors shall comply with all applicable Federal, State and local laws and regulations related to non-discrimination and equal opportunity, including without limitation the County's nondiscrimination policy; the Fair Employment and Housing Act (Government Code sections 12900 et seq.); California Labor Code sections 1101, 1102 and 1102.1; the Federal Civil Rights Act of 1964 (P.L. 88-352), as amended; and all applicable regulations promulgated in the California Code of Regulations or the Code of Federal Regulations.

12. Assignment

This is an agreement for the services of Consultant. County has relied upon the skills, knowledge, experience and training of Consultant and the Consultant's firm, associates and employees as an inducement to enter into this Agreement. Consultant shall not assign or subcontract this Agreement without the express written consent of County. Further, Consultant shall not assign any monies due or to become due under this Agreement without the prior written consent of County.

13. Waiver of Default

Waiver of any default by either party to this Agreement shall not be deemed to be waiver of any subsequent default. Waiver or breach of any provision of this Agreement shall not be deemed to be a waiver of any other or subsequent breach, and shall not be construed to be a modification of the terms of this Agreement unless this Agreement is modified as provided below.

14. Notice

Any notice, communication, amendment, addition or deletion to this Agreement, including change of address of either party during the term of this Agreement, which Consultant or County shall be required or may desire to make shall be in writing and may be personally served or, alternatively, sent by prepaid first class mail to the respective parties as follows:

To County: County of Stanislaus
 Capital Projects
 825 12th Street
 Modesto, CA 95354
 (209) 525-4380 (phone)
 (209) 525-4385 (fax)
 Attn: Randy Cavanagh

To Consultant: PB Americas, Inc.
3840 Rosin Court, Suite 200
Sacramento, CA 95834

15. Conflicts

Consultant represents and warrants that it presently has no interest, and shall not have any interest, direct or indirect, which would conflict in any manner with the performance of services required under this Agreement. Without limitation, Consultant represents to and agrees with County that Consultant has no present, and will have no future conflict of interest between providing County services hereunder and any interest Consultant may presently have, or will have in the future, with respect to any other person or entity which has any interest adverse or potentially adverse to County, as determined in the reasonable judgment of County.

16. Confidentiality

Any information, whether proprietary or not, made known to or discovered by Consultant during the performance of or in connection with this Agreement for County, will be kept confidential and not be disclosed to any other person. Consultant will immediately notify County in writing if it is requested to disclose any information made known to or discovered by during the performance of or in connection with this Agreement. These conflict of interest, confidentiality and future service provisions and limitations shall remain fully effective indefinitely after termination of services to County hereunder.

17. Severability

If any portion of this Agreement or application thereof to any person or circumstance shall be declared invalid by a court of competent jurisdiction or if it is found in contravention of any federal, state or county statute, ordinance or regulation the remaining provisions of this Agreement or the application thereof shall not be invalidated thereby and shall remain in full force and effect to the extent that the provisions of this Agreement are severable.

18. Amendment

This Agreement may be modified, amended, changed, added to or subtracted from by the mutual consent of the parties hereto if such amendment or change is in written form and executed with the same formalities as this Agreement and attached to the original Agreement to maintain continuity.

19. Entire Agreement

This Agreement supersedes any and all other agreements, either oral or in writing, between any of the parties herein with respect to the subject matter hereof and contains all the agreements between the parties with respect to such matter. Each party acknowledges that no representations, inducements, promises or agreements, oral or otherwise, have been made by any

party, or anyone acting on behalf of any party, which are not embodied herein, and that no other agreement, statement or promise not contained in this Agreement shall be valid or binding.

20. Construction

Headings or captions to the provisions of this Agreement are solely for the convenience of the parties, are not part of this Agreement, and shall not be used to interpret or determine the validity of this Agreement. Any ambiguity in this Agreement shall not be construed against the drafter, but rather the terms and provisions hereof shall be given a reasonable interpretation as if both parties had in fact drafted this Agreement.

21. Governing Law and Venue

This Agreement shall be deemed to be made under, and shall be governed by and construed in accordance with, the laws of the State of California. Any action brought to enforce the terms or provisions of this Agreement shall have venue in the County of Stanislaus, State of California.

IN WITNESS WHEREOF, the parties have executed this Agreement on the day and year first herein above written.

