

**DESIGN, FABRICATION, PURCHASE AND INSTALLATION AGREEMENT  
BETWEEN  
CITY OF TEMECULA AND PUBLIC RESTROOM COMPANY**

**VAIL RANCH PARK RESTROOM - PROJECT NUMBER PW23-06**

This Agreement is made and effective as of August 13, 2024, between the City of Temecula , a municipal corporation (hereinafter referred to as "City"), and **Public Restroom Company**, a Nevada corporation (hereinafter referred to as "Contractor"). City and Contractor are referred to collectively as "the Parties."

WHEREAS, Contractor submitted a proposal for parks and recreation equipment and field lighting products and installation with BuyBoard, a cooperative purchasing organization. This proposal was submitted as part of a public bidding process.

WHEREAS, Contractor has entered into numerous agreements with public entities involving the acquisition of supplies, equipment or services, including an agreement with the City of Los Angeles to provide pre-fabricated restrooms. These agreements were based on a pricing proposal submitted by Contractor to BuyBoard through the public bidding process.

WHEREAS, Contractor has agreed to honor the prices that were submitted to BuyBoard as part of a public bidding process in this contract with the City.

In consideration of the mutual covenants and conditions set forth herein, the Parties agree as follows:

**1. TERM**

This Agreement shall commence on August 13, 2024, and shall remain and continue in effect until tasks described herein are completed, but in no event later than June 30, 2027, unless sooner terminated pursuant to the provisions of this Agreement. Upon mutual agreement, the Parties may extend the term of this Agreement.

**2. PURCHASE AND INSTALLATION OF PREFABRICATED RESTROOM**

On and subject to the terms and conditions set forth in this Agreement, Contractor agrees to design, fabricate, sell, deliver and install a prefabricated public restroom building ("Restroom" sometimes herein), at Vail Ranch Park in the City as more particularly described in Exhibit A, Scope of Work (collectively, the "Work") pursuant to the terms of this Agreement. Contractor shall provide and furnish all labor, materials, necessary tools and transportation services required for the Work. All of said Work to be performed and materials to be furnished for the Work shall be in strict accordance with the specifications set forth in the Scope of Work. The Work shall be completed within the time limits set forth herein below. Contractor shall not commence the Work until such time as directed by the City.

A. Working Drawings. On or before October 4, 2024 , Contractor shall prepare and submit to the City working drawings of the Work in sufficient detail that the Work can be fabricated and installed. Within 15 calendar days of the submittal of the working drawings, the Director of Public Works shall approve or conditionally approve the working drawings ("Working Drawings").

B. Fabrication and Installation. Upon the Director of Public Work's approval or conditional approval of the Working Drawings, the Contractor shall diligently fabricate and install the Work in accordance with the Working Drawings and this Agreement. Consultant shall complete the Work according to the following schedule of performance:

- 1) Fabrication of the Work shall be completed by June 30, 2025
- 2) Installation of the Work shall be completed by December 30, 2025

C. Inspection and Testing. The Work shall be subject to inspection and testing by the City and its authorized representatives during the fabrication and installation and all other times and places, including without limitation, the plans of Contractor and any of its suppliers. The Work, including the Restroom, shall be subject to final inspection and acceptance notwithstanding any payments or other prior inspections. Such final inspection shall be made within a reasonable time after completion of the Work.

D. Contractors and Subcontractors. All contractors and subcontractors to be used for the fabrication and installation of the Work shall be listed on Exhibit B, List of Contractors and Subcontractors. All contractors and subcontractors shall hold and maintain such contractor's licenses as may be required for the work they are performing. The Director of Public Works shall be authorized to accept changes to the list of contractors and subcontractors.

### **3. PRICE FOR DESIGN, FABRICATION, PURCHASE, DELIVERY AND INSTALLATION**

A. The City agrees to pay Contractor an amount not to exceed the sum of Two Hundred Fifty-Seven Thousand Seventy-Nine Dollars and Zero Cents (\$257,079.00), for the design, fabrication, purchase, delivery and installation of the Work.

B. Contractor shall not be compensated for any services rendered in connection with its performance of this Agreement which are in addition to those set forth herein, unless such additional services are authorized in advance and in writing by the City Manager. Contractor shall be compensated for any additional services in the amounts and in the manner as agreed to by City Manager and Contractor at the time City's written authorization is given to Contractor for the performance of said services.

C. Contractor shall submit invoices monthly for actual services performed. Invoices shall be submitted between the first and fifteenth business day of each month, for services provided in the previous month. Payment shall be made within thirty (30) days of receipt of each invoice as to all non-disputed fees. If the City disputes any of Contractor's fees, it shall give written notice to Contractor within thirty (30) days of receipt of an invoice of any disputed fees set forth on the invoice. City shall retain from the payment of each invoice the sum of five percent (5%). The retained sums shall be paid to the Contractor within forty-five days of the approval of the certificate of completion and final resolution of any stop-notices that may be filed in relation to the Contractor's work.

