

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

DEPT: Parks and Recreation

BOARD AGENDA # \*B-8

Urgent

Routine

AGENDA DATE March 1, 2011

CEO Concurs with Recommendation YES  NO

4/5 Vote Required YES  NO

(Information Attached)

SUBJECT:

Approval to Enter Into a Master Agreement with Universal Precast Construction, Inc., for the Purchase of Precast Concrete Barbeques and Concrete Fire Pits with Grills for Park Facilities

STAFF RECOMMENDATIONS:

1. Approve the Master Agreement with Universal Precast Construction, Inc., for precast concrete barbeques and concrete fire pits with grills for park facilities.
2. Authorize the Director of the Department of Parks and Recreation to sign Master Agreement Number AO11811.

FISCAL IMPACT:

There is no fiscal impact associated with this Master Agreement. The Agreement allows the Department of Parks and Recreation to purchase merchandise and services provided based on the price schedule and pricing of a five-year contract term ending February 17, 2016.

BOARD ACTION AS FOLLOWS:

No. 2011-125

On motion of Supervisor O'Brien, Seconded by Supervisor Chiesa

and approved by the following vote,

Ayes: Supervisors: O'Brien, Chiesa, Withrow, DeMartini, and Chairman Monteith

Noes: Supervisors: None

Excused or Absent: Supervisors: None

Abstaining: Supervisor: None

1)  Approved as recommended

2)  Denied

3)  Approved as amended

4)  Other:

MOTION:

ATTEST:

Christine Ferraro  
CHRISTINE FERRARO TALLMAN, Clerk

File No.

**DISCUSSION:**

The Department of Parks and Recreation recently began evaluating the benefits of master agreements, which include achieving economies of scale, time saving for staff, and the ability to order and receive products timely. As the result of the expected cost savings as well as staff time saving, the Department will be bringing forward these agreements with set pricing as the opportunity presents itself, which is usually through a planned parks improvement project.

The General Services Agency (GSA) Purchasing Division, posted an Invitation to Bid (Bid), on October 20, 2010, for the purchase of precast concrete barbeques and concrete fire pits with grills on behalf of the Department. Bids were received and opened on November 17, 2010, with two responses received. On January 18, 2011, the GSA Purchasing Division issued a Letter of Intent to Award to Universal Precast Construction, Inc. In response, a protest letter was received from Outdoor Creations, Inc., and logged by the GSA Purchasing Division on January 25, 2011. On January 26, 2011, a response was sent to the protesting company. As of the appeal deadline date of February 9, 2011, no appeal to the GSA Purchasing Agent's decision was received making Universal Precast Construction, Inc., the successful Bidder with the lowest responsive and responsible bid.

Master Agreement Number AO11811 (Attachment A), is for the purchase of precast concrete barbeques and concrete fire pits with grills for park facilities. This Master Agreement will allow the Department to purchase these materials at set prices over the next five years. The Department's ability to enter into a Master Agreement for precast concrete barbeques and concrete fire pits with grills is a valuable resource as barbeque pits and grills are a costly commodity that fluctuate in price one year to the next.

**POLICY ISSUES:**

Approval of this agenda item to authorize the Director of Parks and Recreation, to approve the Master Agreement with Universal Precast Construction, Inc., is consistent with the Board's priorities of A Strong Local Economy by promoting attractive and well cared for regional recreational facilities and the Efficient Delivery of Public Services through the economies of scale and efficiencies provided by the Master Agreement.

**STAFFING IMPACTS:**

There are no staffing impacts associated with this item.

**CONTACT PERSON:**

Sonya K. Harrigfeld, Director of Parks and Recreation

Telephone: 209-525-6770



**MASTER AGREEMENT  
FOR  
INDEPENDENT CONTRACTOR SERVICES**

This Master Agreement for Independent Contractor Services (the "Agreement") is made and entered into by and between the County of Stanislaus ("County") and Universal Precast Construction, Inc. ("Contractor") on \_\_\_\_\_, 2011.

**Recitals**

WHEREAS, the County has a need for contractor services involving furnishing, shipping, delivering, offloading, and setting in place, the various merchandise listed in Exhibit B; and

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

WHEREAS, the County and the Contractor wish to execute one agreement that shall govern all of the work or services provided by the Contractor during the term of this Agreement; and

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 Contractor shall furnish to the County, upon receipt of the County's Purchase Order, various products and services listed in Exhibit A and Exhibit B and which are, by this reference, made a part hereof.

1.2 Each Purchase Order issued by the County against this Agreement is the Contractor's authorization to initiate the ordering process in accordance with the terms and conditions of this Agreement.

1.3 All documents, drawings and written work product prepared or produced by the Contractor under this Agreement, including without limitation electronic data files, are the property of the Contractor; 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 Contractor may copyright the same, except that, as to any work which is copyrighted by the Contractor, 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.

1.4 Services and merchandise provided by the Contractor at the County's request under this Agreement will be performed and delivered in a timely manner consistent with the requirements and standards established by applicable federal, state and County laws, ordinances, regulations and resolutions, and in accordance with a schedule of work set forth in the scope of work for each separately approved Purchase Order. If there is no schedule, the hours and times for completion of said services and work are to be set by the Contractor; provided, however, that such schedule is subject to review by and concurrence of the County.

2. Consideration

2.1 County shall pay Contractor as set forth in Exhibits A and B, and in the separately approved Purchase Order issued against this Master Agreement.