COUNTY OF STANISLAUS By: <u>Patricia Di Marco</u> "County"	PB AMERICAS, INC. By: <u>[Signature]</u> "Consultant"
APPROVED AS TO FORM: By: <u>[Signature]</u> County Counsel	

EXHIBIT A

SCOPE OF WORK

Background

The County of Stanislaus intends to contract with a qualified Design - Build firm for the Design and Construction of a swimming pool complex at Empire Park in Empire California. The County must engage a Professional firm approved by the Department of Industrial Relations to operate a labor compliance program.

Labor Code Section 1771. 5.

(a) Notwithstanding Section 1771, an awarding body may not require the payment of the general prevailing rate of per diem wages or the general prevailing rate of per diem wages for holiday and overtime work for any public works project of twenty-five thousand dollars (\$25,000) or less when the project is for construction work, or for any public works project of fifteen thousand dollars (\$15,000) or less when the project is for alteration, demolition, repair, or maintenance work, if the awarding body elects to initiate and enforce a labor compliance program pursuant to subdivision (b) for every public works project under the authority of the awarding body.

(b) For the purposes of this section, a labor compliance program shall include, but not be limited to, the following requirements:

(1) All bid invitations and public works contracts shall contain appropriate language concerning the requirements of this chapter.

(2) A prejob conference shall be conducted with the contractor and subcontractors to discuss federal and state labor law requirements applicable to the contract.

(3) Project contractors and subcontractors shall maintain and furnish, at a designated time, a certified copy of each weekly payroll containing a statement of compliance signed under penalty of perjury.

(4) The awarding body shall review, and, if appropriate, audit payroll records to verify compliance with this chapter.

(5) The awarding body shall withhold contract payments when payroll records are delinquent or inadequate.

(6) The awarding body shall withhold contract payments equal to the amount of underpayment and applicable penalties when, after investigation, it is established that underpayment has occurred.

(c) For purposes of this chapter, "labor compliance program" means a labor compliance program that is approved, as specified in state regulations, by the Director of the Department of Industrial Relations.

(d) For purposes of this chapter, the Director of the Department of Industrial Relations may revoke the approval of a labor compliance program in the manner specified in state regulations.

Scope of Services

The scope of services for Consultant shall consist of all actions required pursuant to Document 00806 of the Project Manual for the design and construction of the Empire Park Community Pool entitled "Labor Compliance Program."

Consultant represents and warrants that it has in place a Labor Compliance Program containing the requirements outlined in Section 1771.5 of the Labor Code that has been approved by the Department of Industrial Relations. Consultant will provide evidence of such approval to the County.

