

Agreement No. ___-_____

**CONSTRUCTION AGREEMENT FOR TULI MEM AQUATICS CENTER AND PARK,
Community Gathering Area Shade Structure Project,
17257 Yolo Avenue, Esparto, California**

This Agreement for Construction (“Agreement” or “Contract”) is between JPB Designs, Inc., a California Corporation ("Contractor"), and the County of Yolo ("County"), a political subdivision of the State of California.

1. **SCOPE OF WORK.** Contractor shall furnish all labor, services, transportation, materials, equipment, parts, and supplies necessary for **Tuli Mem Aquatics Center and Park Community Gathering Area Shade Structure Project, Esparto, California, (“the Project”)** in strict accordance with the Project Plans and Specifications and Contract Documents, each as defined in Section 3, below. Contractor shall complete the Project per the base bid amount of Two Hundred Thirty Thousand Dollars and 00/100 (\$230,000) (“Contract Price”).
2. **ADDITIONAL OPTIONAL SCOPE OF WORK.** The County shall have the option of adding the bid alternate 2-Electrical Work in the amount not to exceed \$42,000 within 90 days of the bid close date. If the County moves forward with Alternate 2 in accordance with the plans and specifications, Contractor shall complete the Project with the bid alternate 2-Electrical Work for an amount not to exceed Two Hundred Seventy-Two Thousand Dollars and 00/100 (\$272,000). A change order shall be issued by the Contract Administrator if this option is approved to reflect the increase to the Contract Price.
3. **CONTRACT DOCUMENTS.** This Agreement and the documents defined as the “Contract Documents” in Section 1.12 of the General Conditions and attached hereto as exhibits (see list below), which are incorporated as if fully set forth herein by this reference, comprise the entire Agreement between the County and Contractor concerning the above-referenced Project. The documents that describe the work to be performed are sometimes collectively referred to herein as the Plans and Specifications.

Exhibit A ~ Proposal Response, including all required forms

Exhibit B ~ Subcontractor List

Exhibit C ~ Project Manual, Vol. I, Bidding, Contracting Requirements, General Conditions

Exhibit D ~ Project Manual, Vol. II, Technical Specifications and Drawings

Exhibit E ~ Performance Bond and Payment Bond

Exhibit F ~ Project Plans

Exhibit G ~ Change Order Form

All of the Contract Documents are intended to be complementary. Work required by one of the Contract Documents and not by others shall be done as if required by all. In the event of a conflict, the various Contract Documents will be given effect in the order of precedence set forth in the General Conditions (Section 20.08). In the event of any

conflict between any of the provisions of this Contract and the Contract Documents, the provision that requires the highest level of performance from Contractor for the County's benefit shall prevail.

4. **CONDUCT OF WORK, CONTRACT ADMINISTRATOR.** Contractor shall perform the services described in the Contract Documents in a good, workmanlike and substantial manner and to the satisfaction of the County and in a manner that causes the least possible inconvenience to County and the public and safeguards persons and property from any dangerous activities or conditions conducted or created by Contractor. County's Chief Deputy County Administrative Officer shall administer this Agreement for County. County's Board of Supervisors may designate a different person to serve as Contract Administrator by giving advance written notice to Contractor.

(a) **Work Schedule.** Unless otherwise agreed pursuant to Section 3.01 of the General Conditions, Contractor shall begin work within ten (10) calendar days after receiving the Contract Administrator's Notice to Proceed and shall complete the work within **90 calendar days** after receiving that notice. This work must be complete, operational, and be accepted by the County for its intended use for this milestone to be deemed complete.

(b) **Liquidated Damages.** Contractor shall pay County \$400.00 a day liquidated damages for each day's delay (excluding Saturdays, Sundays, and County observed holidays) in completing the work beyond the time specified for completion of work. All other aspects of the payment of such damages shall be governed by Section 3.12 of the General Conditions and other relevant provisions thereof.