2.2 Except as expressly provided in this Agreement or in a separately approved Purchase Order, Contractor 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. Specifically, Contractor 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 County will not withhold any Federal or State income taxes or Social Security tax from any payments made by County to Contractor under the terms and conditions of this Agreement. Payment of all taxes and other assessments on such sums is the sole responsibility of Contractor. County has no responsibility or liability for payment of Contractor's taxes or assessments.

2.4 Pursuant to Penal Code section 484b and to Business and Professions Code section 7108.5, the Contractor must apply all funds and progress payments received by the Contractor from the County for payment of services, labor, materials or equipment to pay for such services, labor, materials or equipment. Pursuant to Civil Code section 1479, the Contractor shall direct or otherwise manifest the Contractor's intention and desire that payments made by the Contractor to subcontractors, suppliers and materialmen shall be applied to retire and extinguish the debts or obligations resulting from the performance of this Agreement.

3. Term

The term of this Agreement shall be from the date of this Agreement and shall end February 17, 2016, or until terminated as provided below. The term for each separately approved Purchase Order shall begin on the date of approval until completion of the agreed upon services, or as otherwise specified in the approved Purchase Order.

3.1 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.

3.2 This Agreement shall terminate automatically on the occurrence of (a) bankruptcy or insolvency of either party, (b) sale of Contractor's business, (c) cancellation of insurance required under the terms of this Agreement, and (d) if, for any reason, Contractor ceases to be licensed or otherwise authorized to do business in the State of California, and the Contractor fails to remedy such defect or defects within thirty (30) days of receipt of notice of such defect or defects.

3.3 The County may terminate this Agreement at any time for its convenience and at its sole option, in whole or in part, by giving written notice to Contractor. Contractor agrees to waive any claims for damages, including loss of anticipated profits, in the event the County terminates the Agreement as provided for in this paragraph. Upon such termination, the obligations of this Agreement shall continue as to any work already performed and the County shall pay Contractor the amount due for work properly performed as of the date of termination, less any sums previously.

4. Required Licenses, Certificates and Permits

Any licenses, certificates or permits required by the federal, state, county or municipal governments for Contractor to provide the services and work described in Exhibit A must be procured by Contractor and be valid at the time Contractor enters into this Agreement. Further, during the term of this Agreement, Contractor 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 Contractor at no expense to the County.

5. Office Space, Supplies, Equipment, Etc.

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

6. Insurance

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

6.1.1 General Liability. Comprehensive 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 Contractor under this Agreement or the general aggregate limit shall be twice the required occurrence limit.

6.1.2 Automobile Liability Insurance. If the Contractor or the Contractor's officers, employees, agents, representatives or subcontractors 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, property damage and transportation related pollution liability with limits of no less than One Million Dollars (\$1,000,000) per incident or occurrence.

6.1.3 Workers' Compensation Insurance. Workers' Compensation insurance as required by the California Labor Code. In signing this contract, the Contractor certifies under section 1861 of the Labor Code that the Contractor 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 Contractor will comply with such provisions before commencing the performance of the work of this Agreement.

6.2 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 Contractor 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 Contractor 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 Contractor's defense and indemnification obligations as set forth in this Agreement.

6.3 The Contractor shall obtain a specific endorsement to all required insurance policies, except Professional Liability insurance, if any, naming the County and its 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 Contractor, including the insured's general supervision of its subcontractors; (b) services, products and completed operations of the Contractor; (c) premises owned, occupied or used by the Contractor; and (d) automobiles owned, leased, hired or borrowed by the Contractor. For Workers' Compensation insurance, the insurance carrier shall agree to waive all rights of subrogation against the County and its officers, officials and employees for losses arising from the performance of or the omission to perform any term or condition of

to perform any term or condition of this Agreement by the Contractor.

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

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

6.6 The Contractor'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.

6.7 Each insurance policy required by this section shall be endorsed to state that coverage shall not be suspended, voided, canceled by either party except after thirty (30) days' prior written notice has been given to County. The Contractor 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.

6.8 Insurance shall be placed with California admitted insurers (licensed to do business in California) with a current rating by Best's Key Rating Guide acceptable to the County; 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. A Best's rating of at least A-VII shall be acceptable to the County; lesser ratings must be approved in writing by the County.

6.9 Contractor 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.

6.10 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.

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

## 7. Defense and Indemnification

7.1 To the fullest extent allowed by law, Consultant shall defend, indemnify, and hold harmless the County and its officers, agents, employees and representatives from and against any and all claims, actions, losses, injuries, damages or expenses of every name, kind, and description, including litigation costs and reasonable attorney's fees incurred, brought for or on account of, injury to or death of any person, including but not limited to workers, County employees, and the public, or damage to property, which arise out of, pertain to, or relate to, directly or indirectly, in whole or in part, the negligence, recklessness, or willful misconduct of Consultant, its officers, agents, employees, volunteers, representatives, contractors and subcontractors, excluding, however, such liabilities caused in part by the sole negligence, active negligence or willful misconduct of the County, its agents, employees, and representatives.

7.2 Contractor'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 Contractor to procure and maintain a policy of insurance.