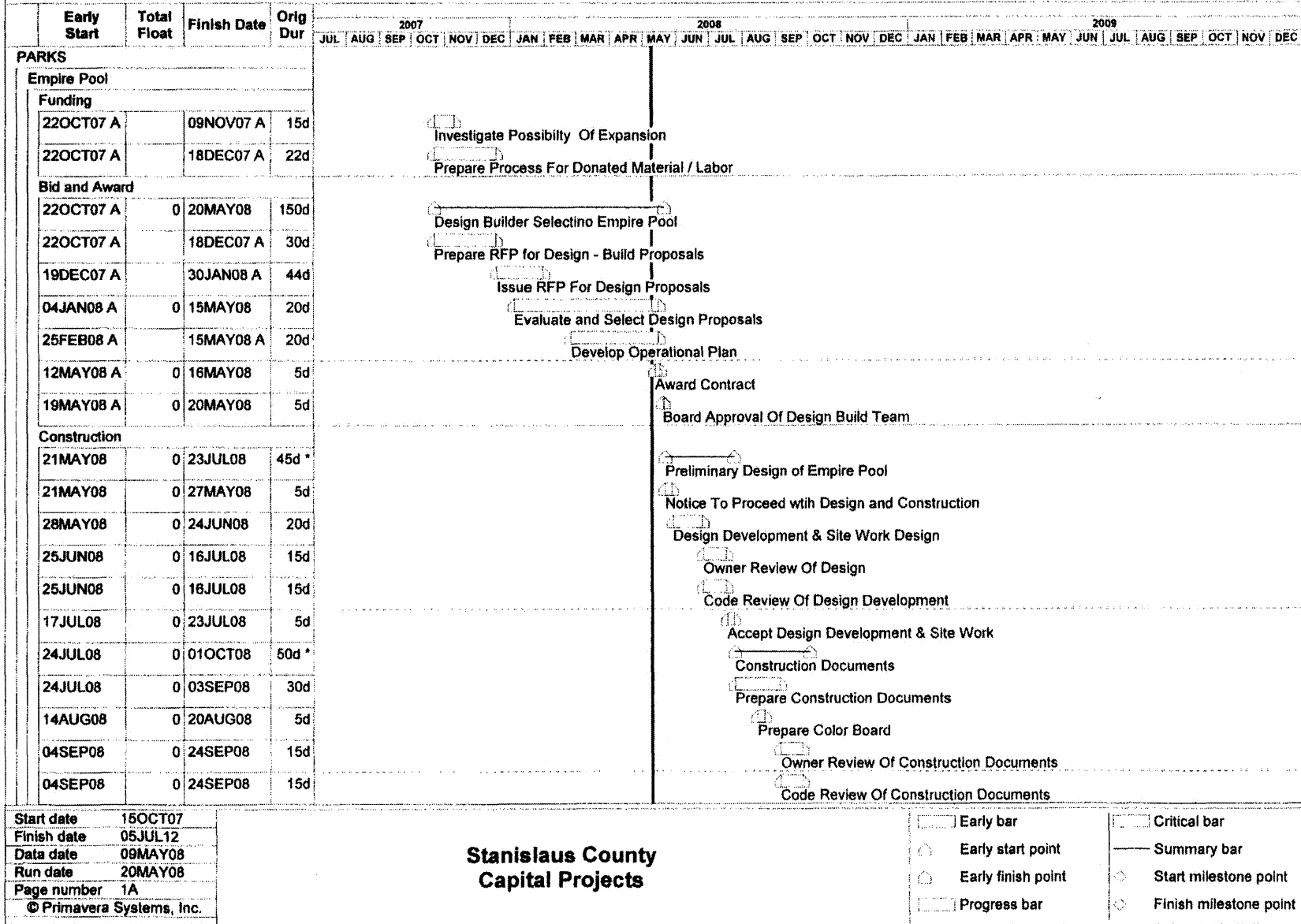
EXHIBIT B

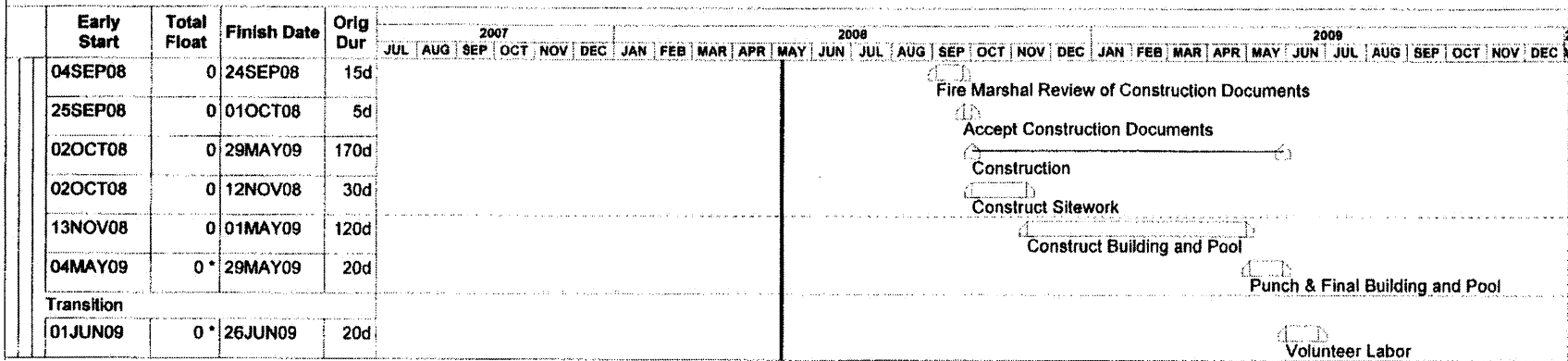
SCHEDULE

Print Date 20MAY08

Empire Pool
EXHIBIT B

Page No 1A Of 2A





Start date	15OCT07
Finish date	05JUL12
Data date	09MAY08
Run date	20MAY08
Page number	2A
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**Stanislaus County
Capital Projects**