### **4. PREVAILING WAGES**

A. Pursuant to the provisions of Section 1773 of the Labor Code of the State of California, the City Council has obtained the general prevailing rate of per diem wages and the general rate for holiday and overtime work in this locality for each craft, classification, or type of workman needed to execute this Agreement from the Director of the Department of Industrial

Relations. Copies may be obtained from the California Department of Industrial Relations Internet website at <http://www.dir.ca.gov>. Contractor shall provide a copy of prevailing wage rates to any staff or sub-contractor hired, and shall pay the adopted prevailing wage rates as a minimum. Contractor shall comply with the provisions of Sections 1720, 1725.5, 1771.1(a), 1773.8, 1775, 1776, 1777.5, 1777.6, and 1813 of the Labor Code. Pursuant to the provisions of 1775 of the Labor Code, Contractor shall forfeit to the City, as a penalty, the sum of \$200.00 for each calendar day, or portion thereof, for each laborer, worker, or mechanic employed, paid less than the stipulated prevailing rates for any work done under this Agreement, by him or by any subcontractor under him, in violation of the provisions of the Agreement. This project, work, or service will be subject to compliance monitoring and enforcement by the Department of Industrial Relations (DIR) pursuant to Labor Code Section 1771.4.

B. Registration with the Department of Industrial Relations (DIR) is mandatory as a condition for bidding, providing certain services, and working on a public works project as specified in Labor Code Section 1771.1(a). Contractor and any sub-contractors must be registered with the Department of Industrial Relations to be qualified to bid, or provide a proposal and/or time and material quote or be listed in a bid, proposal or quote, subject to the requirements of Public Contract Code Section 4104; or engage in the performance of any contract that is subject to Labor Code Section 1720 et seq., unless currently registered and qualified to perform public work pursuant to Labor Code Section 1725.5. Contractor and sub-Contractor/sub-contractors will be required to provide proof of registration with the DIR. For more information regarding registration with the Department of Industrial Relations, refer to <http://www.dir.ca.gov/Public-Works/PublicWorks.html>

## **5. REPRESENTATIONS AND WARRANTIES OF VENDOR**

Contractor makes the following representations and warranties to City:

A. Authority and Consents. Contractor has the right, power, legal capacity and authority to enter into and perform its obligations under this Agreement. No approvals or consents of any persons are necessary in connection with Contractor's execution, delivery, installation and performance of this Agreement, except for such as have been obtained on or prior to the date hereof. The execution, delivery, installation and performance of the Work required by this Agreement by Contractor have been duly authorized by all necessary action on the part of Contractor and constitute the legal, valid and binding obligations of Contractor, enforceable against Contractor in accordance with their respective terms.

B. Title and Operating Condition. Contractor has good and marketable title to the Restroom, and all of the equipment that shall be manufactured and installed as part of the Work. The Work, Restroom, and equipment will be free and clear of any restrictions on or conditions to transfer or assignment, and City will acquire absolute unqualified title to the Restroom, all of the Work, and equipment, free and clear of mortgages, liens, pledges, charges, encumbrances, equities, claims, covenants, conditions and restrictions except for such as may be created or granted by City. The Restroom and equipment will be in good operating condition. The Restroom and all Work and equipment will be free of any defects, and will be in conformity with the specifications, descriptions, representations and warranties set forth in this Agreement. Contractor is aware that the Work will be used by the general public and that City is relying on Contractor's warranty that the Restroom is fit for this purpose and the ordinary purposes for which the Restroom is normally used.

C. Full Disclosure. None of the representations and warranties made by Contractor in this Agreement contains or will contain any untrue statement of a material fact, or omits to state a material fact necessary to make the statements made, in light of the circumstances under which they were made, not misleading.

**6. PERFORMANCE**

A. Contractor shall at all times, faithfully, competently, and to the best of its ability, experience and talent, perform all tasks and the Work described herein. Contractor shall employ, at a minimum, generally accepted standards and practices utilized by persons engaged in providing similar services as are required of Contractor hereunder in meeting its obligations under this Agreement.

B. The Contractor shall obtain and pay for City business licenses.

**7. INSPECTION OF WORK; REJECTION; NO REPLACEMENT OR CURE**

A. All labor, materials, tools, Work, and services, including the Restroom, shall be furnished and work performed and completed subject to the approval of the City or its authorized representatives, and the quality of the workmanship shall be guaranteed for one year from date of acceptance.

B. City shall inspect the Restroom and installation at the time and place of delivery and installation. Such inspections may include reasonable tests and use of the Restroom by City. If, in the determination of City, either the Restroom, or the Work, fails to conform to the Agreement in any manner or respect, City shall so notify Contractor within ten (10) days of inspection. Failing such notice, the Restroom and the Work shall be deemed accepted by City as of the date of receipt.

C. In the event of such notice of non-conformity is given by City pursuant to the section entitled "City Approval" City may, at its option, (1) reject the whole of the Work and installation, (2) accept the whole of the Work and installation, or (3) accept any commercial unit or units of the Work and reject the remainder or the installation. The exercise of any of the above options shall be "without prejudice" and with full reservation of any rights and remedies of City attendant upon a breach. In the event of such notice and election by City, City agrees to comply with all reasonable instructions of Contractor regarding repair or return of either Restroom and, in the event that expenses are incurred by City in following such instructions, Contractor shall indemnify City in full for such expenses.

D. This Agreement calls for strict compliance. Contractor expressly agrees that the Work tendered and the tender itself will conform fully to the terms and conditions of the Agreement on the original tender. In the event of rejection by City of the Restroom, or the whole of the Work or any part thereof pursuant to this Section, City may, but is not required to, accept any substitute performance from Contractor or engage in subsequent efforts to affect a cure of the original tender by Contractor.