## 8. Status of Contractor

8.1 All acts of Contractor and its officers, employees, agents, representatives, subcontractors and all others acting on behalf of Contractor relating to the performance of this Agreement, shall be performed as independent contractors and not as agents, officers or employees of County. Contractor, 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, Contractor has no authority or responsibility to exercise any rights or power vested in the County. No agent, officer or employee of the County is to be considered an employee of Contractor. It is understood by both Contractor and County that this Agreement shall not be construed or considered under any circumstances to create an employer-employee relationship or a joint venture.

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

8.3 Contractor shall determine the method, details and means of performing the work and services to be provided by Contractor under this Agreement. Contractor 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 Contractor in fulfillment of this Agreement. Contractor has control over the manner and means of performing the services under this Agreement. Contractor is permitted to provide services to others during the same period service is provided to County under this Agreement. If necessary, Contractor has the responsibility for employing other persons or firms to assist Contractor in fulfilling the terms and obligations under this Agreement.

8.4 If in the performance of this Agreement any third persons are employed by Contractor, such persons shall be entirely and exclusively under the direction, supervision and control of Contractor. 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 Contractor.

8.5 It is understood and agreed that as an independent Contractor and not an employee of County, the Contractor and the Contractor's officers, employees, agents, representatives or subcontractors do not have any entitlement as a County employee, and do not have the right to act on behalf of the County in any capacity whatsoever as an agent, or to bind the County to any obligation whatsoever.

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

8.7 As an independent Contractor, Contractor 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.

## 9. Records and Audit

9.1 Contractor 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 separately approved project or scope of work. This includes any handwriting, typewriting, printing, photostatic, 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.

9.2 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 Contractor. Further, County has the right at all reasonable

times to audit, inspect or otherwise evaluate the work performed or being performed under this Agreement.

10. Nondiscrimination

During the performance of this Agreement, Contractor 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 or sex. Contractor 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.

11. Assignment

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

12. 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.

13. 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 Contractor 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  
Department of Environmental Resources  
Attention: Susan M. Garcia, C.P.M.  
3800 Cornucopia Way, Suite C  
Modesto, CA 95358

To Contractor: Universal Precast Construction, Inc.  
Attention: Arthur Templeman  
1292 Remwood Avenue  
Sunnyvale, CA 94089

14. Conflicts

Contractor agrees that it has no interest and shall not acquire any interest direct or indirect, which would conflict, in any manner or degree with the performance of the work and services under this Agreement.

15. 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.

16. 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.

17. 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.

18. Advice of Attorney

Each party warrants and represents that in executing this Agreement, it has received independent legal advice from its attorneys or the opportunity to seek such advice.

19. 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.

20. 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 in duplicate on the day and year first hereinabove written.

<p><b>COUNTY OF STANISLAUS</b> Department of Parks and Recreation</p> <p>By: _____ Sonya K. Harrigfeld Director "County"</p> <p>Date: _____</p>	<p><b>UNIVERSAL PRECAST CONSTRUCTION, INC.</b></p> <p>By: <u>Orin M. Thompson, Co-Owner</u> Name Title "Contractor"</p> <p>Date: <u>1/31/11</u></p>
<p>APPROVED AS TO FORM: John P. Doering County Counsel</p> <p>By: <u>Thomas E. Boze</u> Thomas E. Boze Deputy County Counsel</p>	

**EXHIBIT A****A. SCOPE OF WORK / ORDERING REQUIREMENTS**

The Contractor shall, upon receipt of an executed Purchase Order from the County referencing Master Agreement Number A011811, furnish the product specified in Exhibit B and shown in Exhibit C, and provide all the supervision, labor, equipment, materials and tools necessary to ship, deliver, offload, and set in place, the items specified in the executed Purchase Order. The Purchase Order shall specify the ship to location for items to be shipped, delivered/offloaded and set in place.

**B. SHIPPING, DELIVERY AND OFFLOADING**

Contractor shall arrange with the County Department of Parks and Recreation representative, the delivery of the items ordered. Contractor shall offload the delivered items in the places designated by the County Department of Parks and Recreation representative. Contractor shall utilize Contractor owned equipment for offloading items ordered onto the places designated by the County.

Contractor shall be responsible to dispose of any packaging that accompanies the items.

**D. SAFETY REQUIREMENTS**

All services and merchandise must comply with current California State Division of Industrial Safety Orders and OSHA.

**E. COMPENSATION**

The Contractor shall be compensated for the merchandise and services provided under this Agreement as identified in Exhibit B – Price Schedule of this Agreement. Invoices shall be mailed to the address on each individual Purchase Order.

**F. PROTECTION OF EXISTING FACILITIES**

Contractor shall take every precaution to protect all public and private property during the performance of this contract. Any damages caused by Contractor's personnel or equipment will be promptly repaired to the condition existing before the damage or be replaced. All such costs for such repairs or replacement shall be the sole responsibility of the Contractor.

**G. TERMINATION FOR CONVENIENCE**

The County may terminate this Agreement at any time for its convenience and at its sole option, in whole or in part, by giving written notice to Contractor. Contractor agrees to waive any claims for damages, including loss of anticipated profits, in the event the County terminates the Agreement as provided for in this paragraph. Upon such termination, the obligations of this Agreement shall continue as to any work already performed and the County shall pay Contractor the amount due for work properly performed as of the date of termination, less any sums previously paid.

**H. NON-EXCLUSIVE AGREEMENT**

Contractor acknowledges that County may enter into agreements with other Contractors for product and services similar to the products and services that are subject to this Agreement or may have its own employees perform services similar to those services contemplated by this Agreement.