- Early bar
- Early start point
- Early finish point
- Progress bar
- Critical bar
- Summary bar
- Start milestone point
- Finish milestone point

EXHIBIT C

PAYMENT SCHEDULE

LCP Principal in Charge	\$225.00
LCP Project Manager	\$130.00
LCP Site Monitor III	\$107.00
Certified Payroll Reviewer III	\$ 90.00
Certified Payroll Reviewer II	\$ 79.00
Certified Payroll Reviewer I	\$ 80.00
Administrative Assistant	\$ 57.00

LABOR COMPLIANCE PROGRAM

In connection with the County's Project, Contractor and Subcontractors are responsible for complying with each and every applicable prevailing wage law and County's Labor Compliance Program.

1. LABOR COMPLIANCE PROGRAM

1.1 In accordance with California Public Contract Code Section 20133(b)(5), County has contracted with a third party, PB Americas, Inc., to operate a Labor Compliance Program containing the requirements outlined in California Labor Code §1771.5 that has been approved by the Department of Industrial Relations. This Labor Compliance Program is applicable to the County's Empire Community Swimming Pool Project, at Empire Community Park, Empire California.

Deleted: Parsons Brinckerhoff
Construction Services

1.2 All Contractors and Subcontractors providing workers or performing work on the Project shall comply with the Labor Compliance Program.

1.3 All Contractors and Subcontractors providing workers or performing work on the Project shall comply with all applicable wage and hour laws.

2. CONTACT INFORMATION

2.1 The Project's Labor Compliance Program is administered by PB Americas, Inc., located at 3840 Rosin Court, Suite 200, Sacramento, CA 95834 (Compliance Administrator). The telephone number for the Compliance Administrator is (916) 567-2500. All inquiries, questions or requests for assistance with regard to the Project's Labor Compliance Program should be directed to the Compliance Administrator unless County directs otherwise.

3. WAGE RATES

3.1 Copies of the general prevailing rates of per diem wages for each craft, classification, or type of worker needed to execute the Contract, as determined by Director of the State of California Department of Industrial Relations, are on file at the County's Architecture Division. Upon request, County will make available copies to any interested party.

3.2 Contractor shall post the applicable prevailing wage rates at each Project construction site.

4. NO DUTY TO CONTRACTOR OR SUBCONTRACTOR

4.1 The duty of County to carry out its Labor Compliance Program runs solely to the Director of the California Department of Industrial Relations and not to any worker, contractor, subcontractor or other party.

5. MANDATORY PRE-JOB CONFERENCE

5.1 After award and prior to commencement, County will conduct a Mandatory Pre-Job Conference on a time and date to be arranged. The Labor Compliance Administrator will discuss the federal and state labor law requirements applicable to the Project.

5.2 All Contractors and Subcontractors must attend this Mandatory Pre-Job Conference and sign an attendance roster as a condition to participating in the Project.

5.2.1 Contractor and all Subcontractors of whatever tier shall attend and must sign a Pre-Job Checklist acknowledging the following regulations:

- 5.2.2 Contractor and all Subcontractors of any tier must pay prevailing wages under Labor Code § 1770 et seq.;
- 5.2.3 Contractor and all Subcontractors of any tier must employ registered apprentices on the public works project under Labor Code § 1777.5;
- 5.2.4 Contractor and all Subcontractors of any tier must keep, and submit each week and otherwise upon request, copies of certified payroll records under Labor Code § 1776 (a), and the penalties for failure to do so under Labor Code § 1776 (g) and the Contract equals \$25.00 per day;
- 5.2.5 Contractor and all Subcontractors of any tier are prohibited from discrimination in employment under Labor Code § 1777.6; the Government Code and the Title VII of the Civil Rights Act of 1964;
- 5.2.6 Contractor and all Subcontractors of any tier are prohibited from accepting or extracting kickbacks from employee wages under Labor Code § 1778;
- 5.2.7 Contractor and all Subcontractors of any tier are prohibited from accepting fees for registering any person for public work under Labor Code § 1779; or for filling work orders on public works under Labor Code § 1780;
- 5.2.8 Contractor and all Subcontractors of any tier must be properly licensed. Labor Code § 1021, the contract general conditions and Contractors State License Board prohibit unlicensed contractors on public works projects under B&P § 7028.15;
- 5.2.9 Contractor and all Subcontractors of any tier are prohibited from engaging in unfair competition under B & P § 17200-17208;
- 5.2.10 Contractor and all Subcontractors of any tier must be properly insured with Workers Compensation under Labor Code §§ 1860-1861 and the Contract; and
- 5.2.11 Contractor and all Subcontractors of any tier must abide by all Occupational, Safety and Health Laws.