5. **INDEMNIFICATION.** With the exception that this section shall in no event be construed to require indemnification by Contractor to a greater extent than permitted under the public policy of the State of California, Contractor shall indemnify, defend and hold harmless the County of Yolo, officers, agents, employees and volunteers from and against any and all claims, damages, demands, losses, defense costs, expenses (including attorney fees) and liability of any kind or nature arising out of or resulting from performance of the work, provided that any such claim, damage, demand, loss, cost, expense or liability is caused in whole or in part by any negligent or intentional act or omission of the Contractor, any subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, regardless of whether or not it is caused in part by a party indemnified hereunder. Contractor and/or subcontractor's responsibility for such defense and indemnity obligations shall survive the termination or completion of this agreement for the full period of time allowed by law. The defense and indemnification obligations of this agreement are undertaken in addition to, and shall not in any way be limited by, the insurance obligations contained in this Agreement. Counsel retained to defend the County pursuant to this Section shall be approved by the County Counsel, which approval may not be unreasonably withheld.

6. **COMPENSATION; PREVAILING WAGE.** All matters of compensation shall be governed by the General Conditions, including but not limited to Article 25 thereof,

provided, however that the total compensation to be paid by County to Contractor shall not exceed the Contract Price. The statement of prevailing wages appearing in the General Prevailing Wage Rate Determinations of the Director of the State of California Department of Industrial Relations are incorporated herein by reference. When two rates differ for similar kinds of labor, Contractor shall pay not less than the higher rate. Contractor shall bear all risks of payment or non-payment of prevailing wages under California law, and Contractor hereby agrees to defend, indemnify, and hold the County, its officials, officers, employees, agents and volunteers, free and harmless from any claim or liability arising out of any failure or alleged failure to comply with the prevailing wage laws.

7. **INSURANCE.** Contractor shall maintain the insurance required by the General Conditions and the following insurance while performing the work covered by this Agreement. The comprehensive general liability insurance shall include broad form property damage insurance.

(a) Minimum Coverages (as applicable) - Insurance coverage shall be with limits not less than the following:

1. **Commercial General Liability** Occurrence form Insurance policy (ISO CG 00 01 or equivalent) covering all operations by or on behalf of Contractor, including coverage for:
 - a) Premises and Operations
 - b) Products and completed Operations
 - c) Contractual Liability insuring the obligations assumed by Contractor in this agreement or Blanket Contractual Liability Coverage
 - d) Broad Form Property Damage (including Completed Operations)
 - e) Explosion, Collapse, and Underground Hazards
 - f) Personal Injury Liability

Limits of liability shall be not less than:

\$5,000,000 each occurrence (combined single limit for bodily injury and property damage)

\$5,000,000 for Personal Injury Liability

\$5,000,000 for Products Completed Operations

\$10,000,000 General Aggregate

If the policy does not have an endorsement providing that the General Aggregate Limit applies separately, or if defense costs are included in the aggregate limits, then the required aggregate limits shall be \$10,000,000.

2. **Automobile Liability** – Insurance policy (ISO CA 00 01) covering Bodily Injury, Property Damage and contractual Liability coverage for “Any Auto” which includes coverage for any owned, hired, borrowed and non-

owned automobile, trailer, and equipment coverage, with limits no less than \$1,000,000 occurrence (per accident for bodily injury and property damage) and \$2,000,000 policy aggregate.

3. **Workers' Compensation** – Statutory Limits/**Employers' Liability** – No less than \$1,000,000 per accident for bodily injury or disease.
4. **Builder's Risk** – (Course of Construction) insurance utilizing an “All Risk” (Special Perils) coverage form, with limits equal to the completed value of the project and no coinsurance penalty provisions.
5. **Contractor's Pollution Legal Liability Insurance** – Limits of no less than \$2,000,000 per occurrence or claim, and \$2,000,000 policy aggregate.