**8. PLACE OF DELIVERY**

The Restroom shall be delivered and installed at the following location:

**VAIL RANCH PARK  
32965 Harmony Lane,  
Temecula, CA 92591**

**9. LABOR AND MATERIAL BONDS.**

Within ten (10) business days from the City Council's approve of this Agreement, Contractor shall provide the City with a Labor and Materials Bond in the amount of 100% of the Agreement price to secure payment to any contractor, sub-sub-contractor or to satisfy claims, persons selling the Work, or furnishing labor or materials, and of mechanics and laborers employed by them on the work required to be constructed or installed pursuant to this Agreement. The bond shall be maintained by the Contractor in full force and effect until the completed work is accepted by the City, all claims for materials and labor are paid, and the time within which the California Labor Commissioner may bring any enforcement action has expired. The Labor and Materials Bond shall be in the form attached hereto as Exhibit C, Labor and Materials Bond, and shall be approved by the City Attorney.

**10. EXHIBITS**

a. This Agreement includes the following Exhibits that are by this reference incorporated herein and made a part hereof:

Exhibit A. Scope of Work

Exhibit B. List of Contractors and Subcontractors

Exhibit C Labor and Materials Bond

b. In the event any term or condition of the Exhibits conflicts with or is contradictory to any term or condition of the Agreement, the terms and conditions of this Agreement are controlling.

**11. DEFAULT OF CONTRACTOR**

a. The Contractor's failure to comply with the provisions of this Agreement shall constitute a default. In the event the Contractor is in default under the terms of this Agreement, the City shall have no obligation or duty to continue compensating Contractor for any work performed after the date of default and can terminate this Agreement immediately following written notice to the Contractor, as provided in subsection (b), below. If such failure by the Contractor to make progress in the performance of work hereunder arises out of causes beyond the Contractor's control, and without fault or negligence of the Contractor, it shall not be considered a default.

b. If the City Manager or his delegate determines the Contractor is in default in the performance of any of the terms or conditions of this Agreement, they shall serve the Contractor with written notice of the default. The Contractor shall have ten (10) days after service of said notice in which to cure the default by rendering satisfactory performance. In the event the Contractor fails to cure its default within such period of time, the City shall have the right, notwithstanding any other provision of this Agreement, to terminate this Agreement without further notice and without prejudice to any other remedy to which it may be entitled at law, in equity or under this Agreement.

c. In the event of any dispute or controversy with the City over any matter whatsoever, the Contractor shall not cause any delay or cessation in or of Work, but shall proceed with the performance of the Work in dispute. The Contractor shall retain any and all rights provided that pertain to the resolution of disputes and protests between the Parties. The disputed Work will be categorized as an "unresolved dispute" and payment, if any, shall be as later determined by agreement or a court of law. The Contractor shall keep accurate, detailed records of all disputed Work, claims and other disputed matters. All claims arising out of or related to the



Agreement or the Work, and the consideration and payment of such claims, are subject to the Government Claims Act (Government Code Section 810 et seq.) with regard to filing claims.

d. Upon termination of this Agreement, Contractor's sole compensation shall be payment for actual services performed up to, and including, the date of termination, less damages incurred by the City, or as may be otherwise agreed to in writing between the City Council and the Contractor.

## **12. LIQUIDATED DAMAGES; EXTENSION OF TIME.**

In accordance with Government Code Section 53069.85, Contractor agrees to forfeit and pay to City the sum of one Thousand Dollars (\$1,000.00) per day for each calendar day completion is delayed beyond the time allowed pursuant to Section 2 of this Agreement. Such sum shall be deducted from any payments due to, or become due to Contractor. Contractor will be granted an extension of time and will not be assessed liquidated damages for unforeseeable delays beyond the control of, and without the fault or negligence of, the Contractor including delays caused by City. Within ten (10) calendar days of the occurrence of such delay, Contractor shall give written notice to City. Within thirty (30) calendar days of the occurrence of the delay, Contractor shall provide written documentation sufficient to support its delay claim to City. Contractor's failure to provide such notice and documentation shall constitute Contractor's waiver, discharge, and release of such delay claims against City.

## **13. INDEMNIFICATION**

To the maximum extent permitted by law, the Contractor agrees to defend, indemnify, protect and hold harmless the City of Temecula, Temecula Community Services District, and/or the Successor Agency to the Temecula Redevelopment Agency, its officers, officials, employees and volunteers from and against any and all claims, demands, losses, defense costs or expenses, including attorney fees and expert witness fees, or liability of any kind or nature which the City of Temecula, Temecula Community Services District, and/or the Successor Agency to the Temecula Redevelopment Agency, its officers, agents, employees or volunteers may sustain or incur or which may be imposed upon them for injury to or death of persons, or damage to property arising out of Contractor's acts, omissions, or willful misconduct, arising out of or in any way related to the performance or non-performance of this Agreement, excepting only liability arising out of the sole negligence of the City of Temecula, Temecula Community Services District, and/or the Successor Agency to the Temecula Redevelopment Agency.

## **14. INSURANCE REQUIREMENTS**

Contractor shall procure and maintain for the duration of the contract insurance against claims for injuries to persons and/or damages to property, which may arise from or in connection with the performance of the work hereunder and the results of work by the Contractor, its agents, representatives, employees, or subcontractors.

1) Minimum Scope of Insurance. Coverage shall be at least as broad as: Commercial General Liability (CGL): Insurance Services Office Form CG 00 01 covering CGL on an "occurrence" basis, including products and completed operation, property damage, bodily injury, and personal & advertising with limits no less than One Million (\$1,000,000) per occurrence. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location (ISO CG 25 03 05 09 or 25 04 05 09) or the general aggregate limit shall be twice the required occurrence limit.

2) Automobile Liability: ISO Form Number CA 00 01 covering any auto (Code 1), or if Contractor has no owned autos, covering hired, (Code8) and non-owned autos

(Code 9), with limits no less than One Million (\$1,000,000) per accident for bodily injury, including death, of one or more persons, property damage and personal injury.