**I. ORDER OF PRECEDENCE**

In the event of an inconsistency in this Agreement and any of the attached Exhibits, and the Purchase Order, the terms set forth in this Agreement shall prevail. If, and to the extent this Agreement incorporates by reference any provision of the BID or the BID Response, such provision shall be deemed a part of this Agreement. Nevertheless, if there is any conflict among the terms and conditions of this

Agreement and those of any such provision or provisions so incorporated by reference, this Agreement shall govern over both the Response and the BID and the BID Response shall govern over the BID.

**J. WARRANTY/GUARANTEE**

Contractor delivering merchandise against this specification shall guarantee that the merchandise meets the minimum requirements set forth herein. If it is found that the merchandise delivered does not meet the minimum requirements of this specification, the Contractor will be required to correct the same at the Contractor's expense.

The manufacturer shall provide a new equipment warranty, F.O.B. Destination, regardless of the method of delivery for each unit. Warranty time shall start when the product is set in place at the specific location, not at time of delivery.

The product shall be guaranteed under standard factory and/or dealer warranty and a copy of manufacturer's warranty policy shall be delivered with equipment.

If warranty is in conflict with the terms of this Agreement, the Agreement shall be the prevailing document.

**K. MULTI-YEAR CONTRACTS**

If funds are not appropriated or otherwise made available to support continuation in any fiscal year succeeding the first fiscal year, the County shall have the right to terminate this contract and the Contractor is not entitled to recover any costs not incurred prior to termination.

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**EXHIBIT B  
PRICE SCHEDULE**

**PRICE SCHEDULE:**

The Contractor shall provide all the supervision, labor, equipment, materials and tools necessary to furnish, ship, deliver, offload, and set in place as designated by the County Representative, the items identified below, in accordance with the below rate schedule.

The pricing for the five (5) year Contract term is identified in the price schedule below. The unit price is a delivered and set in place price and includes but is not limited to, shipping/freight, delivery, disposal of any packaging that accompanies the items, equipment to offload, offloading, and setting in place at the County designated locations.

The method of order placement for the items identified below is the issuance of an executed Purchase Order from the County referencing Master Agreement Number A120110.

**PRODUCT DESCRIPTION****Family BBQ**

- Precast concrete barbeque
- Laser Cut non-welded Grill System
- Has a clean-out door
- Smooth finish and rounded edges
- Concrete graffiti-resistant sealer
- Grill to be laser cut, single steel sheet design
- Multi-welded rod design
- Barbeque shall be at least 34" high and 32" wide
- Grill shall be 24" x 24"
- Minimum thickness of all areas is 4 "
- Reinforced with #4 and #5 rebar grid.
- Minimum weight 1800 lbs.
- Pure mineral oxide coloring agents shall be mixed integrally with cement
- Cured concrete shall attain minimum compressive strength of 7,000 P.S.I in 28 days

**48" Square Concrete Fire Pit With Grill**

- Precast concrete fire pit with grill
- Minimum thickness of all areas to be 4 inches
- Minimum weight to be 1400 lbs.
- Coloring agents are to be pure mineral oxides and shall be mixed integrally with cement
- Concrete mix design to include 8.5 sacks Portland cement per yard with maximum rock size of ¾ " reinforced with #4 and #5 rebar grid. Cured concrete shall attain minimum compressive strength of 7,000 P.S.I
- All formed surfaces and edges shall be fully rounded and smooth finished. Finish of all exposed surfaces to have concrete graffiti-resistant sealer applied.
- Grill shall be laser-cut with no welded seems on cooking surface
- Grill shall be 10" wide by 35" long
- Fire pit 48" square
- ADA Compliant

Year 1

Item	Description	Manufacturer	Model #	Unit Price 1-25	Unit Price 26 - 50	Unit Price 51 - 100	Unit Price 101 - 125	Unit Price 126 - 150	Unit Price 151 - 200
1	Family BBQ – per above specifications	Universal Precast Construction, Inc.	Custom	\$515.00	\$515.00	\$515.00	\$515.00	\$515.00	\$515.00
2	Fire Pit with BBQ per above specifications	Universal Precast Construction, Inc.	Custom	\$297.00	\$297.00	\$297.00	\$297.00	\$297.00	\$297.00

Year 2

Item	Description	Manufacturer	Model #	Unit Price 1-25	Unit Price 26 - 50	Unit Price 51 - 100	Unit Price 101 - 125	Unit Price 126 - 150	Unit Price 151 - 200
1	Family BBQ – per above specifications	Universal Precast Construction, Inc.	Custom	\$525.00	\$525.00	\$525.00	\$525.00	\$525.00	\$525.00
2	Fire Pit with BBQ per above specifications	Universal Precast Construction, Inc.	Custom	\$303.00	\$303.00	\$303.00	\$303.00	\$303.00	\$303.00

Year 3

Item	Description	Manufacturer	Model #	Unit Price 1-25	Unit Price 26 - 50	Unit Price 51 - 100	Unit Price 101 - 125	Unit Price 126 - 150	Unit Price 151 - 200
1	Family BBQ – per above specifications	Universal Precast Construction, Inc.	Custom	\$536.00	\$536.00	\$536.00	\$536.00	\$536.00	\$536.00
2	Fire Pit with BBQ per above specifications	Universal Precast Construction, Inc.	Custom	\$309.00	\$309.00	\$309.00	\$309.00	\$309.00	\$309.00