(b) The County, its officers, agents, employees and volunteers shall be named as additional insured on all but the workers' compensation and professional liability coverages. . [NOTE: Evidence of additional insured may be needed as a separate endorsement due to wording on the certificate negating any additional writing in the description box.] It shall be a requirement under this agreement that any available insurance proceeds broader than or in excess of the specified minimum Insurance coverage requirements and/or limits shall be available to the Additional Insured. Furthermore, the requirements for coverage and limits shall be (1) the minimum coverage and limits specified in this Agreement; or (2) the broader coverage and maximum limits of coverage of any Insurance policy or proceeds available to the named Insured; whichever is greater.

1. The Additional Insured coverage under the Contractor's policy shall be “primary and non-contributory” and will not seek contribution from the County's insurance or self insurance and shall be at least as broad as CG 20 01 04 13.
2. The limits of Insurance required in this agreement may be satisfied by a combination of primary and umbrella or excess Insurance. Any umbrella or excess Insurance shall contain or be endorsed to contain a provision that such coverage shall also apply on a primary and non contributory basis for the benefit of the County of Yolo (if agreed to in a written contract or agreement) before the County's own Insurance or self insurance shall be called upon to protect it as a named insured.
3. Said policies shall remain in force through the life of this Agreement and, with the exception of professional liability coverage, shall be payable on a “per occurrence” basis unless the County Risk Manager specifically consents in writing to a “claims made” basis. For all “claims made” coverage, in the event that the Contractor changes insurance carriers Contractor shall purchase “tail” coverage covering the term of this Agreement and not less than three years thereafter. Proof of such “tail” coverage shall be required at any time that the Contractor changes to a new carrier prior to receipt of any payments due.

4. The Contractor shall declare all aggregate limits on the coverage before commencing performance of this Agreement, and the County's Risk Manager reserves the right to require higher aggregate limits to ensure that the coverage limits required for this Agreement as set forth above are available throughout the performance of this Agreement.
 5. Any deductibles or self-insured retentions must be declared to and are subject to the approval of the County Risk Manager. All self-insured retentions (SIR) must be disclosed to Risk Management for approval and shall not reduce the limits of liability. Policies containing any SIR provision shall provide or be endorsed to provide that the SIR may be satisfied either by the named Insured or Yolo County.
 6. Each insurance policy shall be endorsed to state that coverage shall not be suspended, voided, canceled by either party, reduced in coverage or in limits except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to the Director (ten (10) days for delinquent insurance premium payments).
 7. Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A:VII, unless otherwise approved by the County Risk Manager.
 8. The policies shall cover all activities of Contractor, its officers, employees, agents and volunteers arising out of or in connection with this Agreement.
 9. For any claims relating to this Agreement, the Contractor's insurance coverage shall be primary, including as respects the County, its officers, agents, employees and volunteers. Any insurance maintained by the County shall apply in excess of, and not contribute with, insurance provided by Contractor's liability insurance policy.
 10. The insurer shall waive all rights of subrogation against the County, its officers, employees, agents and volunteers.
- (c) Prior to commencing services pursuant to this Agreement, Contractor shall furnish the County with original endorsements reflecting coverage required by this Agreement. The endorsements are to be signed by a person authorized by that insurer to bind coverage on its behalf. All endorsements are to be received by, and are subject to the approval of, the County Risk Manager before work commences. Upon County's request, Contractor shall provide complete, certified copies of all required insurance policies, including endorsements reflecting the coverage required by these specifications.
- (d) During the term of this Agreement, Contractor shall furnish the County with original endorsements reflecting renewals, changes in insurance companies and

any other documents reflecting the maintenance of the required coverage throughout the entire term of this Agreement. The endorsements are to be signed by a person authorized by that insurer to bind coverage on its behalf. Upon County's request, Contractor shall provide complete, certified copies of all required insurance policies, including endorsements reflecting the coverage required by these specifications. Yolo County reserves the right to obtain a full certified copy of any Insurance policy and endorsements. Failure to exercise this right shall not constitute a waiver of right to exercise later.