3) Workers' Compensation: as required by the State of California, with Statutory Limits, and Employer's Liability Insurance with limit of no less than One million (\$1,000,000) per accident for bodily injury or disease. In accordance with the provisions of Labor Code Section 3700, every contractor will be required to secure the payment of compensation to its employees. By executing this Agreement, and pursuant to Labor Code Section 1861, Contractor hereby certifies as follows:

"I am aware of the provisions of Section 3700 of the Labor Code which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and I will comply with such provisions before commencing the performance of the work of this contract."

4) Professional Liability (Errors and Omissions): One million (\$1,000,000) per occurrence and in aggregate. Professional Liability Insurance shall be written on a policy form providing professional liability for the Contractor's profession. If a "claims made" policy is used, it shall be endorsed to provide an extended reporting period of not less than three (3) years.

a. Deductibles and Self-Insured Retentions. Any deductibles or self-insured retentions must be declared and approved by the Risk Manager.

b. Other Insurance Provisions. The insurance policies are to contain, or be endorsed to contain, the following provisions:

1) The City of Temecula, the Temecula Community Services District, the Successor Agency to the Temecula Redevelopment Agency, their officers, officials, employees and volunteers are to be covered as additional insureds on the CGL policy with respect to liability arising out of work or operations performed by or on behalf of the Contractor's products and completed operations of the Contractor; premises owned, occupied or used by the Vendor. General liability coverage can be provided in the form of an endorsement to the Contractor Insurance (at least as broad as ISO Form CG 20 10 11 85 or if not available, through the addition of both CG 20 10, CG 20 26, CG 20 33, or CG 20 38; and CG 20 37 if a later edition is used). The coverage shall contain no special limitations on the scope of protection afforded to the City of Temecula, the Temecula Community Services District, the Successor Agency to the Temecula Redevelopment Agency, their officers, officials, employees, or volunteers.

2) For any claims related to this project, the Contractor insurance coverage shall be primary and non-contributory and at least as broad as ISO CG 20 01 04 13 as respects the City, the Temecula Community Services District, the Successor Agency to the Temecula Redevelopment Agency, their officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by the City of Temecula, Temecula Community Services District, and/or the Successor Agency to the Temecula Redevelopment Agency, its officers, officials, employees, or volunteers shall be excess of the Contractor's insurance and shall not contribute with it. This also applies to any Excess or Umbrella liability policies.

3) The Contractor may use Umbrella or Excess Policies to provide the limits as required in this agreement. The Umbrella or Excess policies shall be provided on a true "following form" or broader coverage basis, with coverage at least as broad as provided on the underlying Commercial General Liability Insurance.

4) Any failure to comply with reporting or other provisions of the policies including breaches of warranties shall not affect the indemnification provided to the City of Temecula, the Temecula Community Services District, and/or the Successor Agency to the Temecula Redevelopment Agency, their officers, officials, employees, or volunteers.

5) 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) If the Contractor's maintains broader coverage and/or higher limits than the minimums shown above, the City requires and shall be entitled to the broader coverage and/or higher limits maintained by the contractor.

7) If insurance coverage is canceled or, reduced in coverage or in limits the Contractor shall within two (2) business days of notice from insurer phone, fax, and/or notify the City via certified mail, return receipt requested of the changes to or cancellation of the policy.

8) Unless otherwise approved by City, if any part of the Services and Tasks is subcontracted, the Minimum Insurance Requirements must be provided by, or on behalf of, all subcontractors even if city has approved lesser insurance requirements for Contractor, and all subcontractors must agree in writing to be bound by the provisions of this section.

9) The CGL, auto liability, and workers compensation policies shall be endorsed with a waiver of subrogation. Contractor waives all rights of subrogation against the City and all other additional insureds, to the extent permitted by law.

- a. Acceptability of Insurers. Insurance required above, except for workers' compensation insurance, must be placed with insurers with a current A.M. Best rating of A-: VII or better, unless otherwise acceptable to the City. Self-insurance shall not be considered to comply with these insurance requirements.
- b. Verification of Coverage. Contractor shall furnish the City with original certificates and amendatory endorsements, or copies of the applicable policy language effecting coverage required by this clause. All certificates and endorsements and copies of the Declarations and Endorsements pages are to be received and approved by the City before work commences. However, failure to obtain the required documents prior to the work beginning shall not waive the Contractor obligation to provide them. The City reserves the right to require complete, certified copies of all required insurance policies, including endorsements required by these specifications, at any time.
- c. Special Risks or Circumstances. The City reserves the right to modify these requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances.

## 15. GENERAL

a. Survival of Representations and Warranties. All representations, warranties, covenants and agreements of the Parties contained in this Agreement shall survive the execution, delivery, installation and performance of this Agreement.



b. Legal Responsibilities. The Contractor shall keep itself informed of all local, State and federal ordinances, laws and regulations which in any manner affect those employed by it or in any way affect the performance of its service pursuant to this Agreement. The Contractor shall at all times observe and comply with all such ordinances, laws and regulations. The City, and its officers and employees, shall not be liable at law or in equity occasioned by failure of the Contractor to comply with this section.

c. Prohibited Interest. No officer or employee of the City of Temecula shall have any financial interest, direct or indirect, in this Agreement, the proceeds thereof, the Contractor, or Contractor's sub-Contractors/sub-contractors for this project, during his/her tenure or for one year thereafter. The Contractor hereby warrants and represents to the City that no officer or employee of the City of Temecula has any interest, whether contractual, non-contractual, financial or otherwise, in this transaction, or in the business of the Contractor or Contractors sub-Contractors/sub-contractors on this project. Contractor further agrees to notify the City in the event any such interest is discovered whether or not such interest is prohibited by law or this Agreement.