6. PAYMENT OF PREVAILING WAGE RATES

- 6.1 Contractor and all Subcontractors of any tier under the Contract shall pay all workers on all Work performed pursuant to this Contract not less than the general prevailing rate of per diem wages and the general prevailing rate for holidays and overtime work as determined by the Director of the Department of Industrial Relations, State of California, for the type of work performed and the locality in which the work is to be performed, for the boundaries of the County, pursuant to sections 1770 et seq. of the California Labor Code. Prevailing wage rates are available on the Internet at: <http://www.dir.ca.gov/>.
- 6.2 Contractor and all Subcontractors of whatever tier shall insert in every subcontract or other arrangement which any may make for performance of Work or labor on Work provided for in the Contract, a provision that each Subcontractor shall pay persons performing labor or rendering service under subcontract or other arrangement not less than the general prevailing rate of per diem wages for work of a similar character in the locality in which the Work is performed, and not less than the general prevailing rate of per diem wages for holiday and overtime work fixed in the California Labor Code.
- 6.3 Contractor and all Subcontractors of whatever tier shall pay not less than the specific prevailing wage rates to all workers employed by them in the execution of the Project. It is Contractor's responsibility to include any rate change, which has occurred or will occur during the intervening period between each issuance of written rates by Department of Industrial Relations in its Bid.

6.4 Contractor and all Subcontractors of whatever tier shall insert in every subcontract or other arrangement which any may make for performance of Work or labor on Work provided for in the Contract, a provision that each Subcontractor shall ascertain and comply with all current general prevailing wage rates for each craft, classification, or type of worker needed to perform the Work, including any rate changes that take effect during the term of the Contract.

6.5 The limited exemption from paying prevailing wage rates pursuant to California Labor Code §1771.5 shall be applied to this Contract if the exemption criteria set forth therein are met.

7. LABOR CODE COMPLIANT PAYROLL RECORDS

7.1 Contractor must maintain accurate payroll records showing the name, address, social security number and work classification of each employee and owner performing Work on the Project. Contractor's payroll records shall also set forth the straight time and overtime hours worked each day and each week, the fringe benefits and the actual per diem wage paid to each owner, journeyman, apprentice worker or other employee employed in connection with the Project.

A Fringe Benefits Statement can be provided in addition to the certified payroll report listing all employer and employee payments. The Fringe Benefit Statement must be sent in with the first certified payroll report and when any changes are made to the payments.

7.2 Each of Contractor's payroll record shall be verified by a written declaration that it is made under penalty of perjury and stating that the information contained in the payroll record is true and correct and that Contractor has complied with the requirements of California Labor Code §§1771, 1811 and 1815 for any Work performed by Contractor's employees on the Project.

7.3 Contractor and all Subcontractor of whatever tier shall insert in every subcontract or other arrangement which Contractor may make for performance of Work or labor on Work provided for in the Contract, a provision that each Subcontractor shall maintain accurate payroll records showing the name, address, social security number and work classification of each employee and owner performing Work on the Project. Subcontractor's payroll records shall also set forth the straight time and overtime hours worked each day and each week, the fringe benefits and the actual per diem wage paid to each owner, journeyman, apprentice worker or other employee employed in connection with the Project.

7.4 Contractor and all subcontractor of whatever tier shall insert in every subcontract or other arrangement which Contractor may make for performance of Work or labor on Work provided for in the Contract, a provision that each Subcontractor shall verify, by a written declaration that it is made under penalty of perjury and stating that the information contained in the payroll record is true and correct and that Subcontractor has complied with the requirements of California Labor Code §§1771, 1811 and 1815 for any Work performed by Subcontractor's employees on the Project.

8. PAYROLL RECORD AVAILABILITY

8.1 Contractor shall make available for inspection at all reasonable hours at the principal office of Contractor, or shall furnish a certified copy, of all Contractor's payroll records for its employees employed in connection with the Work upon request by an employee, employee representative, County, the Compliance Administrator or any other County representative, The Division of Labor Standards.

