

AGREEMENT BETWEEN COUNTY OF MONTEREY AND CONTRACTOR

This AGREEMENT is made and entered into by and between the County of Monterey, a political subdivision of the State of California, hereinafter referred to as “County”, and Mobile Modular, hereinafter referred to as “CONTRACTOR” (each individually referred to as, “party”, and collectively referred to as, “the Parties”) and is effective as of the last date opposite the respective signatures below.

RECITALS

WHEREAS, County wishes to purchase a pre-engineered, prefabricated mobile storage unit to serve as institutional storage required by the Board of State and Community Corrections (BSCC) for the Probation Department’s New Juvenile Hall Project 8811 (Project);

WHEREAS, due to limited time and funding, County researched multiple procurement options that would provide the best value to the County;

WHEREAS, County has confirmed the necessary goods and ancillary services are available to local agencies under General Services Administration (GSA) Schedule 56 for Building and Building Materials including Pre-Engineered and Prefabricated Buildings using a piggyback contract procurement effort which will extend the same pricing to the County;

WHEREAS, piggybacking applies to contracts issued by individual governmental entities that allow other jurisdictions to use the contract (i.e., to “piggyback” on the contract terms and prices) established;

WHEREAS, County must include piggyback language in the contract, and CONTRACTOR must agree;

WHEREAS, CONTRACTOR’s proposal to County includes prices consistent with GSA Schedule 56 for Building and Building Materials including Pre-Engineered and Prefabricated Buildings;

WHEREAS, the Parties understand and agree to engage in said piggyback contract procurement effort which shall extend the same GSA Schedule 56 pricing to County;

WHEREAS, an extended formal bidding process to complete Phase 2B of the Project would result in Project delays and add significant cost and potential risks of liability to the County;

WHEREAS, County has determined that goods and services which have been competitively bid and awarded under GSA Schedule 56 are the best value to the County;

WHEREAS, CONTRACTOR has submitted a responsive and responsible proposal to perform such services under this AGREEMENT;

WHEREAS, this AGREEMENT is entered into based on CONTRACTOR's proposal to extend best value pricing to County through the piggybacking of said best value pricing under GSA Schedule 56; and

WHEREAS, CONTRACTOR has the expertise and capabilities necessary to provide the services requested.

NOW THEREFORE, County and CONTRACTOR, for valuable consideration as set forth below, agree as follows:

1.0 PERFORMANCE OF THE AGREEMENT

1.1 After consideration and evaluation of the CONTRACTOR'S proposal, the County hereby engages CONTRACTOR to provide the services set forth in this AGREEMENT on the terms and conditions contained herein. The intent of this AGREEMENT is to summarize the contractual obligations of the parties. The component parts of this AGREEMENT include the following:

This AGREEMENT including all its attachments, Exhibits and Appendix

CONTRACTOR'S Proposal dated [Pending Final Proposal] attached hereto as Exhibit "A" and incorporated herein by reference ("CONTRACTOR's Proposal")

Certificate of Insurance Additional Insured Endorsements

Payment and Performance Bonds

1.2 All of the above-referenced contract documents are intended to be complementary. Work required by one of the above-referenced contract documents and not by others shall be done as if required by all. In the event of a conflict between or among component parts of the contract, the contract documents shall be construed in the following order: AGREEMENT including CONTRACTOR'S Proposal, and all other Attachments, Exhibits and Appendix to the extent explicitly incorporated herein and attached hereto, Certificate of Insurance, and Additional Insured Endorsements.

1.3 CONTRACTOR warrants that CONTRACTOR and CONTRACTOR's agents, employees, and subcontractors performing services under this AGREEMENT are specially trained, experienced, competent, and appropriately licensed to perform the work and deliver the services required under this AGREEMENT and are not employees of the County, or immediate family of an employee of the County.

1.4 CONTRACTOR, its agents, employees, and subcontractors shall perform all work in a safe and skillful manner and in compliance with all applicable laws and regulations. All work performed under this AGREEMENT that is required by law to be performed or supervised by licensed personnel shall be performed in accordance with such licensing requirements.

S1.4.1 CONTRACTOR must maintain all licenses throughout the term of the AGREEMENT.

1.5 CONTRACTOR shall furnish, at its own expense, all materials, equipment, and personnel necessary to carry out the terms of this AGREEMENT, except as otherwise specified in this AGREEMENT. CONTRACTOR shall not use County premises, property (including equipment, instruments, or supplies) or personnel for any purpose other than in the performance of its obligations under this AGREEMENT.

2.0 SCOPE OF SERVICE

Refer to CONTRACTOR'S Proposal, attached hereto as Exhibit A for CONTRACTOR'S detailed scope of work ("Work") and specifications of the modular building sold hereunder ("Equipment").

3.0 TERM OF AGREEMENT

3.1 The initial term shall commence with the signing of this AGREEMENT through and including June 30, 2021

3.2 Both parties shall agree upon term extension(s) or changes in writing.

3.3 County acknowledges and agrees that the Equipment is made specifically for County and that all sales are final and non-refundable. Any requests by County to cancel the purchase of the Equipment or reschedule the delivery and installation thereof may not be accepted by CONTRACTOR. Acceptance of any such cancellation or rescheduling shall be made in CONTRACTOR'S sole discretion and approved by CONTRACTOR in writing. In the event of a CONTRACTOR-approved cancellation or rescheduling, County shall reimburse CONTRACTOR for all of the costs and expenses incurred by CONTRACTOR prior to and/or as a result of such cancellation or rescheduling, including but not limited to, production costs, manufacturing costs, material costs and restocking costs as a result of County's cancellation or rescheduling, plus a markup of fifteen percent (15%) for overhead and profit.