- (e) Contractor agrees to include with all Subcontractors in their subcontract the same requirements and provisions of this agreement including the indemnity and Insurance requirements to the extent they apply to the scope of the Subcontractor's work. Subcontractors hired by Contractor agree to be bound to Contractor and the County of Yolo in the same manner and to the same extent as Contractor is bound to the County of Yolo under the Contract Documents. Subcontractor further agrees to include these same provisions with any Sub-subcontractor. A copy of the Owner Contract Document Indemnity and Insurance provisions will be furnished to the Subcontractor upon request. The General Contractor/**and or Contractor** shall require all Subcontractors to provide a valid certificate of insurance and the required endorsements included in the agreement prior to commencement of any work and General Contractor/**and or Contractor** will provide proof of compliance to the County of Yolo.
- (f) Contractor shall maintain insurance as required by this contract to the fullest amount allowed by law and shall maintain insurance for a minimum of five years following the completion of this project. In the event Contractor fails to obtain or maintain completed operations coverage as required by this agreement, the County at its sole discretion may purchase the coverage required and the cost will be paid by Contractor.

8. COMPLIANCE WITH LAWS. Contractor shall comply with all relevant federal, state, and local statutes, regulations, ordinances, rules, orders, and other laws in effect when performing the services required by this Agreement, all as set forth in the General Conditions (including but not limited to Article 20 thereof).

9. INDEPENDENT CONTRACTOR. While performing the services required by this Agreement for Construction, Contractor shall act as an independent contractor, not as an employee of County, and thus shall be subject to the direction and control of County only for the final result. Contractor shall be solely responsible for paying all required employment taxes and for meeting all employment obligations related to its performance of the services, including but not limited to payment of worker's compensation, liability insurance, social security taxes (i.e., FICA), and tax withholding. Moreover, Contractor shall indemnify, defend (upon County's written request), and protect County from any liability County may incur to federal or state governments for such taxes and obligations. This Agreement does not entitle Contractor or its officers, employees, subcontractors, or agents to vacation pay, sick leave, retirement benefits, disability or unemployment insurance, or employee benefits of any kind from County.

10. **INSPECTIONS.** All inspections and any remedial action required in response thereto shall be governed by the General Conditions, including but not limited to Article 18 thereof.
11. **PERFORMANCE AND PAYMENT BONDS.** Within the time set forth in the Proposal and before performing any services pursuant to this Agreement, Contractor shall provide to County the bonds required by the General Conditions, including but not limited to Article 2 thereof. All other matters relating to bonds shall be governed by the General Conditions.
12. **TERM OF AGREEMENT; EARLY TERMINATION.** The term and termination of this Agreement shall be governed by the General Conditions, including but not limited to Article 27 thereof.
13. **GUARANTY.** Guarantees and warranties shall be governed by the General Conditions, including but not limited to Article 26 thereof.
14. **AUDIT PROVISIONS.** Contractor's records which shall include but not limited to accounting records, subcontract files, correspondence, change order files, and any other supporting evidence necessary to substantiate charges relating to this contract (all the foregoing hereinafter referred to as "records") shall be open to inspection and subject to audit and/or reproduction, during normal working hours, by County's agent or its authorized representative to the extent necessary to adequately permit evaluation and verification of any invoices, payments, or claims submitted by the contractor or any of his payees pursuant to the execution of this Agreement. For the purpose of such audits, inspections, examination, and evaluations, the County's agent or authorized representative shall have access to said records from the effective date of this Agreement, for the duration of the work, and until six years after the date of final payment by County to Contractor pursuant to this Agreement.
15. **NONDISCRIMINATION.** Contractor certifies that any Work performed or service provided pursuant to this Contract shall be without discrimination based on color, race, creed, national origin, religion, sex, age, sexual preferences, or physical or mental disability in accordance with all applicable Federal, State and County laws and regulations and any administrative directives established by the County Board of Supervisors or the County Administrative Officer. For the purpose of this Contract, distinctions on the grounds of color, race, creed, national origin, religion, sex, age, sexual preferences, or physical or mental disability include but are not limited to the following: denying a participant any service or benefit which is different, or is provided in a different manner or at a different time from that provided to other participants under this Contract; subjecting a participant to segregation or separate treatment in any way in the enjoyment or any advantage or privilege enjoyed by others receiving any service or benefit; treating a participant differently from others in determining whether the participant has satisfied any admission, enrollment quota, eligibility, membership, or