d. Independent Contractor. Contractor is and shall at all times remain as to the City a wholly independent Contractor. The personnel performing the services under this Agreement on behalf of Contractor shall at all times be under Contractor's exclusive direction and control. Neither City nor any of its officers, employees, agents, or volunteers shall have control over the conduct of Contractor or any of Contractor's officers, employees, or agents except as set forth in this Agreement. Contractor shall not at any time or in any manner represent that it or any of its officers, employees or agents are in any manner officers, employees or agents of the City. Contractor shall not incur or have the power to incur any debt, obligation or liability whatever against City, or bind City in any manner. No employee benefits shall be available to Contractor in connection with the performance of this Agreement. Except for the fees paid to Contractor as provided in the Agreement, City shall not pay salaries, wages, or other compensation to Contractor for performing services hereunder for City. City shall not be liable for compensation or indemnification to Contractor for injury or sickness arising out of performing services hereunder.

e. Assignment and Subcontracting. The Contractor shall not assign any portion of this Agreement or amounts due to Contractor hereunder, or subcontract any required performance, without prior written consent of the City, except that Contractor may use contractors or subcontractors listed on Exhibit B or otherwise approved by the Director of Public Works.

f. Notices. Any notices to either of the Parties, permitted or required herein, must be in writing and may be given either by (i) personal service, (ii) delivery by a reputable document delivery service, such as but not limited to, Federal Express, that provides a receipt showing date and time of delivery, or (iii) mailing in the United States Mail, certified mail, postage prepaid, return receipt requested, addressed to the address of the party as set forth below or at any other address as that party may later designate by Notice. Notice shall be effective upon delivery to the addresses specified below or on the third business day following deposit with the document delivery service or United States Mail as provided above.

**Mailing Address:**

City of Temecula  
Attn: City Manager  
41000 Main Street  
Temecula, CA 92590

**To Contractor:**

Public Restroom Company  
2587 Business Parkway

g. Governing Law and Venue. The City and Contractor understand and agree that the laws of the State of California, without regard for conflicts of laws rules, shall govern the rights, obligations, duties and liabilities of the Parties and also govern the interpretation of this Agreement. Any litigation concerning this Agreement shall take place in the superior court for the County of Riverside, or U.S. District Court, Central District, State of California.

h. Contractor's Independent Investigation. No plea of ignorance of conditions that exist or that may hereafter exist or of conditions of difficulties that may be encountered in the execution of the work under this Contract, as a result of failure to make the necessary independent examinations and investigations, and no plea of reliance on initial investigations or reports prepared by City for purposes of letting this Contract out to proposal will be accepted as an excuse for any failure or omission on the part of the Contractor to fulfill in every detail all requirements of this Contract. Nor will such reasons be accepted as a basis for any claims whatsoever for extra compensation or for an extension of time.

i. Books And Records. Contractor's books, records, and plans or such part thereof as may be engaged in the performance of this Contract, shall at all reasonable times be subject to inspection and audit by any authorized representative of the City.

j. Utility Location. City acknowledges its responsibilities with respect to locating utility facilities to the extent required by California Government Code Section 4215.

k. Regional Notification Centers. Contractor agrees to contact the appropriate regional notification center in accordance with Government Code Section 4216, et seq..

l. Licenses. At all times during the term of this Agreement, Contractor shall have in full force and effect, all licenses required of it by law for the performance of the services for the Work described in this Agreement.

m. Entire Agreement. This Agreement contains the entire understanding between the parties relating to the obligations of the parties described in this Agreement. All prior or contemporaneous agreements, understandings, representations and statements, oral or written, are merged into this Agreement and shall be of no further force or effect. Each party is entering into this Agreement based solely upon the representations set forth herein and upon each party's own independent investigation of any and all facts such party deems material.

n. Time Of The Essence. Time is of the essence in this Agreement.

o. Authority To Execute This Agreement. The person or persons executing this Agreement on behalf of Contractor warrants and represents that he or she has the authority to execute this Agreement on behalf of the Contractor and has the authority to bind Contractor to the performance of its obligations hereunder. The City Manager is authorized to enter into an amendment on behalf of the City to make the following non-substantive modifications to the agreement: (a) name changes; (b) extension of time; (c) non-monetary changes in scope of work; (d) agreement termination.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed the day and year first above written.

**CITY OF TEMECULA**

**PUBLIC RESTROOM COMPANY**

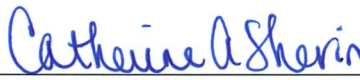
*(Two Signatures of corporate officers required unless corporate documents authorize only one person to sign the agreement on behalf of the corporation.)*

By: \_\_\_\_\_  
James Stewart, Mayor

By:  \_\_\_\_\_  
Charles E. Kaufman IV, President

**ATTEST:**

By: \_\_\_\_\_  
Randi Johl, City Clerk

By:  \_\_\_\_\_  
Catherine A. Sherin, Secretary

**APPROVED AS TO FORM:**

By: \_\_\_\_\_  
Peter M. Thorson, City Attorney

**CONTRACTOR:**

Public Restroom Company  
Contact Person: Chris Gaughan, V.P. Sales  
2587 Business Parkway  
Minden, Nevada 89423  
chrisg@publicrestroomcompany.com  
Phone: (888) 888-2060 ext 106

PM Initials: Date:
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## EXHIBIT "A"

### SCOPE OF WORK

- 1. Restroom Building designed, fabricated, stored, and delivered to project site for \$228,486, including all costs and applicable taxes.**

Public Restroom Company shall:

- a. Design and fabricate the building pursuant to the City-approved Working Drawings;
- b. Store the building prior to delivery to the City;
- c. Deliver the building to the site on a mutually agreeable date in advance of the delivery.