4.0 COMPENSATION AND PAYMENTS

4.1 It is mutually understood and agreed by both parties that CONTRACTOR shall be compensated under this AGREEMENT in accordance with the Proposal attached hereto and

any mutually accepted written change orders.

4.2 Prices for the products and services specified in CONTRACTOR'S Proposal shall remain firm, except in the event that County delays the purchase, delivery or installation of the Equipment and such delay results in increases in CONTRACTOR'S costs and expenses of performance of its obligations hereunder.

4.3 CONTRACTOR shall levy no additional fees or surcharges of any kind during the term of this AGREEMENT without first obtaining approval from County in writing.

4.4 Tax: Pricing as per this AGREEMENT is inclusive of all applicable taxes. County is registered with the Internal Revenue Service, San Francisco office, and registration number 94-6000524. The County is exempt from Federal Transportation Tax; an exemption certificate is not required where shipping documents show Monterey County as consignee.

4.5 County agrees to pay CONTRACTOR the full sum of this AGREEMENT in accordance with the following payment schedule ("Payment Schedule"). CONTRACTOR shall submit invoices to the County at the following intervals:

- (a) twenty-five percent (25%) deposit invoiced within five (5) business days of execution of this AGREEMENT;
- (b) twenty-five percent (25%) at start of construction, twenty-five percent (25%) invoiced upon delivery;
- (c) twenty-five percent (25%) upon Substantial Completion of CONTRACTOR'S Work;
- (d) five percent (5%) invoiced upon completion of punchlist items. County agrees to pay each invoice so submitted Net 30 days from the date of receipt thereof, subject to review and acceptance by County that invoiced amount matches the value of work performed to date.

S5.0 INVOICES AND PURCHASE ORDERS

5.1 Invoices for all services rendered per this AGREEMENT shall be billed electronically directly to the department at the following address:

5.2 CONTRACTOR shall submit invoices in accordance with the payment schedule set forth in 4.5. The invoice shall set forth the amounts claimed by CONTRACTOR for the previous period, together with an itemized basis for the amounts claimed, and such other information pertinent to the invoice. County shall promptly submit each invoice to County Auditor-Controller for payment. County Auditor-Controller shall pay the amount certified on the schedule set forth in S4.7 within 30 days of receiving the certified invoice.

5.3 All County of Monterey Purchase Orders issued for the AGREEMENT are valid only during the fiscal year in which they are issued (the fiscal year is defined as July 1 through June 30).

5.4 Unauthorized Surcharges or Fees: Invoices containing unauthorized surcharges or unauthorized fees of any kind shall be rejected by County. Surcharges and additional fees not included in the AGREEMENT must be approved by County in writing via an Amendment or a Change Order (defined below).

6.0 INDEMNIFICATION; RISK OF LOSS

6.1 CONTRACTOR shall indemnify, defend, and hold harmless County, its officers, agents, and employees, from and against any and all third-party claims, liabilities, and losses whatsoever (including damages to property and injuries to or death of persons, court costs, and reasonable attorneys' fees) to the extent occurring or resulting from the negligence or willful misconduct of CONTRACTOR, its employees, subcontractors or agents in the performance of this AGREEMENT.

6.2 County shall indemnify, defend, and hold harmless CONTRACTOR, its officers, agents and employees, from and against any all third-party claims, liabilities, and losses whatsoever (including damages to property and injuries to or death of persons, court costs, and reasonable attorneys' fees) to the extent occurring or resulting from the negligence or willful misconduct of County, including its employees, other contractors, or agents, in connection with this Agreement.

6.3 In no event shall either party be responsible for claims, liabilities or losses resulting from the other party's sole or gross negligence or willful misconduct. Each party's duty of indemnification shall be in proportion to its allocated share of joint negligence.

6.4 All risk of loss or damage to the Equipment shall transfer to County on the date upon which the Equipment is accepted by the County per Section 18.0 Substantial Completion. County agrees to indemnify, defend and hold CONTRACTOR harmless from any loss resulting from theft, destruction or damage to the Equipment occurring on or following the date of Substantial Completion. Any loss of or damage to the Equipment occurring on or following the date of Substantial Completion (excluding damages caused solely by CONTRACTOR'S negligence) shall not alleviate County's obligation to pay CONTRACTOR any remaining balance of the sum of the Agreement existing at the time of the loss.

7.0 INSURANCE REQUIREMENTS

7.1 Evidence of Coverage:

7.1.1 Prior to commencement of this AGREEMENT, CONTRACTOR shall provide a "Certificate of Insurance" certifying that coverage as required herein has been obtained. Individual endorsements executed by the insurance carrier shall accompany the certificate. In addition, CONTRACTOR upon request shall provide a copy of the policy or policies

required by this AGREEMENT

7.1.2 This verification of coverage shall be sent to the County's Contracts/Purchasing Department, unless otherwise directed. CONTRACTOR shall not receive a "Notice to Proceed" with the work under this AGREEMENT until it has obtained all insurance required and such, insurance has been approved by County. This approval of insurance shall neither relieve nor decrease the liability of CONTRACTOR.

7.2 Qualifying Insurers: All coverages, except surety, shall be issued by companies which hold a current policy holder's alphabetic and financial size category rating of not less than A-VII, according to the current Best's Key Rating Guide or a company of equal financial stability that is approved by County's Purchasing Officer.

7.3 Insurance Coverage Requirements: Without limiting CONTRACTOR's duty to indemnify, CONTRACTOR shall maintain in effect throughout the term of this AGREEMENT a policy or policies of insurance with the following minimum limits of liability:

7.3.1 Commercial general liability insurance, including but not limited to premises and operations, including coverage for Bodily Injury and Property Damage, Personal Injury, Contractual Liability, Broadform Property Damage, Independent Contractors, Products and Completed Operations, with a combined single limit for Bodily Injury and Property Damage of not less than \$1,000,000 per occurrence.