other requirement or condition which individuals must meet in order to be provided any service or benefit; and the assignment of times or places for the provision of services.

16. MISCELLANEOUS.

(a) **Notice.** Except as expressly provided otherwise, all correspondence regarding this Agreement, including invoices, payments, and notices, shall be directed to the following persons at the following addresses and phone numbers:

County:

Ryan Pistochini
General Services Director
120 West Main Street, Suite G
Woodland, CA 95695
Telephone: (530) 666-8888

Contractor:

JPB Designs, Inc.
Artyom Ponomarenko, President
5650 Main Ave Suite 2
Orangevale, CA 95662
Telephone: (916) 549-6259

If written, correspondence shall be sent by personal delivery (including overnight delivery service); or by U.S. Mail, postage prepaid; during business hours. Notices must be actually received to be effective.

(b) **Time of Essence.** Time is of the essence of this Agreement.

(c) **Interpretation and Jurisdiction.** This Agreement shall be interpreted and applied in accordance with California law. In the event of a dispute between the parties as to the language of this Contract or the construction or meaning of any term hereof, this Contract shall be deemed to have been drafted by the parties in equal parts so that no presumptions or inferences concerning its terms or interpretation may be construed against any party to this Contract. Any action or proceeding arising out of this Contract shall be filed in a California Superior Court located in Woodland, California.

(d) **Waiver.** A party's failure to insist on strict performance of this Agreement or to exercise any right or remedy upon breach of this Agreement shall not constitute a waiver of such performance, right, or remedy. No waiver is binding unless set forth in a writing signed by the waiving party.

(e) **Assignments and subcontracts.** Contractor shall not assign this Agreement. Contractor may subcontract any of the services described in Section 1 (Scope of Work) with County's prior written consent. Contractor shall require each subcontractor to agree in writing to be bound by Section 4 (Indemnification) and Section 6 (Insurance) of this

Agreement. County shall consider all subcontractors to be Contractor's employees, and Contractor shall be responsible for their work.

(f) **Dispute Resolution.** Unless the General Conditions provide otherwise, if the Contract Administrator notifies Contractor that the work or any portion of it is unacceptable, then the Contract Administrator and Contractor shall meet at the Yolo County Office of County Administrator, 625 Court Street #202, Woodland, California, within five (5) days after Contractor receives the notice (excluding Saturdays, Sundays, and County observed holidays) and shall attempt in good faith to resolve their differences. Payment shall not constitute approval or acceptance of any defective work.

(g) **Integration.** This Agreement sets forth the parties' entire understanding regarding the matters set forth in herein. It supersedes all prior Agreements and representations, written and oral, and may be modified only by a written amendment approved by County's Chief Deputy County Administration Officer and signed by County and Contractor.

(h) **Effective date.** This Agreement shall be effective on the last date shown below.

(i) **Public Record.** Upon its execution, this Agreement (including all exhibits and attachments) shall be subject to disclosure pursuant to the California Public Records Act.

IN WITNESS WHEREOF, the parties have executed this Contract as of the date set forth above.

COUNTY

CONTRACTOR

By: _____
Ryan Pistochini, Director

By: _____

Printed Name: _____

Its: _____

Attest: Julie Dachtler, Senior Deputy
Clerk of the Board of Supervisors

By: _____
Deputy (Seal)

Approved as to Form:

By: _____
Philip J. Pogledich, County Counsel