8.2 Contractor shall insert in every subcontract or other arrangement which Contractor may make for performance of Work or labor on Work provided for in the Contract, a provision that each Subcontractor shall make available for inspection at all reasonable hours at the principal office of Subcontractor, or shall furnish a certified copy of all Subcontractor's payroll records for its employees employed in connection with the Work upon request by an employee, employee representative, County, the Compliance Administrator or any other County representative, The Division of Labor Standards.

8.3 If the principal office of Contractor or Subcontractor is more than twenty-five miles from the Project site, upon request from County, the Compliance Administrator or any other County representative or a worker employee, Contractor or Subcontractor shall make a certified copy of all Contractor's or Subcontractor's payroll records for its employees employed in connection with the Work available for inspection at County's Capital Projects office located at 825 12th Street, Modesto, CA 95354.

9. SUBMISSION OF WEEKLY PAYROLL RECORDS

9.1 Contractor shall submit to the Compliance Administrator a certified copy of all Contractor's payroll records for its employees and its subcontractors of every tier employed in connection with the Work on a weekly basis. The certified payroll records for the preceding week shall be submitted on the Wednesday of the following week. In the event that a legal holiday falls on Wednesday, the certified payroll records shall be submitted on the next business day.

9.1.1 If there was no work performed during a given week, after the first certified payroll report and before the final payroll report is submitted, Contractor's certified payroll record shall be annotated: "no work" for that week.

9.1.2 Contractor shall mark "final" on its last submitted payroll for the Project.

9.2 Contractor shall insert in every subcontract or other arrangement which Contractor may make for performance of Work or labor on Work provided for in the Contract, a provision that each Subcontractor shall submit to the Contractor who will submit to the Compliance Administrator a certified copy of all Subcontractor's payroll records for its employees employed in connection with the Work on a weekly basis. The certified payroll records for the preceding week shall be submitted on the Wednesday of the following week. In the event that a legal holiday falls on Wednesday, the certified payroll records shall be submitted on the next business day.

9.2.1 If there was no work performed during a given week, after the first certified payroll report and before the final payroll report is submitted, Contractor's certified payroll record shall be annotated: "no work" for that week.

9.2.2 Subcontractor shall mark "final" on its last submitted payroll for the Project.

10. AUDIT AND INVESTIGATION OF COMPLIANCE

10.1 County may conduct reasonable investigation of Contractor's and/or Subcontractor's compliance with the requirements of California Labor Code §§1771, 1775, 1777.5, 1811, 1813 and 1815 and any other applicable state or federal labor law. Not more than ten days after a written or oral request from County, Compliance Administrator or any other County representative, Contractor and/or Subcontractor shall provide legible copies of time cards, personnel sign in sheets, daily logs payroll registers, pay check stubs, cancelled pay checks or any other document requested to authenticate or corroborate compliance with prevailing wage rate laws. Contractor and/or Subcontractor shall make the originals of the requested documents available for inspection upon request by County, the Compliance Administrator or any other County representative at all reasonable hours at the principal office of Contractor or Subcontractor or if the principal office of Contractor or Subcontractor is more than 25 miles from the Project site, at County's Capital Projects office located at 825 12th Street, Modesto, CA 95354.

10.2 Contractor and/or Subcontractor shall assist County, the Compliance Administrator or any other County representative with any investigation or audit of Contractor and/or Subcontractor regarding compliance with the prevailing wage rate laws.

10.3 Contractor and/or Subcontractor shall make its employees available for interviews by County, the Compliance Administrator or any other County representative.

10.4 Neither Contractor nor Subcontractor shall take retaliatory measures against any worker on the Project for informing County or Compliance Administrator or County representative of, or responding to, any monitoring, investigation or audit of any violation or suspected violation of the prevailing wage rate laws.

10.5 Contractor shall insert in every subcontract or other arrangement which Contractor may make for performance of Work or labor on Work provided for in the Contract, the same terms as set forth in this Document 00806 Paragraphs 10 and each subpart thereto.

11. INADEQUATE OR DELINQUENT PAYROLL RECORDS

11.1 Payment under this Contract shall not be made when Contractor or Subcontractor payroll records are delinquent or inadequate.

11.2 Payroll records shall be considered delinquent if they are not submitted in compliance with Paragraph 9 of this Document 00806.