- 2. Installation: Turnkey Installation of the Restroom Buildings at the project site for \$28,593, including all costs and applicable taxes.**

Public Restroom Company shall install the building. Public Restroom Company's national factory authorized installation team will:

- a. Arrive onsite to confirm and verify the City prepared the site for installation (as set forth below) including access to the site.
- b. Verify the building pad size, building corners, finished slab elevation, utility depth and location, meter size and distance from building, and compaction compliance.
- c. Excavate the utility trenches for placement of the prefabricated underground piping tree for plumbing and electrical, set the kit in place, provide the water test for inspection before backfilling, and then place the site adjacent coarse sand that the City provides alongside the building pad and screed it level for final building placement. The City agrees to provide onsite water availability for wetting the sand bed before building placement to consolidate the pad.
- d. Set the building on the site pad.
- e. Connect the utility piping stub ups to the building piping stub down building points of connection for water, sewer, and electrical conduit to the building internal electrical panel.

- 3. City Tie In of Utilities and other site work:**

The exterior utility connections for water, sewer and electrical 6' or less from the footprint of the building are the responsibility of the City.

- 4. Total Cost of building and installation is \$257,079.**

## **CITY SCOPE OF WORK WITH/WITHOUT FOOTINGS:**

### **Scope of Work Background:**

The City shall survey the site, establish survey for the building pad and prefabricated building slab elevation and front corners, excavate for building footings (if required), locate footing sleeves for electrical, waste, and water, pour the footings (if required), furnish sand base adjacent to subgrade pad, and provide location for utility POC's nominally 6' outside the foundation.

### **Preparation of Building Pad:**

The City is responsible for providing the building subgrade pad, or when required, footings to frost depth per Public Restroom Company design specifications. Public Restroom Company will provide detailed drawings for the subgrade building pad, utilities POC's, and if required by the City, the footings, attached to this scope of work.

### **Subgrade Pad/Foundation Requirements:**

1. The City shall survey the building site and provide a finished slab elevation for the prefabricated building. The building pad size required is larger than the final actual building footprint. The City shall provide building front corner stakes with 10' offsets.
2. Excavate the existing site to the depth of the required footings to local code if required.
3. Furnish coarse concrete sand adjacent to subgrade pad so Public Restroom Company can cut the utility trenches, install underground utilities, and screed sand.

### **City verification of site access to allow Building Delivery:**

1. The City shall provide suitable delivery access to the proposed building site. Suitable access is defined as 14' minimum width, 16' minimum height, and sufficient turning radius for a crane and 70' tractor-trailer.
2. The City acknowledges that the contract cost is based upon the crane provided by Public Restroom Company being able to get within 35' from the building center and for the delivery truck to be no more than 35' from the crane center picking point.
3. If the path to the building site traverses curbs, underground utilities, landscaping, sidewalks, or other obstacles that could be damaged, the City is responsible for repair and all costs, if damage occurs.
4. If trench plating is required, it shall be the cost responsibility of the City.
5. If unseen obstacles are present when site installation begins, it is the City's responsibility to properly mark them and verbally notify Public Restroom Company before installation.
6. If weather becomes an issue for safety or site installation delays due to weather, the City or Public Restroom Company, with the City's confirmation, may call-off set. If building set is stopped, relocation of the building modules to an onsite or offsite location may incur additional costs to Owner/General Contractor.

**Delivery and Installation Notice and Site Availability:**

Public Restroom Company will provide sufficient notice of delivery of the prefabricated buildings. The City shall make the sites available during the delivery period. During the delivery period, on an improved site, the City should stop site watering several days before delivery to minimize the impact on the soils for the heavy equipment needed for installation.

**Caution:** *If a site is not ready for our field crew to perform their installation and if no notice of delay in readiness from the City is sent two days before the delivery date, Public Restroom Company will provide a change order for re-mobilization on a daily basis until the site is ready for installation. Ready means that the site pad is completed, the corner required survey stakes are in place, the slab elevation stakes are in place, the location of the front of the building is confirmed on site, and access to the site is available from an improved roadway. The City shall sign the change order before Public Restroom Company continues delivery.*

**Public Restroom Company will "turn-key" set the buildings including the hook up of utilities inside the building (only) when they are available. Public Restroom Company will use its own factory trained staff for the installation.**

**Utility Connections:**

1. The City is responsible for flushing all water service lines before final connection.
2. The City is responsible for the **final connections** of water, sewer, and electrical at the exterior of building POC's.
3. Public Restroom Company provides a POC for water, a POC Drain Waste and Vent waste line with a clean out the service connection, and an electrical schedule 80 PVC sleeve at an exterior POC.
4. Public Restroom Company provides and connects the interior building utility connections and the City makes the exterior connections to POC's for services.

**Special Conditions, Permits, and Inspection Fees:**

Follow any published specifications governing local building procedures for applicable building permit fees, health department fees, all inspection fees, site concrete testing fees, and compaction tests, if required by Owner. PRC is responsible for all required State inspections and final State insignia certification of the building, if applicable.