7.3.2 Business automobile liability insurance, covering all motor vehicles, including owned, leased, non-owned, and hired vehicles, used in providing services under this AGREEMENT, with a combined single limit for Bodily Injury and Property Damage of not less than \$1,000,000 per occurrence.

7.3.3 Workers' Compensation Insurance, if CONTRACTOR employs others in the performance of this AGREEMENT, in accordance with California Labor Code section 3700 and with Employer's Liability limits not less than \$1,000,000 each person, \$1,000,000 each accident and \$1,000,000 each disease.

7.4 Other Insurance Requirements:

7.4.1 All insurance required by this AGREEMENT shall be with a company reasonably acceptable to County and issued and executed by an admitted insurer authorized to transact Insurance business in the State of California. Unless otherwise specified by this AGREEMENT, all such insurance shall be written on an occurrence basis, or, if the policy is not written on an occurrence basis, such policy with the coverage required herein shall continue in effect for a period of three years following the date CONTRACTOR completes its performance of services under this AGREEMENT.

7.4.2 Each liability policy shall provide that County shall be given notice in writing at least thirty days in advance of any endorsed reduction in coverage or limit, cancellation, or intended non-renewal thereof. Each policy shall provide coverage for CONTRACTOR

and additional insureds with respect to claims arising from each subcontractor, if any, performing work under this AGREEMENT, or be accompanied by a certificate of insurance from each subcontractor showing each subcontractor has identical insurance coverage to the above requirements.

7.4.3 Commercial general liability and automobile liability policies shall provide an endorsement naming the County of Monterey, its officers, agents, and employees as Additional Insureds with respect to liability arising out of the CONTRACTOR'S work, including ongoing and completed operations, and shall further provide that such insurance is primary insurance to any insurance or self-insurance maintained by the County with respect to CONTRACTOR's scope of work only and that the insurance of the Additional Insureds shall not be called upon to contribute to a loss covered by the CONTRACTOR'S insurance with respect to CONTRACTOR's scope of work only. The required endorsement form for Commercial General Liability Additional Insured is ISO Form CG 20 10 11-85 or CG 20 10 10 01 in tandem with CG 20 37 10 01 (2000). The required endorsement form for Automobile Additional Insured endorsement is ISO Form CA 20 48 02 99.

7.4.4 Prior to the execution of this AGREEMENT by County, CONTRACTOR shall file certificates of insurance with County's contract administrator and County's Contracts/Purchasing Division, showing that CONTRACTOR has in effect the insurance required by this AGREEMENT. CONTRACTOR shall file a new or amended certificate of insurance within five calendar days after any change is made in any insurance policy, which would alter the information on the certificate then on file. Acceptance or approval of insurance shall in no way modify or change the indemnification clause in this AGREEMENT, which shall continue in full force and effect.

7.4.5 CONTRACTOR shall at all times during the term of this AGREEMENT maintain in force the insurance coverage required under this AGREEMENT and shall send, without demand by County, annual certificates to County's Contract Administrator and County's Contracts/Purchasing Division. If the certificate is not received by the expiration date, County shall notify CONTRACTOR and CONTRACTOR shall have five calendar days to send in the certificate, evidencing no lapse in coverage during the interim. Failure by CONTRACTOR to maintain such insurance is a default of this AGREEMENT, which entitles County, at its sole discretion, to terminate this AGREEMENT immediately.

7.5 CONTRACTOR shall procure and maintain, at its sole expense (including all premiums, deductibles and self-insured retentions), the following types and amounts of insurance coverage:

7.5.1 Course of Construction Property insurance written on a builder's risk "all-risks" completed value or equivalent policy form, covering the loss, theft, destruction or damage to the Equipment in an amount not less than the total sum of the Agreement (and with a deductible no higher than \$25,000), covering the Equipment during transportation, installation, storage (on or off-site), and staging thereof, and covering all property of CONTRACTOR (including CONTRACTOR'S tools, materials, equipment and other

personal property) located at the project site during performance of CONTRACTOR'S Work at the project site, naming CONTRACTOR as loss payee of the proceeds. This insurance shall include the interests of the County, CONTRACTOR, and CONTRACTOR'S lower-tiered subcontractors and suppliers in the performance of CONTRACTOR'S Work as insureds. The property insurance required by this Section S7.5.1 shall be maintained by CONTRACTOR from the date of this Agreement through and including Final Completion of CONTRACTOR'S Work as defined in Section 19.

8.0 RECORDS AND CONFIDENTIALITY

8.1 Confidentiality: CONTRACTOR and its officers, employees, agents, and subcontractors shall comply with any and all federal, state, and local laws, which provide for the confidentiality of records and other information. CONTRACTOR shall not disclose any confidential records or other confidential information received from the County or prepared in connection with the performance of this AGREEMENT, unless County specifically permits CONTRACTOR to disclose such records or information or such disclosure is required by applicable law, including without limitation any subpoena or court order. CONTRACTOR shall promptly transmit to County any and all requests for disclosure of any such confidential records or information. CONTRACTOR shall not use any confidential information gained by CONTRACTOR in the performance of this AGREEMENT except for the sole purpose of carrying out CONTRACTOR's obligations under this AGREEMENT.

8.2 County Records: When this AGREEMENT expires or terminates, CONTRACTOR shall return to County any County records which CONTRACTOR used or received from County to perform services under this AGREEMENT.

8.3 Maintenance of Records: CONTRACTOR shall prepare, maintain, and preserve all reports and records that may be required by federal, state, and County rules and regulations related to services performed under this AGREEMENT.