Year 4

Item	Description	Manufacturer	Model #	Unit Price 1-25	Unit Price 26 - 50	Unit Price 51 - 100	Unit Price 101 - 125	Unit Price 126 - 150	Unit Price 151 - 200
1	Family BBQ – per above specifications	Universal Precast Construction, Inc.	Custom	\$547.00	\$547.00	\$547.00	\$547.00	\$547.00	\$547.00
2	Fire Pit with BBQ per above specifications	Universal Precast Construction, Inc.	Custom	\$315.00	\$315.00	\$315.00	\$315.00	\$315.00	\$315.00

Year 5

Item	Description	Manufacturer	Model #	Unit Price 1-25	Unit Price 26 - 50	Unit Price 51 - 100	Unit Price 101 - 125	Unit Price 126 - 150	Unit Price 151 - 200
1	Family BBQ – per above specifications	Universal Precast Construction, Inc.	Custom	\$558.00	\$558.00	\$558.00	\$558.00	\$558.00	\$558.00
2	Fire Pit with BBQ per above specifications	Universal Precast Construction, Inc.	Custom	\$321.00	\$321.00	\$321.00	\$321.00	\$321.00	\$321.00

**F.O.B. Destination**

Contractors shall certify and warrant that the price offered for F.O.B. Destination includes only the actual freight rate costs at the lowest and best rate and is based upon the actual weight of the goods to be shipped. Standard commercial packaging, packing and shipping containers shall be used, except as otherwise specified herein.

**Truck Size:** Long Flat Bed Truck.

**Lead Time:** The lead-time of items ordered is four (4) weeks after receipt of the Purchase Order.

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**DEPARTMENT OF PARKS AND RECREATION**  
3800 Cornucopia Way, Suite C  
Modesto, CA 95358  
Phone: (209) 525-6700  
Fax: (209) 525-6774

**MASTER AGREEMENT  
FOR  
INDEPENDENT CONTRACTOR SERVICES**

This Master Agreement for Independent Contractor Services (the "Agreement") is made and entered into by and between the County of Stanislaus ("County") and Universal Precast Construction, Inc. ("Contractor") on March 1, 2011.

**Recitals**

WHEREAS, the County has a need for contractor services involving furnishing, shipping, delivering, offloading, and setting in place, the various merchandise listed in Exhibit B; and

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

WHEREAS, the County and the Contractor wish to execute one agreement that shall govern all of the work or services provided by the Contractor during the term of this Agreement; and

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 Contractor shall furnish to the County, upon receipt of the County's Purchase Order, various products and services listed in Exhibit A and Exhibit B and which are, by this reference, made a part hereof.

1.2 Each Purchase Order issued by the County against this Agreement is the Contractor's authorization to initiate the ordering process in accordance with the terms and conditions of this Agreement.

1.3 All documents, drawings and written work product prepared or produced by the Contractor under this Agreement, including without limitation electronic data files, are the property of the Contractor; 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 Contractor may copyright the same, except that, as to any work which is copyrighted by the Contractor, 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.

1.4 Services and merchandise provided by the Contractor at the County's request under this Agreement will be performed and delivered in a timely manner consistent with the requirements and standards established by applicable federal, state and County laws, ordinances, regulations and resolutions, and in accordance with a schedule of work set forth in the scope of work for each separately approved Purchase Order. If there is no schedule, the hours and times for completion of said services and work are to be set by the Contractor; provided, however, that such schedule is subject to review by and concurrence of the County.

2. Consideration

2.1 County shall pay Contractor as set forth in Exhibits A and B, and in the separately approved Purchase Order issued against this Master Agreement.

2.2 Except as expressly provided in this Agreement or in a separately approved Purchase Order, Contractor 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. Specifically, Contractor 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 County will not withhold any Federal or State income taxes or Social Security tax from any payments made by County to Contractor under the terms and conditions of this Agreement. Payment of all taxes and other assessments on such sums is the sole responsibility of Contractor. County has no responsibility or liability for payment of Contractor's taxes or assessments.

2.4 Pursuant to Penal Code section 484b and to Business and Professions Code section 7108.5, the Contractor must apply all funds and progress payments received by the Contractor from the County for payment of services, labor, materials or equipment to pay for such services, labor, materials or equipment. Pursuant to Civil Code section 1479, the Contractor shall direct or otherwise manifest the Contractor's intention and desire that payments made by the Contractor to subcontractors, suppliers and materialmen shall be applied to retire and extinguish the debts or obligations resulting from the performance of this Agreement.

3. Term

The term of this Agreement shall be from the date of this Agreement and shall end February 17, 2016, or until terminated as provided below. The term for each separately approved Purchase Order shall begin on the date of approval until completion of the agreed upon services, or as otherwise specified in the approved Purchase Order.

3.1 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.

3.2 This Agreement shall terminate automatically on the occurrence of (a) bankruptcy or insolvency of either party, (b) sale of Contractor's business, (c) cancellation of insurance required under the terms of this Agreement, and (d) if, for any reason, Contractor ceases to be licensed or otherwise authorized to do business in the State of California, and the Contractor fails to remedy such defect or defects within thirty (30) days of receipt of notice of such defect or defects.

