

RESOLUTION 2009- _____

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CALISTOGA,
COUNTY OF NAPA, STATE OF CALIFORNIA,
DECLARING THAT EMERGENCY CIRCUMSTANCES REQUIRE WORK
TO BE PERFORMED ON CERTAIN ESSENTIAL ELEMENTS
OF THE COMMUNITY POOL PROJECT AND AUTHORIZING
THE CITY MANAGER TO TAKE EMERGENCY MEASURES
TO COMPLETE SUCH WORK
(FOUR-FIFTHS VOTE REQUIRED IN ACCORDANCE
WITH PUBLIC CONTRACT CODE SECTION 22050)

1 **WHEREAS**, on September 18, 2007, the City Council awarded a construction contract for
2 the Community Pool project to Page Construction Company of Novato in the amount of
3 \$3,681,000. The City issued a Notice to Proceed on November 8, 2007, and the required
4 contract completion date was in September 2008; and
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6 **WHEREAS**, the project as a whole is not finished. There are numerous items of work for
7 which the quality, function, or performance does not meet the requirements of the Contract
8 Documents; these items must be completed or corrected to meet the requirements of the
9 Contract Documents; and
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11 **WHEREAS**, one of the most important and time-sensitive elements of the work that
12 remains to be completed is related to repairs of through-cracks that developed in the shell of the
13 Swimming Pool. Once the 2009 swim season ended, the pool was drained and the cracks in the
14 pool were investigated and then remediated through injection of an epoxy grout product into each
15 crack. A total of almost 200 linear feet of cracks were repaired during the October through early
16 November period; and
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18 **WHEREAS**, following that crack repair work, City staff, in consultation with Aquatic
19 Design Group (an expert firm in pool design and construction) determined that the existing
20 plaster had become worn, stained, dehydrated, and cracked; in a letter dated November 9, 2009
21 Aquatic Design Group recommended that the City have the pool re-plastered; and
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23 **WHEREAS**, if the pool remains empty while groundwater rises at the site during the rainy
24 season, it could result in the complete destruction of the pool and surrounding structures due to
25 the hydrostatic forces that would be applied to the pool shell; and
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27 **WHEREAS**, Page Construction was notified on November 12, 2009, that the entire pool
28 was required to be re-plastered and that work was required to begin by November 17, 2009, and
29 Page Construction was again notified on November 19, 2009 to begin re-plastering work by
30 November 23, 2009; and
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32 **WHEREAS**, Page replied on November 20, 2009 that it disagreed with the City's direction
33 to replace the plaster and that it was still waiting for a response from its subcontractor, that they
34 desired additional time to consult with their insurance carriers, and did not agree to perform the
35 work or provide a schedule; and
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37 **WHEREAS**, on November 25, 2009, the City issued a 'Notice of Default' and 'Notice to
38 Cure' letter to Page Construction, which provided Page with seven days to cure the default and
39 begin to complete the indicated re-plastering work. The deadline for compliance with that notice
40 is December 2, 2009; and
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42 **WHEREAS**, staff has reviewed long-range weather forecasts and confirmed that rain is
43 forecast for next week, that such rain events are common in December in Calistoga, and has
44 also observed that such rain events are directly correlated with increases in groundwater levels;
45 and
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47 **WHEREAS**, if Page Construction does not provide a cure of their default for this item by
48 December 2, 2009 at 4:30 pm its failure to complete the work as specified and as they had
49 agreed, will have created a substantial delay and substantial hazard to the property; and
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51 **WHEREAS**, Staff believes that the remainder of the pool repair work, which will be
52 followed immediately with re-filling the pool, must be done immediately so the pool can be filled
53 before the forecasted rain raises the groundwater level; and
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55 **WHEREAS**, the failure of Page Construction to honor their obligations to perform the
56 work despite previous agreements to do so, coupled with the threat of imminent rain constitutes
57 an "emergency" defined as a "sudden, unexpected occurrence that poses a clear and imminent
58 danger, requiring immediate action to prevent or mitigate the loss or impairment of life, health,
59 property or essential public services" in Public Contract Code Section 1102; and
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61 **WHEREAS**, Public Contract Code section 20168 requires the Council to make a finding
62 and declare that "*public interest and necessity demand the immediate expenditure of public*
63 *money to safeguard life, health, or property.*"; and
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65 **WHEREAS**, Public Contract Code 22050 requires that the Council "*make a finding, based*
66 *on substantial evidence set forth in the minutes of its meeting, that the emergency will not permit*
67 *a delay resulting from a competitive solicitation for bids, and that the action is necessary to*
68 *respond to the emergency.*"; and
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70 **WHEREAS**, Staff recommends that the City Council declare an emergency and grant the
71 City Manager the authority to order the work to be performed on certain essential elements of the
72 Community Pool Project and to take any related and immediate action necessary to effectuate
73 such work, including procuring the necessary equipment, services, and supplies for those
74 purposes.
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76 **NOW, THEREFORE BE IT RESOLVED** that the City Council of the City of Calistoga
77 hereby declares an emergency, as defined in Public Contract Code section 1102, relating to the
78 re-plastering of the pool and finds that:
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80 1. The above-referenced recitals are true and correct.
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82 2. Failure of Page Construction to honor their obligations to perform the work despite
83 previous agreements to do so coupled with the threat of imminent threat of rain constitutes an
84 "emergency" defined as a "sudden, unexpected occurrence that poses a clear and imminent
85 danger, requiring immediate action to prevent or mitigate the loss or impairment of life, health,
86 property or essential public services" in Public Contract Code Section 1102.
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88 3. Immediate action is necessary to respond to the emergency and prevent the
89 possibility of property loss.
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91 4. Public interest and necessity demand the immediate expenditure of public money
92 to safeguard life, health or property.

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5. The nature of this emergency will not permit a delay resulting from a competitive solicitation of bids, and immediate action is necessary to respond to the emergency.

6. The potential for damage to the pool is a situation which would result in a significant loss of property and significant economic hardship if corrective action is not undertaken within a time period less than the normal time required for formal bidding procedures.

BE IT FURTHER RESOLVED that the City Council hereby grants the City Manager the authority to order the re-plastering and refilling to be performed on the Community Pool and to take any related and immediate actions necessary to effectuate such work, including procuring the necessary equipment, services, and supplies for those purposes.

PASSED, APPROVED, AND ADOPTED by the City Council of the City of Calistoga at a Special Meeting held this **1st day of December, 2009** by the following vote:

AYES:

NOES:

ABSTAIN/ABSENT:

JACK GINGLES, Mayor

ATTEST:

SUSAN SNEDDON, City Clerk