8.4 Access to and Audit of Records: County shall have the right to examine, monitor and audit all records, documents, conditions, and activities of CONTRACTOR and its subcontractors related to services provided under this AGREEMENT. Pursuant to Government Code section 8546.7, if this AGREEMENT involves the expenditure of public funds in excess of \$10,000, the parties to this AGREEMENT may be subject, at the request of County or as part of any audit of County, to the examination and audit of the State Auditor pertaining to matters connected with the performance of this AGREEMENT for a period of three years after final payment under the AGREEMENT.

9.0 NON-DISCRIMINATION

9.1 During the performance of this AGREEMENT, CONTRACTOR shall not unlawfully

discriminate against any employee or applicant for employment because of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, age (over 40), sex, or sexual orientation. CONTRACTOR shall ensure that the evaluation and treatment of its employees and applicants for employment are free of such discrimination. CONTRACTOR shall comply with the provisions of the Fair Employment and Housing Act (Government Code, §12900, et seq.) and the applicable regulations promulgated thereunder (California Code of Regulations, Title 2, §7285.0, et seq.).

9.2 The applicable regulations of the Fair Employment and Housing Commission implementing Government Code, §12900, et seq., set forth in Chapter 5 of Division 4 of Title 2 of the California Code of Regulations are incorporated into this AGREEMENT by reference and made a part hereof as if set forth in full.

9.3 CONTRACTOR shall include the non-discrimination and compliance provisions of the clause in all contracts with subcontractors to perform work under this AGREEMENT.

10.0 OVERRIDING CONTRACTOR PERFORMANCE REQUIREMENTS

10.1 Independent Contractor: CONTRACTOR shall be an independent contractor and shall not be an employee of Monterey County, nor immediate family of an employee of County. CONTRACTOR shall be responsible for all insurance (General Liability, Automobile, Workers' Compensation, unemployment, etc.,) and all payroll-related taxes. CONTRACTOR shall not be entitled to any employee benefits. CONTRACTOR shall control the manner and means of accomplishing the result contracted for herein.

10.2 Non-Assignment: CONTRACTOR shall not assign this AGREEMENT or the work required herein without the prior written consent of County.

10.3 Any and all subcontractor shall comply with all County requirements, including but not limited to insurance and indemnification requirements required pursuant to this AGREEMENT.

11.0 CONFLICT OF INTEREST

11.1 CONTRACTOR covenants that it presently has no interest, and shall not have any interest, direct or indirect, which would conflict in any manner with the performance of services required under this AGREEMENT. Without limitation, CONTRACTOR represents to and agrees with COUNTY that CONTRACTOR has no present, and will have no future, conflict of interest between providing COUNTY services hereunder and any other person or entity (including but not limited to any federal or state environmental or regulatory agency) which has any interest adverse or potentially adverse to COUNTY, as determined in the reasonable judgment of the Board of Supervisors of COUNTY.

11.2 CONTRACTOR agrees that any information, whether proprietary or not, made known to or discovered by it during the performance of or in connection with this AGREEMENT for COUNTY will be kept confidential and not be disclosed to any other person. CONTRACTOR agrees to immediately notify COUNTY in accordance with the Notices Section of this AGREEMENT, if it is requested to disclose any information made known to or discovered by it during the performance of or in connection with this AGREEMENT. These conflict of interest and future service provisions and limitations shall remain fully effective five (5) years after termination of services to COUNTY hereunder.

12.0 COMPLIANCE WITH APPLICABLE LAWS

12.1 CONTRACTOR shall keep itself informed of and in compliance with all federal, state and local laws, ordinances, regulations, and orders, including but not limited to all state and federal tax laws that may affect in any manner the Project or the performance of the Services or those engaged to perform Services under this AGREEMENT. CONTRACTOR shall procure all transportation permits and other licenses required for Equipment delivery and installation Work including contractor's licenses, pay all charges and fees, and give all notices required by law in the performance of the Services. County shall obtain all required building permits.

12.2 CONTRACTOR shall report promptly to County's Contracts/Purchasing Officer, in writing, any discrepancy or inconsistency it discovers in the laws, ordinances, regulations, orders, and/or guidelines in relation to the Project of the performance of the Services.

12.3 All documentation prepared by CONTRACTOR shall provide for a completed project that conforms to all applicable codes, rules, regulations and guidelines that are in force at the time such documentation is prepared.

12.4 County assumes all responsibility for any and all licenses, clearances, permits and other certificates as may be required for County's lawful operation, use possession and occupancy of the Equipment. County agrees to fully comply with all laws, rules, regulations and orders of all local, state and federal governmental authorities which in any way relate to the Equipment; and to indemnify and hold CONTRACTOR harmless from any and all fines, forfeitures, seizures, penalties or other liabilities that may arise from any infringement or violation of any such law, rule, regulation or order.

13.0 DRUG FREE WORKPLACE

CONTRACTOR and CONTRACTOR'S employees shall comply with the COUNTY'S policy of maintaining a drug free workplace. Neither CONTRACTOR nor CONTRACTOR'S employees shall unlawfully manufacture, distribute, dispense, possess or use controlled substances, as defined in 21 U.S. Code § 812, including, but not limited to, marijuana, heroin, cocaine, and amphetamines, at any COUNTY facility or work site. If CONTRACTOR or any

employee of CONTRACTOR is convicted or pleads nolo contendere to a criminal drug statute violation occurring at a COUNTY facility or work site, the CONTRACTOR shall, within five days thereafter notify the head of the COUNTY department/agency for which the AGREEMENT services are performed. Violation of this provision shall constitute a material breach of this AGREEMENT.