3.3 The County may terminate this Agreement at any time for its convenience and at its sole option, in whole or in part, by giving written notice to Contractor. Contractor agrees to waive any claims for damages, including loss of anticipated profits, in the event the County terminates the Agreement as provided for in this paragraph. Upon such termination, the obligations of this Agreement shall continue as to any work already performed and the County shall pay Contractor the amount due for work properly performed as of the date of termination, less any sums previously.

4. Required Licenses, Certificates and Permits

Any licenses, certificates or permits required by the federal, state, county or municipal governments for Contractor to provide the services and work described in Exhibit A must be procured by Contractor and be valid at the time Contractor enters into this Agreement. Further, during the term of this Agreement, Contractor 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 Contractor at no expense to the County.



5. Office Space, Supplies, Equipment, Etc.

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

6. Insurance

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

6.1.1 General Liability. Comprehensive 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 Contractor under this Agreement or the general aggregate limit shall be twice the required occurrence limit.

6.1.2 Automobile Liability Insurance. If the Contractor or the Contractor's officers, employees, agents, representatives or subcontractors 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, property damage and transportation related pollution liability with limits of no less than One Million Dollars (\$1,000,000) per incident or occurrence.

6.1.3 Workers' Compensation Insurance. Workers' Compensation insurance as required by the California Labor Code. In signing this contract, the Contractor certifies under section 1861 of the Labor Code that the Contractor 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 Contractor will comply with such provisions before commencing the performance of the work of this Agreement.

6.2 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 Contractor 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 Contractor 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 Contractor's defense and indemnification obligations as set forth in this Agreement.

6.3 The Contractor shall obtain a specific endorsement to all required insurance policies, except Professional Liability insurance, if any, naming the County and its 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 Contractor, including the insured's general supervision of its subcontractors; (b) services, products and completed operations of the Contractor; (c) premises owned, occupied or used by the Contractor; and (d) automobiles owned, leased, hired or borrowed by the Contractor. For Workers' Compensation insurance, the insurance carrier shall agree to waive all rights of subrogation against the County and its officers, officials and employees for losses arising from the performance of or the omission to perform any term or condition of

to perform any term or condition of this Agreement by the Contractor.

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

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

6.6 The Contractor'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.

6.7 Each insurance policy required by this section shall be endorsed to state that coverage shall not be suspended, voided, canceled by either party except after thirty (30) days' prior written notice has been given to County. The Contractor 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.

6.8 Insurance shall be placed with California admitted insurers (licensed to do business in California) with a current rating by Best's Key Rating Guide acceptable to the County; 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. A Best's rating of at least A-VII shall be acceptable to the County; lesser ratings must be approved in writing by the County.

6.9 Contractor 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.

6.10 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.

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

## 7. Defense and Indemnification

7.1 To the fullest extent allowed by law, Consultant shall defend, indemnify, and hold harmless the County and its officers, agents, employees and representatives from and against any and all claims, actions, losses, injuries, damages or expenses of every name, kind, and description, including litigation costs and reasonable attorney's fees incurred, brought for or on account of, injury to or death of any person, including but not limited to workers, County employees, and the public, or damage to property, which arise out of, pertain to, or relate to, directly or indirectly, in whole or in part, the negligence, recklessness, or willful misconduct of Consultant, its officers, agents, employees, volunteers, representatives, contractors and subcontractors, excluding, however, such liabilities caused in part by the sole negligence, active negligence or willful misconduct of the County, its agents, employees, and representatives.

7.2 Contractor'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 Contractor to procure and maintain a policy of insurance.

## 8. Status of Contractor

8.1 All acts of Contractor and its officers, employees, agents, representatives, subcontractors and all others acting on behalf of Contractor relating to the performance of this Agreement, shall be performed as independent contractors and not as agents, officers or employees of County. Contractor, 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, Contractor has no authority or responsibility to exercise any rights or power vested in the County. No agent, officer or employee of the County is to be considered an employee of Contractor. It is understood by both Contractor and County that this Agreement shall not be construed or considered under any circumstances to create an employer-employee relationship or a joint venture.

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

8.3 Contractor shall determine the method, details and means of performing the work and services to be provided by Contractor under this Agreement. Contractor 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 Contractor in fulfillment of this Agreement. Contractor has control over the manner and means of performing the services under this Agreement. Contractor is permitted to provide services to others during the same period service is provided to County under this Agreement. If necessary, Contractor has the responsibility for employing other persons or firms to assist Contractor in fulfilling the terms and obligations under this Agreement.

8.4 If in the performance of this Agreement any third persons are employed by Contractor, such persons shall be entirely and exclusively under the direction, supervision and control of Contractor. 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 Contractor.

8.5 It is understood and agreed that as an independent Contractor and not an employee of County, the Contractor and the Contractor's officers, employees, agents, representatives or subcontractors do not have any entitlement as a County employee, and do not have the right to act on behalf of the County in any capacity whatsoever as an agent, or to bind the County to any obligation whatsoever.

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

8.7 As an independent Contractor, Contractor 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.

## 9. Records and Audit

9.1 Contractor 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 separately approved project or scope of work. This includes any handwriting, typewriting, printing, photostatic, 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.

9.2 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 Contractor. Further, County has the right at all reasonable

times to audit, inspect or otherwise evaluate the work performed or being performed under this Agreement.

10. Nondiscrimination

During the performance of this Agreement, Contractor 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 or sex. Contractor 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.

11. Assignment

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

12. 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.