11.3 Payroll records shall also be considered delinquent if they are not submitted within ten days of any written request by County or Compliance Administrator or other County representative.

11.4 Payroll records shall be considered inadequate if one or more of the following conditions exists:

11.4.1. The record lacks the information required by California Labor Code §1776; or

11.4.2. The record contains the information required by California Labor Code §1776 but is not certified, or is certified by someone that is not an agent of Contractor; or

11.4.3. A nonconforming record remains uncorrected for one payroll period after County or its designee has given Contractor notice of inaccuracies detected by County or its designee.

12. NAME AND ADDRESS OF BONDING COMPANY

12.1 Contractor shall provide County with the name and address of any bonding company issuing a bond that secures the payment of wages by Contractor. If the name or address of any such bonding company changes over the term of this Contract, Contractor shall provide the new name and/or address of the bonding company to County in writing within ten days of such change. The writing shall be clearly identified as "Notice of Change in Bonding Company For Payment of Wages."

12.2 Contractor shall insert in every subcontract or other arrangement which Contractor may make for performance of Work or labor on Work provided for in the Contract, a provision that each Subcontractor shall provide County with the name and address of any bonding company issuing a bond that secures the payment of wages by Subcontractor. If the name or address of any such bonding company changes over the term of the Project, Subcontractor shall provide the new name and/or address of the bonding company to County in writing within ten days of such change. The writing shall be clearly identified as "Notice of Change in Bonding Company For Payment of Wages."

13. NOTICE TO BONDING COMPANY

13.1 Contractor acknowledges and agrees that in the event that County or its Compliance Administrator or any other County representative, provides notice of withholding contract payment to Contractor or Subcontractor, a copy of the notice may also be served on any of Contractor's or Subcontractor's bonding companies that issued a bond to securing payment of wages.

13.2 Contractor shall insert in every subcontract or other arrangement which Contractor may make for performance of Work or labor on Work provided for in the Contract, a provision that each Subcontractor shall acknowledge and agrees that in the event that County or its Compliance Administrator or any other County representative, provides notice of withholding contract payment to Contractor or Subcontractor, a

copy of the notice may also be served on any of Contractor's or Subcontractor's bonding companies that issued a bond to securing payment of wages.

14. NOTICE OF WITHHOLDING

- 14.1 County shall provide Contractor with notice of withholding contract payments.
- 14.2 County shall provide Contractor and Subcontractor with notice of withholding if withholding is due to Subcontractor.

15. REQUEST FOR REVIEW

- 15.1 The exclusive and only means for Contractor or Subcontractor to receive review of a decision by County to withhold payment for violations of the prevailing wage requirements is through the procedure set forth herein.
- 15.2 Contractor or Subcontractor may contest a finding that it has violated the prevailing wage requirement laws by submitted a writing clearly identified as "Request for Review" to County's Labor Compliance Program personnel as identified in Paragraph 2 of this Document 00806 within sixty (60) days after service of the Notice to Withhold of Contract Payments.
- 15.3 The Request for Review must clearly identify the Notice of Withholding Contract Payments from which review is sought, including the date of the Notice of Withholding Contract Payments or it shall include a copy of the Notice of Withholding Contract Payments as an attachment.
- 15.4 The Request for Review must contain a complete statement of the basis for the protest.
- 15.5 The Request for Review must refer to the specific portion of the Notice to Withhold that forms the basis for the protest.
- 15.6 The Request for Review must include the name, address, and telephone number of the person representing the protesting party.
- 15.7 Contractor shall insert in every subcontract or other arrangement which Contractor may make for performance of Work or labor on Work provided for in the Contract, the same terms as set forth in this Document 00806 Paragraphs 15, 16 and 17 and each subpart thereto.

16. FAILURE TO REQUEST REVIEW SHALL RESULT IN FINAL JUDGMENT

- 16.1 Failure by Contractor to submit a timely Request for Review may result in a final order which shall be binding on Contractor, and which shall also be binding, with respect to the amount due, on the bonding company issuing a bond that secures the payment of wages by Contractor and a surety on the bond.
- 16.2 Failure by Subcontractor to submit a timely Request for Review may result in a final order which shall be binding on Subcontractor, and which shall also be binding, with respect to the amount due, on the bonding company issuing a bond that secures the payment of wages by Subcontractor and a surety on the bond.