14.0 TIME OF ESSENCE

Time is of the essence in respect to all provisions of this AGREEMENT that specify a time for performance; provided, however, that the foregoing shall not be construed to limit or deprive a party of the benefits of any grace or use period allowed in this AGREEMENT.

15.0 PERFORMANCE ASSURANCE AND WAIVER OF BREACH

15.1 Assurance of Performance: If at any time County believes CONTRACTOR may not be adequately performing its obligations under this AGREEMENT or that CONTRACTOR may fail to complete the Services as required by this AGREEMENT, County may request from CONTRACTOR prompt written assurances of performance and a written plan acceptable to County, to correct the observed deficiencies in CONTRACTOR'S performance. CONTRACTOR shall provide such written assurances and written plan within ten (10) calendar days of its receipt of County's request and shall thereafter diligently commence and fully perform such written plan. CONTRACTOR acknowledges and agrees that any failure to provide such written assurances and written plan within the required time is a material breach under this AGREEMENT. If County accepts the plan it shall issue a signed waiver.

15.1.1 Waiver: No waiver of a breach, failure of any condition, or any right or remedy contained in or granted by the provisions of this AGREEMENT shall be effective unless it is in writing and signed by the party waiving the breach, failure, right or remedy. No waiver of any breach, failure, right or remedy shall be deemed a waiver of any other breach, failure, right or remedy, whether or not similar, nor shall any waiver constitute a continuing waiver unless the writing so specifies.

16.0 CHANGE ORDERS

Changes in the Work following execution of this Agreement, consisting of additions, deletions or other revisions not already specified in this Agreement (including the Proposal), may be authorized only by written change order ("Change Order") signed by CONTRACTOR and County in advance of the changed Work being performed; provided, however, in the event of an emergency affecting health, safety or in the event that CONTRACTOR is notified of required changes in the Work pursuant to the requirements of any city or county agency, inspector (including but not limited to the Building Department), or other applicable governmental, quasi-governmental or other entity having jurisdiction over the Work or the

project site (“Authorities Having Jurisdiction”), CONTRACTOR shall be permitted to proceed with such change in the Work upon receipt of written consent from the County’s representative and County agrees to execute a written Change Order promptly thereafter (but no later than seventy-two (72) hours from time said emergency is brought to the attention of County by CONTRACTOR). For additional Work performed by CONTRACTOR in accordance with this Section, adjustments in the sum of the AGREEMENT and project schedule resulting from the change in the Work shall be determined by mutual agreement of the Parties (not to be unreasonably withheld). Except in the event of an above-referenced emergency, the adjustment to the sum of the AGREEMENT and project schedule shall be determined before the change in the Work is performed, and such amount, including CONTRACTOR’s usual fee for overhead and profit, shall be paid as the change in the Work progresses, concurrently with payments made for the prior Work in accordance with the Payment Schedule.

17.0 WARRANTY

17.1 WARRANTY ON THE WORK. With respect to the performance of the installation Work, CONTRACTOR warrants, for a period of twelve (12) months from the date of Substantial Completion, that the Work will be performed in a workmanlike manner in accordance with generally accepted construction practices for similar projects in the place where the project site is located, free of defects in materials and workmanship.

17.2 WARRANTY ON THE EQUIPMENT. With respect to Equipment manufactured by CONTRACTOR, if any, CONTRACTOR warrants, for a period of twelve (12) months from the date of manufacture, that the Equipment shall be free from defects in materials and workmanship. With respect to Equipment not manufactured by CONTRACTOR, CONTRACTOR shall cause any manufacturer(s) warranties to be transferred (to the extent transferrable) to County from CONTRACTOR upon CONTRACTOR’s receipt of Final Payment for the Work.

17.3 REPLACEMENT OR REPAIR. CONTRACTOR’s liability under the foregoing CONTRACTOR warranties shall be limited to the replacement or repair (during CONTRACTOR’s normal working hours), at CONTRACTOR’s option, of the applicable Equipment or the Work; provided, however, that County shall provide written notice of any warranty claim to CONTRACTOR within five (5) calendar days after discovery, and failure to provide such notice in a timely manner may result in a limitation of this warranty at CONTRACTOR’s option. County shall grant reasonable access to the Equipment and Work for such replacement or repairs.

17.4 EXCLUSIONS. CONTRACTOR’s warranties exclude growth, infestation or spread of mold, mildew or other fungal, bacterial or biological substances; equipment manufactured by individuals or entities other than CONTRACTOR; radon gas occurring on the Site; any Work or item purchased, furnished or installed by County or its own contractors; damages resulting from allowing sprinkler heads to spray onto exterior Equipment; damage or defect caused by improper application, improper or insufficient maintenance; damage caused by accident,

neglect, vandalism, abuse or acts of God; ordinary wear and tear; exposure to adverse operating or Hazardous Substances; or repairs or alterations to the Equipment or Work by anyone other than CONTRACTOR or its subcontractors or agents.

17.5 REMEDIES. CONTRACTOR shall respond within two (2) business days after being notified in writing by County of any Work or Equipment not in accordance with the requirements of the Contract or any defects in the Work or Equipment. CONTRACTOR shall commence and prosecute with due diligence all work necessary to fulfill the terms of this AGREEMENT, and to complete the work within a reasonable period of time. Contractor shall remove any defective Equipment rejected by County and replace it with Equipment that is not defective, and satisfactorily correct or remove and replace any damage to other Equipment or the work of others resulting therefrom. If CONTRACTOR fails to promptly comply with the terms of such instructions, or in an emergency where delay would cause serious risk of loss or damage, County may have the defective work corrected or the rejected Work or Equipment removed and replaced. CONTRACTOR shall pay for all claims, costs, losses and damages caused by or resulting from such removal and replacement. Where CONTRACTOR fails to correct defective work, or defects are discovered outside the correction period, County shall have all rights and remedies granted by law.