**Jurisdiction for Off-site Work:**

Jurisdiction, for permitting and inspection of this building shall be either the State agency who manages prefabricated building compliance in the state or the local CBO (when the State does not provide certification.) If the responsibility for building inspection is the local CBO, we will provide a certified plan set, calculations, and a third-party engineer inspection report for any and all closed work the local official cannot see.

**PUBLIC RESTROOM COMPANY SCOPE OF WORK:**

**In Plant/Off-Site Construction Scheduling System:**

Public Restroom Company has several off-site manufacturing centers in the United States, strategically located, with the proper equipment and trained staff to fabricate custom buildings to a high-quality fit and finish standard. Public Restroom Company



manages quality control in its off-site production facility to comply with the approved drawings and provides an inspection certification and photos as required. When proprietary materials, which Public Restroom Company has designed and fabricated, are part of the project, Public Restroom Company shall supply the manufacturing centers with these proprietary Public Restroom Company components. Public Restroom Company will then schedule the in-plant construction process to coordinate with the delivery date through Public Restroom Company's Operations Division field staff. Public Restroom Company guarantees on time at cost delivery weather permitting.

**Special Payment and Progress Billing Terms:**

Invoicing begins on the 30th of the month following an order and/or the acceptance of the proposal/contract. The first progress billing invoice will be issued for the commencement of design and engineering of architectural plans. This will be 10% of the contracted amount. Once construction begins invoicing will commence monthly based on plant percentage of completion, supported by photographs.

In the event of project stoppage, additional fees may be assessed for re-mobilization, storage, crane costs, etc. **Our discounted project costs are based upon timely payments. Delays in payment could change delivery schedules and project costs.**

**Delivery and Installation:**

**Site Inspection:**

Public Restroom Company staff, upon site arrival, will verify the required dimensions of the building pad and the corner locations/elevation. Public Restroom Company will also verify the delivery path from an accessible road or street and install the underground utilities to the point of connection nominally 6' from the exterior of the building.

**Installation:**

Public Restroom Company will install the building turn-key, except for any exclusion (listed under "Exclusions," herein.)

**Installation of Utilities under the Prefabricated Building:**

Public Restroom Company shall fabricate off-site an underground utilities (water, and DWV piping and fittings) preassembled plumbing and electrical tree. Public Restroom Company staff will set the underground tree in the excavated trench (excavation by Public Restroom Company to the proper depth per local code) into code depth excavated trenches and Public Restroom Company staff will install the coarse concrete sand to bed the piping per our submitted drawing.

Public Restroom Company shall provide all the under-slab piping (including the driven electrical ground rod or lightning rod, if applicable.) The City shall bring utility services to within 6' of the pad and is responsible for final connections at that point.

**Connection of Utilities Post Building Placement:**

After placement of the building on the pad by Public Restroom Company, Public Restroom Company staff will tie in the water and sewer connection "inside" the building only and terminate at a point of connection (POC) outside the building clearly marked for each utility service. The City is responsible for final utility point of service connections at the nominal 6' from building locations.

**Electrical:**

Public Restroom Company shall provide the electrical conduit to the POC 6' from the building. The City pulls the wire and ties it off on the electrical panel.

**Plumbing:**

Public Restroom Company provides the POC up to 6' from the building footprint and the City connects the water to the stub out location.

**Sewer:**

Some sites depending on the local jurisdiction will require an outside house trap which the City shall install if needed. Public Restroom Company will provide you with a sewer point of connection including a clean out to which Owner/General Contractor will terminate the site sewer service.

**Testing of Water, Sewer, and Electrical in Plant and Final Site Utility Connection:**

Before the building leaves the manufacturing center, Public Restroom Company certifies a pressure water piping test, DWV, and the electrical connections for compliance with code. While the building is fully tested for leaks at the plant before shipment, road vibration may loosen some plumbing slip fittings and require tightening once the building services (water) is completed. The City is responsible for minor fitting tightening to handle small slip fitting leaks caused by transportation.

**Time of Completion:**

Public Restroom Company estimates a 240 calendar day schedule to complete our scope of work from receipt of written notice to proceed together with signed approved architectural submittals from all authorities required to approve them.

**Exclusions:**

1. Access issues for delivery of the building by a clear unobstructed path of travel from an improved roadway to the final installation pad or foundation may cause site delays and extra cost at each site. This exclusion covers sites whose access is limited by trees, inaccessible roadways, overhead power lines at location where crane will lift building, grade changes disallowing our delivery trailers with only 4" of clearance to grade, berms, or uneven site grades, or when the path of travel is over improvements such as sidewalks, all of which are not within the scope of work by PRC. On some sites without on-site storage availability for buildings that cannot be set, relocation to a proximal crane yard and later relocated to the site for installation, will incur additional fees at rates that vary depending on local rates. PRC will provide written costs for this additional work by change order.
2. If weather on site causes site delivery issues, the delivery may have to be diverted to an off-site location and the additional costs will be a change order to the bid. Our staff works with the Owner/General Contractor in advance to make sure sound decisions for delivery are made to avoid this issue. But sometimes Owner/General Contractor take risks for weather, but this risk is clearly at the Owner/General Contractor risk, not PRC.
3. Sidewalks outside the building footprint.
4. Trench plates or matting needed for protection of site soils, sidewalks, hardscaping, or site utilities shall be the responsibility of the Owner/General Contractor. Any site soils damage or other site improvements if damaged during installation shall be the responsibility of the Owner/General Contractor.
5. Not responsible for removing any soil, sand, or other debris as a result of trenching or installation.