17. NO INTERIM PAYMENT OF WITHHELD CONTRACT PAYMENTS

- 17.1 Pending a final order, or the expiration of the time period for seeking review of the Notice of Withholding of Contract Payments, County shall not disburse any Contract payments that have been withheld.

18. FAILURE TO COMPLY WITH LABOR LAWS MAY RESULT IN PENALTIES

- 18.1 Failure by Contractor or Subcontractor to pay every employee performing Work prevailing wages may result in Contractor and/or Subcontractor being prohibited from bidding on public works projects for up to three years.
- 18.2 Failure by Contractor or Subcontractor to pay every employee performing Work prevailing wages may result in Contractor and/or Subcontractor being prohibited from being awarded public works projects for up to three years.
- 18.3 Failure by Contractor or Subcontractor to pay every employee performing Work prevailing wages may result in a forfeiture of the unpaid wages by Contractor or Subcontractor.
- 18.4 Failure by Contractor or Subcontractor to pay every employee performing Work prevailing wages may result in a forfeiture of up to \$50.00 per each calendar day, or portion thereof, for each worker paid less than the prevailing wage rates.
- 18.5 Failure by Contractor or any Subcontractor to submit certified copies of payroll records within ten days of a written request from County, the Compliance Administrator or any other County representative may result in a forfeiture of up to \$25.00 per each calendar day, or portion thereof, for each worker until strict compliance is effectuated.
- 18.6 Failure by Contractor or any Subcontractor to provide the applicable Apprenticeship Committee with notice of contract award information, and or failure to properly employ registered apprentice(s), during the performance of a public work project may result in refer to Division of Apprenticeship Standards.
- 18.7 Failure by Contractor or any Subcontractor to pay every employee performing Work prevailing wages may result in withholdings, penalties and forfeitures being assessed against Contractor.
19. **CONTRACTOR MUST MONITOR SUBCONTRACTOR COMPLIANCE**
- 19.1 Contractor shall monitor the payment of the specified general prevailing rate of per diem wages to employees by each Subcontractor by periodically reviewing the certified payroll records of each Subcontractor.
20. **CORRECTIVE ACTION BY CONTRACTOR REGARDING SUBCONTRACTOR**
- 20.1 Once Contractor is aware that any Subcontractor has failed to pay its workers the specified prevailing rate of wages, Contractor shall diligently take corrective action to halt or rectify the failure, including but not limited to, retaining sufficient funds due Subcontractor for Work performed on the Project.
21. **AFFIDAVIT PRIOR TO FINAL PAYMENT TO SUBCONTRACTOR**
- 21.1 Prior to making final payment to any Subcontractor for Work performed on the Project, Contractor shall obtain an affidavit signed under penalty of perjury from each Subcontractor that each Subcontractor has paid the specified general prevailing rate of per diem wages to its employees on the Project and any amounts due under California Labor Code §1813.
22. **NOTICE OF PRIOR VIOLATIONS OF THE PREVAILING WAGE RATES**
- 22.1 Contractor shall promptly notify County if Contractor has been barred from bidding for or working on public works projects for any reason.
- 22.2 Contractor shall promptly notify County if Contractor or a firm, corporation, partnership, or association in which the contractor has any interest has been found to have willfully violated the prevailing wage rate laws.

- 22.3 Contractor shall promptly notify County if Contractor or a firm, corporation, partnership, or association in which the contractor or has any interest has been found to have violated the public works chapter of the California Labor Code with an intent to defraud.
- 22.4 The term “any interest” shall have the meaning set forth in California Labor Code §1777.1(f) or any amendment thereto.
- 22.5 Notice shall be given by Contractor to County before bidding closes or if Contractor is unaware until after bidding has closed, before the Contract is awarded or if Contractor is unaware until after the Contract has been awarded then before it is executed and if Contractor is unaware until after the Contract has been executed then not more than five calendar days after Contractor has notice of any kind that it has been found to have willfully violated the prevailing wage rate laws or found to have violated the public works chapter of the California Labor Code with an intent to defraud.
23. **DEFINITIONS**
- 23.1 All abbreviations and definitions of terms used in this Document 00806 are set forth in this Document 00806 or in Document 00700 (General Conditions) and Section 01420 (References and Definitions).

END OF DOCUMENT