18.0 SUBSTANTIAL COMPLETION AND PUNCHLIST

“Substantial Completion” is the stage and the progress of the Work when the Work is sufficiently complete in accordance with this AGREEMENT so the County can occupy or utilize the Equipment for its intended use. Provided that CONTRACTOR has substantially completed its Work, the attainment of Substantial Completion under this AGREEMENT shall not be delayed by other work the County or its other contractors may be performing at the project site or by causes outside of the control of the CONTRACTOR. Warranties required by this Agreement shall commence on the date of Substantial Completion of the Work. When the CONTRACTOR considers that the Work is substantially complete, the CONTRACTOR shall prepare and submit to the County a comprehensive list of items to be completed or corrected prior to final payment (“Punch List”). Within five (5) calendar days following County’s receipt of the Punch List, the County will make an inspection and advise CONTRACTOR of any additional Punch List Work. Failure to inspect the Work or advise CONTRACTOR of any additional Punch List items within the foregoing time period shall be deemed a waiver of County’s right to add to the Punch List. The CONTRACTOR will then advise County of the time period in which CONTRACTOR will complete the Punch List (which shall be performed diligently and without delay).

19.0 FINAL COMPLETION AND FINAL PAYMENT

“Final Completion” is the stage of the Work when the Work, including all Punch List Work, is complete (except for CONTRACTOR’S responsibility to correct Work as provided in the Warranty provisions set forth herein and to satisfy other requirements, if any, which extend

beyond final payment) in accordance with this AGREEMENT. Upon receipt of CONTRACTOR'S notification to County that the Punch List Work is complete and the Work is ready for final inspection, County shall promptly (but no later than five (5) calendar days following receipt of such notice) inspect the Work. If County does not inspect the Work within such time or does not provide written notice to CONTRACTOR within five (5) calendar days following such final inspection of the Work, it shall be conclusively presumed between County and CONTRACTOR that County has inspected the Work, the Work is in conformance with this AGREEMENT, the Work has been accepted by County, and that Final Completion has been achieved. "Final Payment," constitutes the entire unpaid balance of the sum of the AGREEMENT, as adjusted by Change Orders issued in accordance with this AGREEMENT, if applicable, is due to CONTRACTOR in accordance with the payment terms specified in Section 4.0 Compensation and Payments.

20.0 TITLE

Title to the Equipment shall not pass to County until CONTRACTOR's receipt of the entire sum of the AGREEMENT, as may be adjusted by any agreed upon Change Order in accordance with this AGREEMENT. Upon CONTRACTOR's receipt of payment in full of the sum of the AGREEMENT, title to the Equipment shall transfer to County.

21.0 RIGHTS AND REMEDIES OF THE COUNTY FOR DEFAULT

In the case of material default (as defined below) by CONTRACTOR prior to delivery of the Equipment, County may procure the articles or services from other sources and may recover the loss occasioned thereby from any unpaid balance due to CONTRACTOR or by proceeding against any performance bond of CONTRACTOR, if any, or by suit against CONTRACTOR. The prices paid by County shall be considered the prevailing market price at the time such purchase(s) may be made. Inspections of deliveries or offers for deliveries that do not meet specifications shall be made at the expense of CONTRACTOR. The parties hereby agree that "material default" of CONTRACTOR is herein defined as CONTRACTOR'S failure to comply with the project schedule mutually agreed upon between the parties, including any mutually approved revisions thereto, provided that such failure is not caused or contributed to by the acts or failure to acts of County or its other contractors or agents or from events of Force Majeure, as defined below. Prior to exercising one or more of the remedies described above, County shall provide CONTRACTOR with written notice of such alleged default and CONTRACTOR shall have no fewer than ten (10) business days to cure such default.

22.0 DEBARMENT AND SUSPENSION

22.1 Applicable to all AGREEMENTS funded in part or whole with federal funds.

22.2 By signing this AGREEMENT CONTRACTOR agrees to comply with applicable federal

suspension and debarment regulations, including but not limited to Title 7 Code of Federal Regulations (CFR) 3016.35, 28 CFR 66.35, 29 CFR 97.35, 34 CFR 80.35, 45 CFR 92.35 and Executive Order 12549.

22.3 By signing this AGREEMENT, CONTRACTOR certifies to the best of its knowledge and belief, that it and its principals:

22.4 Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded by any federal department or agency; and

22.5 Shall not knowingly enter into any covered transaction with a person who is proposed for debarment under federal regulations, debarred, suspended, declared ineligible, or voluntarily excluded from participation in such transaction.

23.0 FORCE MAJEURE

23.1 "Force Majeure" means any cause beyond the reasonable control of a party, including but not limited to acts of God, civil or military disruption, fire, strike, flood, riot, war, earthquake, acts of public enemies, acts of terrorism, or inability due to the aforementioned causes to obtain necessary labor, materials or facilities.

23.2 Except for making payments when due, if any party hereto is delayed or prevented from fulfilling its obligations under this AGREEMENT by Force Majeure, said party will not be liable under this AGREEMENT for said delay or failure, nor for damages or injuries resulting directly from the inability to perform scheduled work due to Force Majeure.

23.3 CONTRACTOR shall be granted an automatic extension of time commensurate with any delay in performing scheduled work arising from Force Majeure. CONTRACTOR agrees to resume such work within three (3) days after the Force Majeure has subsided enough to do so.