6. Survey, location of building corners, finish floor elevation, excavation, and construction of subgrade building pad and footings (if required) per PRC plans.
7. Soil conditions not suitable for bearing a minimum of 1500 PSF with compaction to 90% maximum dry density shall require Owner/General Contractor correction before building placement. If no soils testing report is available before bid, Owner/General Contractor must verify site supporting soils at a minimum of 1500 PSF because that is the least we can place our structures on or Owner/General Contractor or engineer of record must design a foundation system to meet the imposed loads of site placement.
8. Improper water pressure, an undersized meter, or improper water volume flow to the building may necessitate a change order for installation of a building internal diaphragm tank to provide the minimum flow rate and static pressure of up to 60 PSI and a minimum of 40 PSI to properly flush the fixtures. Building water service chlorination, post installation, shall be by Owner/General Contractor.
9. PRC's bid included crane costs are based on a maximum 35' radius from the center pin of the crane (10' back from the rear of the crane) to the building center point of the furthest building module roof. If additional distance requires a larger crane, additional costs will be assessed by change order to the Owner/General Contractor.
10. Bonds, building permits, a site survey, special inspection fees, minor trash removal (nominally one pickup truck of shipping materials), final utility connections to the on-site water, sewer and electrical are by the Owner/General Contractor. Since the building is fully inspected and tested in plant, minor plumbing leaks (if water is not available when building site work installation is completed) is by the Owner/ General Contractor. PRC shall have a current City of Temecula Business License.
11. Site Traffic Control, if applicable, shall be by Owner/ General Contractor, not PRC.
12. Any equipment installation, site work or special inspections other than described within this proposal, shall be by Owner/General Contractor.
13. Backflow certification if applicable by Owner/ General Contractor.

**Insurance and Prevailing Wage Certification:**

PRC shall comply with the required insurance requirements, wage reports, and safety requirements for the project, including OSHA regulations.

**Special Insurance to protect the Building before acceptance:**

As PRC requires payment for each month of off-site construction, and since the building is not on owner property where their insurance will cover the building, we maintain a special policy that insures the property even when paid for off-site until the building is finally accepted by the owner. This special policy protects the Owner's custom ordered materials to be used in the fabrication of the building during this period. PRC provides this Stock Throughput Policy to cover the building materials from supplier to manufacturer, while it is being built off-site, while in transit to the job site, during and after it is installed on-site until final acceptance. This special policy has a \$1,000,000 coverage limit. This exceeds the cost of any single building we have offered for sale herein.

**Errors and Omissions Insurance:**

Our firm employs licensed architects, engineers, and drafting staff to provide design of our buildings. Since these buildings are required to meet accessibility standards and building codes on site, and since we are the designer, we carry Errors and Omissions Insurance (E & O) to protect our clients from any errors. The policy covers a limit of up to \$2,000,000 per occurrence and is more clearly explained in the insurance certificates we provide after receipt of a purchase order.

## **WARRANTY**

All work performed by PUBLIC RESTROOM COMPANY (called "Company") shall be warranted to the Owner to be of good quality, free of faults and defects in material, workmanship, and title for 5 years from last date of installation if building is installed by Company or 1 year if building is installed by Owner or Owner's agent without on-site supervision by Company. Company warranty on building shell including exterior walls, concrete 8" slab/foundation, and roof system is warranted for 20 years structurally. The Company will repair or replace at their sole option any defects in work upon proper notice to the below stated address below.

Our Company extended warranties shall be Company only and shall have no effect on any required Performance, Payment, or Warranty Bonds where Surety shall assume no liability to the Company, the Owner, or any third parties should the Company fail for any reason to deliver acceptable maintenance warranties beyond the one year period. The warranty extension is solely between the owner and PRC and not the general contractor, bonding company, or architect/engineer of record.

This warranty applies only if all work performed by Company has been fully paid for, including change orders if applicable. Company has no responsibility for any neglect, abuse, or improper handling of building product.

The warranties expressed herein are exclusive, and are in lieu of all other warranties expressed or implied, including those of merchantability and fitness. There are no warranties which extend beyond those described on the face of this Warranty. The foregoing shall constitute the full liability of the Company and be the sole remedy to the Owner.

### **Term of Offer to Sell and Owner/General Contractor Acceptance:**

This offer is valid for acceptance within 30 days, or when a part of a public bid for the applicable duration imposed within the Owner's bid documents. Acceptance is by approving our post bid preliminary notice to begin drawings subject to final Owner/General Contractor approval of our submittals and receipt of a contract or a purchase order/contract.

### **Special Notice of Possible Project Cost Increases as a Result of Late Payments:**

In the event of delayed or late payment, PRC shall have the right to remedies including late charges, overall project total cost increases, and other damages as allowed by applicable law. The contract price quoted herein is a discounted price based upon our receipt of progress payments as invoiced on the agreed billing schedule of PRC. In the event of non-payment, PRC will provide a 5 day written notice to cure and if payment is still not received, the discounted price for the payment due may increase, to an undetermined amount, to cover work stoppage, remobilization, cancellation of materials and subsequent restocking charges, resale of the contracted building to another party, storage fees, additional crane fees, travel and per diem costs for field crews, and any other cost applicable to the project, as allowed by law. Interest if applicable to non-payment will be assessed at the maximum amount allowed by law or 18% whichever is greater.

### **Termination**

Upon Termination for any reason, Owner/General Contractor shall be liable for the cost of all work performed up to the date of termination. Additionally, Owner/General Contractor shall pay for off-site demolition and disposal of the partially or fully fabricated building as well as any non-returnable materials which were custom-ordered

to complete fabrication in PRC's factory location. Any returned materials are subject to return and restocking fees at the Owner/General Contractor expense.