13. 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 Contractor 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  
 Department of Environmental Resources  
 Attention: Susan M. Garcia, C.P.M.  
 3800 Cornucopia Way, Suite C  
 Modesto, CA 95358

To Contractor: Universal Precast Construction, Inc.  
 Attention: Arthur Templeman  
 1292 Remwood Avenue  
 Sunnyvale, CA 94089

14. Conflicts

Contractor agrees that it has no interest and shall not acquire any interest direct or indirect, which would conflict, in any manner or degree with the performance of the work and services under this Agreement.

15. 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.

16. 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.

17. 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.

18. Advice of Attorney

Each party warrants and represents that in executing this Agreement, it has received independent legal advice from its attorneys or the opportunity to seek such advice.

19. 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.

20. 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 in duplicate on the day and year first hereinabove written.

<p><b>COUNTY OF STANISLAUS</b>  Department of Parks and Recreation</p> <p>By: <u><i>Sonya K. Harrigfeld</i></u>  Sonya K. Harrigfeld  Director</p> <p>Date: <u>3/1/11</u> "County"</p>	<p><b>UNIVERSAL PRECAST CONSTRUCTION, INC.</b></p> <p>By: <u><i>Arthur J. Jompson, Co-Owner</i></u>  Name  Title</p> <p>Date: <u>1/31/11</u> "Contractor"</p>
<p>APPROVED AS TO FORM:  John P. Doering  County Counsel</p> <p>By: <u><i>Thomas E. Boze for</i></u>  Thomas E. Boze  Deputy County Counsel</p>	

**EXHIBIT A****A. SCOPE OF WORK / ORDERING REQUIREMENTS**

The Contractor shall, upon receipt of an executed Purchase Order from the County referencing Master Agreement Number A011811, furnish the product specified in Exhibit B and shown in Exhibit C, and provide all the supervision, labor, equipment, materials and tools necessary to ship, deliver, offload, and set in place, the items specified in the executed Purchase Order. The Purchase Order shall specify the ship to location for items to be shipped, delivered/offloaded and set in place.

**B. SHIPPING, DELIVERY AND OFFLOADING**

Contractor shall arrange with the County Department of Parks and Recreation representative, the delivery of the items ordered. Contractor shall offload the delivered items in the places designated by the County Department of Parks and Recreation representative. Contractor shall utilize Contractor owned equipment for offloading items ordered onto the places designated by the County.

Contractor shall be responsible to dispose of any packaging that accompanies the items.

**D. SAFETY REQUIREMENTS**

All services and merchandise must comply with current California State Division of Industrial Safety Orders and OSHA.

**E. COMPENSATION**

The Contractor shall be compensated for the merchandise and services provided under this Agreement as identified in Exhibit B – Price Schedule of this Agreement. Invoices shall be mailed to the address on each individual Purchase Order.

**F. PROTECTION OF EXISTING FACILITIES**

Contractor shall take every precaution to protect all public and private property during the performance of this contract. Any damages caused by Contractor's personnel or equipment will be promptly repaired to the condition existing before the damage or be replaced. All such costs for such repairs or replacement shall be the sole responsibility of the Contractor.

**G. TERMINATION FOR CONVENIENCE**

The County may terminate this Agreement at any time for its convenience and at its sole option, in whole or in part, by giving written notice to Contractor. Contractor agrees to waive any claims for damages, including loss of anticipated profits, in the event the County terminates the Agreement as provided for in this paragraph. Upon such termination, the obligations of this Agreement shall continue as to any work already performed and the County shall pay Contractor the amount due for work properly performed as of the date of termination, less any sums previously paid.

**H. NON-EXCLUSIVE AGREEMENT**

Contractor acknowledges that County may enter into agreements with other Contractors for product and services similar to the products and services that are subject to this Agreement or may have its own employees perform services similar to those services contemplated by this Agreement.

**I. ORDER OF PRECEDENCE**

In the event of an inconsistency in this Agreement and any of the attached Exhibits, and the Purchase Order, the terms set forth in this Agreement shall prevail. If, and to the extent this Agreement incorporates by reference any provision of the BID or the BID Response, such provision shall be deemed a part of this Agreement. Nevertheless, if there is any conflict among the terms and conditions of this

Agreement and those of any such provision or provisions so incorporated by reference, this Agreement shall govern over both the Response and the BID and the BID Response shall govern over the BID.

**J. WARRANTY/GUARANTEE**

Contractor delivering merchandise against this specification shall guarantee that the merchandise meets the minimum requirements set forth herein. If it is found that the merchandise delivered does not meet the minimum requirements of this specification, the Contractor will be required to correct the same at the Contractor's expense.

The manufacturer shall provide a new equipment warranty, F.O.B. Destination, regardless of the method of delivery for each unit. Warranty time shall start when the product is set in place at the specific location, not at time of delivery.

The product shall be guaranteed under standard factory and/or dealer warranty and a copy of manufacturer's warranty policy shall be delivered with equipment.

If warranty is in conflict with the terms of this Agreement, the Agreement shall be the prevailing document.

**K. MULTI-YEAR CONTRACTS**

If funds are not appropriated or otherwise made available to support continuation in any fiscal year succeeding the first fiscal year, the County shall have the right to terminate this contract and the Contractor is not entitled to recover any costs not incurred prior to termination.

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**EXHIBIT B  
PRICE SCHEDULE**

**PRICE SCHEDULE:**

The Contractor shall provide all the supervision, labor, equipment, materials and tools necessary to furnish, ship, deliver, offload, and set in place as designated by the County Representative, the items identified below, in accordance with the below rate schedule.