24.0 PUBLIC WORKS OF IMPROVEMENT REQUIREMENTS

24.1 Prevailing Wages: If applicable, CONTRACTOR shall comply with provisions of the Labor Code (sections 1720, et seq.) governing public works, including payment of prevailing wages, payroll records and employment of apprentices. Copies of the determination of the general prevailing rate of per diem wages are available to interested parties at: <http://www.dir.ca.gov/dlsr/DPreWageDetermination.htm>.

24.2 Local Hiring per County of Monterey Code 5.08.120: All provisions included in County of Monterey Code 5.08.120 are applicable to this AGREEMENT, including but not limited to County of Monterey Code Section 5.08.120 General Provisions; Unless such a provision would conflict with a State or Federal law or regulation applicable to a particular contract for public works of improvement, all County contracts for public works of improvement shall contain

provisions pursuant to which the contractor promises to make a good-faith effort Exhibit B to hire qualified individuals who are, and have been for at least one year prior to the opening of bids, residents of the Monterey Bay Area in sufficient numbers so that no less than fifty (50) percent of the contractor's total construction work force, including any subcontractor work force, measured in labor work hours, is comprised of Monterey Bay Area residents. For the purpose of this Section, the following terms have the meanings indicated:

24.3 "Board" shall mean the Monterey County Board of Supervisors.

24.4 "Qualified individual" shall mean a person who is specially trained, skilled, and experienced in the work, trade, or craft specified in the portion of the public work of improvement to be performed or who is enrolled in a certified State or federally approved apprenticeship program in the applicable trade or who is a journey person in his or her applicable trade. "Resident of Monterey Bay Area" shall mean a person who resides within the boundaries of Monterey County, Santa Cruz County, or San Benito County.

25.0 BOND REQUIREMENTS

Contractor shall furnish a surety bond in an amount equal to one hundred percent (100%) of the contract sum as security for faithful performance of this Contract ("Performance Bond") and shall furnish a separate surety bond in an amount at least equal to one hundred percent (100%) of the contract sum as security for the payment of all persons performing labor and furnishing materials in connection with the contract ("Payment Bond"). Both the Performance Bond and the Payment Bond must be executed by an admitted surety insurer. The form of these bonds shall be as set forth in these Contract Documents.

26.0 NON-APPROPRIATIONS CLAUSE

Notwithstanding anything contained in this AGREEMENT to the contrary, if insufficient funds are appropriated, or funds are otherwise unavailable in the budget for County for any reason whatsoever in any fiscal year, for payments due under this AGREEMENT, County will immediately notify CONTRACTOR of such occurrence, and this AGREEMENT shall terminate after the last day during the fiscal year for which appropriations shall have been budgeted for County or are otherwise available for payments.

27.0 BACKGROUND CHECKS

27.1 CONTRACTOR shall be required to obtain State and Federal level criminal background clearance(s) for all personnel required to work within County facilities that are deemed restricted or high security, including but not limited to the Sheriff's Office, Probation

Department, 911 Center, and District Attorney's Office.

27.2 A California licensed Investigator must perform the required State level criminal background check(s) which must then be submitted to County prior to the personnel being allowed to work within such County facilities. CONTRACTOR shall be responsible for the cost of these background check costs unless otherwise informed by County. In some circumstances, a specific County department may request that County Sheriff's Office perform the background checks.

27.3 All CONTRACTOR personnel who are designated to provide services at any of the County Sheriff's facilities are required to undergo fingerprinting and background checks through the Sheriff's main office specifically.

28.0 ACCESSIBILITY

CONTRACTOR shall inform himself by coordinating with County to identify any peculiarities and limitations of the spaces available for the installation of all work and materials furnished and installed under the AGREEMENT. CONTRACTOR shall exercise due and particular caution to determine that all parts of CONTRACTORS work are made quickly and easily accessible. County is responsible for ensuring that the site of placement of the Equipment is clear and accessible for delivery and installation of the Equipment and shall be responsible for additional charges in the event that additional labor or special equipment is required to facilitate the delivery and installation of the Equipment in the event that the site of placement is not readily clear and accessible.

29.0 CLEANUP

29.1 Cleanup: During performance and completion of work on this project CONTRACTOR shall remove all unused equipment and instruments of service, all excess or unsuitable material, trash, rubbish and debris, and legally dispose of same, unless otherwise directed by the AGREEMENT. CONTRACTOR shall leave entire area in a neat, clean and acceptable condition as approved by County.

29.2 Waste Removal: Once the collection of waste materials has commenced, CONTRACTOR has exercised control of and taken possession of the waste, and the assumption of risk and liability is solely with CONTRACTOR. County shall not take responsibility for the accidental or purposeful discharge or release of any waste material.

30.0 DAMAGE

CONTRACTOR shall be held responsible for any breakage, loss of County's equipment or supplies through negligence of CONTRACTOR or his employee while working on County's premises. CONTRACTOR shall be responsible for restoring/replacing any equipment, facilities, etc. so damaged. CONTRACTOR shall immediately report to County any damages to the premises resulting from services performed under this AGREEMENT.

31.0 NOTICES

Notices required to be given to the respective parties under this AGREEMENT shall be deemed given by any of the following means: (1) when personally delivered to County's contract administrator or to CONTRACTOR'S responsible officer; (2) when personally delivered to the party's principle place of business during normal business hours, by leaving notice with any person apparently in charge of the office and advising such person of the import and contents of the notice; three (3) days after the notice is deposited in the U. S. mail with first class or better postage fully prepaid, addressed to the party as indicated below.