The pricing for the five (5) year Contract term is identified in the price schedule below. The unit price is a delivered and set in place price and includes but is not limited to, shipping/freight, delivery, disposal of any packaging that accompanies the items, equipment to offload, offloading, and setting in place at the County designated locations.

The method of order placement for the items identified below is the issuance of an executed Purchase Order from the County referencing Master Agreement Number A120110.

**PRODUCT DESCRIPTION****Family BBQ**

- Precast concrete barbeque
- Laser Cut non-welded Grill System
- Has a clean-out door
- Smooth finish and rounded edges
- Concrete graffiti-resistant sealer
- Grill to be laser cut, single steel sheet design
- Multi-welded rod design
- Barbeque shall be at least 34" high and 32" wide
- Grill shall be 24" x 24"
- Minimum thickness of all areas is 4 "
- Reinforced with #4 and #5 rebar grid.
- Minimum weight 1800 lbs.
- Pure mineral oxide coloring agents shall be mixed integrally with cement
- Cured concrete shall attain minimum compressive strength of 7,000 P.S.I in 28 days

**48" Square Concrete Fire Pit With Grill**

- Precast concrete fire pit with grill
- Minimum thickness of all areas to be 4 inches
- Minimum weight to be 1400 lbs.
- Coloring agents are to be pure mineral oxides and shall be mixed integrally with cement
- Concrete mix design to include 8.5 sacks Portland cement per yard with maximum rock size of ¾ " reinforced with #4 and #5 rebar grid. Cured concrete shall attain minimum compressive strength of 7,000 P.S.I
- All formed surfaces and edges shall be fully rounded and smooth finished. Finish of all exposed surfaces to have concrete graffiti-resistant sealer applied.
- Grill shall be laser-cut with no welded seams on cooking surface
- Grill shall be 10" wide by 35" long
- Fire pit 48" square
- ADA Compliant



**Year 1**

Item	Description	Manufacturer	Model #	Unit Price 1-25	Unit Price 26 - 50	Unit Price 51 - 100	Unit Price 101 - 125	Unit Price 126 - 150	Unit Price 151 - 200
1	Family BBQ – per above specifications	Universal Precast Construction, Inc.	Custom	\$515.00	\$515.00	\$515.00	\$515.00	\$515.00	\$515.00
2	Fire Pit with BBQ per above specifications	Universal Precast Construction, Inc.	Custom	\$297.00	\$297.00	\$297.00	\$297.00	\$297.00	\$297.00

**Year 2**

Item	Description	Manufacturer	Model #	Unit Price 1-25	Unit Price 26 - 50	Unit Price 51 - 100	Unit Price 101 - 125	Unit Price 126 - 150	Unit Price 151 - 200
1	Family BBQ – per above specifications	Universal Precast Construction, Inc.	Custom	\$525.00	\$525.00	\$525.00	\$525.00	\$525.00	\$525.00
2	Fire Pit with BBQ per above specifications	Universal Precast Construction, Inc.	Custom	\$303.00	\$303.00	\$303.00	\$303.00	\$303.00	\$303.00

**Year 3**

Item	Description	Manufacturer	Model #	Unit Price 1-25	Unit Price 26 - 50	Unit Price 51 - 100	Unit Price 101 - 125	Unit Price 126 - 150	Unit Price 151 - 200
1	Family BBQ – per above specifications	Universal Precast Construction, Inc.	Custom	\$536.00	\$536.00	\$536.00	\$536.00	\$536.00	\$536.00
2	Fire Pit with BBQ per above specifications	Universal Precast Construction, Inc.	Custom	\$309.00	\$309.00	\$309.00	\$309.00	\$309.00	\$309.00

**Year 4**

Item	Description	Manufacturer	Model #	Unit Price 1-25	Unit Price 26 - 50	Unit Price 51 - 100	Unit Price 101 - 125	Unit Price 126 - 150	Unit Price 151 - 200
1	Family BBQ – per above specifications	Universal Precast Construction, Inc.	Custom	\$547.00	\$547.00	\$547.00	\$547.00	\$547.00	\$547.00
2	Fire Pit with BBQ per above specifications	Universal Precast Construction, Inc.	Custom	\$315.00	\$315.00	\$315.00	\$315.00	\$315.00	\$315.00

**Year 5**

Item	Description	Manufacturer	Model #	Unit Price 1-25	Unit Price 26 - 50	Unit Price 51 - 100	Unit Price 101 - 125	Unit Price 126 - 150	Unit Price 151 - 200
1	Family BBQ – per above specifications	Universal Precast Construction, Inc.	Custom	\$558.00	\$558.00	\$558.00	\$558.00	\$558.00	\$558.00
2	Fire Pit with BBQ per above specifications	Universal Precast Construction, Inc.	Custom	\$321.00	\$321.00	\$321.00	\$321.00	\$321.00	\$321.00

**F.O.B. Destination**

Contractors shall certify and warrant that the price offered for F.O.B. Destination includes only the actual freight rate costs at the lowest and best rate and is based upon the actual weight of the goods to be shipped. Standard commercial packaging, packing and shipping containers shall be used, except as otherwise specified herein.

**Truck Size:** Long Flat Bed Truck.

**Lead Time:** The lead-time of items ordered is four (4) weeks after receipt of the Purchase Order.

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