Notices mailed or faxed to the parties shall be addressed as follows:

TO COUNTY:
Florence Kabwasa-Green
Project Manager III

County of Monterey
1441 Schilling Place
Salinas, CA 93901
Tel. No.: (831) 755-4805
Kabwasa-GreenFA@co.monterey.ca.us

TO CONTRACTOR:
Operations Manager
Address 5700 Las Positas Rd.
Livermore, CA 94551

Tel. No. (925) 606-9000

With a copy to:
McGrath RentCorp Legal Department
1830 W. Airfield Drive
Dallas, TX 75261

32.0 LEGAL DISPUTES

32.1 CONTRACTOR agrees that this AGREEMENT and any dispute arising from the relationship between the parties to this AGREEMENT, shall be governed and interpreted by the laws of the State of California, excluding any laws that direct the application of another jurisdiction's laws.

32.2 Any dispute that arises under or relates to this AGREEMENT (whether contract, tort, or both) shall be resolved in the Superior Court of California in Monterey County, California.

32.3 CONTRACTOR shall continue to perform under this AGREEMENT during any dispute.

32.4 The parties agree to waive their separate rights to a trial by jury. This waiver means that the trial will be before a judge.

33.0 MISCELLANEOUS PROVISIONS

33.1 The recitals to this AGREEMENT are incorporated into this AGREEMENT.

33.2 COMPLIANCE WITH TERMS OF STATE OR FEDERAL GRANTS:

If this AGREEMENT has been or will be funded with monies received by the County pursuant to a contract with the state or federal government in which the County is the grantee, CONTRACTOR will comply with all the provisions of said contract, to the extent applicable to CONTRACTOR as a subgrantee under said contract, and said provisions shall be deemed a part of this AGREEMENT, as though fully set forth herein. Upon request, County will deliver a copy of said contract to CONTRACTOR, at no cost to CONTRACTOR.

33.3 Amendment: This AGREEMENT may be amended or modified only by an instrument in writing signed by the county and the CONTRACTOR.

33.4 Waiver: Any waiver of any terms and conditions of this AGREEMENT must be in writing and signed by the County and the CONTRACTOR. A waiver of any of the terms and conditions of this AGREEMENT shall not be construed as a waiver of any other terms or conditions in this AGREEMENT.

33.5 Contractor: The term "CONTRACTOR" as used in this AGREEMENT includes CONTRACTOR's officers, agents, and employees acting on CONTRACTOR's behalf in the performance of this AGREEMENT.

33.6 Disputes: CONTRACTOR shall continue to perform under this AGREEMENT during any dispute.

33.7 Successors and Assigns: This AGREEMENT and the rights, privileges, duties, and obligations of the County and CONTRACTOR under this AGREEMENT, to the extent assignable or delegable, shall be binding upon and inure to the benefit of the parties and their respective successors, permitted assigns, and heirs.

33.8 Headings: The headings are for convenience only and shall not be used to interpret the terms of this AGREEMENT.

33.9 Time is of the Essence: Time is of the essence in each and all of the provisions of this AGREEMENT.

33.10 Non-exclusive Agreement: This AGREEMENT is non-exclusive and both County and CONTRACTOR expressly reserve the right to contract with other entities for the same or similar services.

33.11 Construction of Agreement: The County and CONTRACTOR agree that each party has fully participated in the review and revision of this AGREEMENT and that any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not apply in the interpretation of this AGREEMENT or any amendment to this AGREEMENT.

33.12 Counterparts: This AGREEMENT may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same Agreement.

33.13 Authority: Any individual executing this AGREEMENT on behalf of the County or the CONTRACTOR represents and warrants hereby that he or she has the requisite authority to enter into this AGREEMENT on behalf of such party and bind the party to the terms and conditions of this AGREEMENT.

33.14 Integration: This AGREEMENT, including the exhibits, represent the entire Agreement between the County and the CONTRACTOR with respect to the subject matter of this AGREEMENT and shall supersede all prior negotiations, representations, or agreements, either written or oral, between the County and the CONTRACTOR as of the effective date of this AGREEMENT, which is the date that the County signs the AGREEMENT.

33.15 Interpretation of Conflicting Provisions: In the event of any conflict or inconsistency between the provisions of this AGREEMENT and the Provisions of any exhibit or other attachment to this AGREEMENT, the provisions of this AGREEMENT shall prevail and control.

IN WITNESS WHEREOF, the Parties hereto have executed this AGREEMENT which shall be effective as of the last date opposite the respective signatures below.

COUNTY OF MONTEREY

CONTRACTOR*

By:

Contracts/Purchasing Officer

Contractor's Business Name

Date:

By:

(Signature of Chair, President or Vice President)

**Approved as to Form
Office of the County Counsel
Leslie J. Girard, County Counsel**

Its:

(Print Name and Title)

By:

Mary Grace Perry
Deputy County Counsel

Date:

By:

(Signature of Secretary, Asst. Secretary, CFO, Treasurer or Asst. Treasurer)

Date:

Its:

(Print Name and Title)

Approved as to Fiscal Provisions

Date:

By:

Auditor/Controller

Date:

**Approved as to Indemnity and Insurance Provisions
Office of the County Counsel-Risk Manager
Leslie J. Girard, County Counsel-Risk Manager**

By:

Name:

Title:

Date:

*INSTRUCTIONS: If CONTRACTOR is a corporation, including non-profit corporations, the full legal name of the corporation shall be set forth above together with the signatures of two (2) specified officers per California Corporations Code Section 313. If CONTRACTOR is a Limited Liability Corporation (LLC), the full legal name of the LLC shall be set forth above together with the signatures of two (2) managers. If CONTRACTOR is a partnership, the full legal name of the partnership shall be set forth above together with the signature of a partner who has authority to execute this Agreement on behalf of the partnership. If CONTRACTOR is contracting in an individual capacity, the individual shall set forth the name of the business, if any, and shall personally sign the Agreement or Amendment to said Agreement.