

CITY OF FOSTER CITY (OWNER)

610 Foster City Boulevard, Foster City, CA 94404

CONTRACT

Recreation Center Modular Buildings Project, DATE: May 20, 2024

1. Identification of Contractor.

CONTRACTOR: McGrath RentCorp DBA Mobile Modular Management Corporation

LICENSE NO: 450299

2. Scope of The Work.

See Scope of Work attached as Appendix A.

Compensation for Work. Contractor's total compensation for the Work performed under this Agreement (**Contract Sum**) is \$363,415.94, to be paid as (**check one**): (1) ☐ lump sum; (2) ☒ lump sum with progress payments; (3) ☐ per attached schedule of rates and charges, up to a guaranteed not-to-exceed amount of \$363,415.94. All payments (**check one**): ☒ shall ☐ shall not be subject to a five percent retention.

Contractor's hourly rates are listed in Exhibit A, Scope of Work and Cost Proposal. In the event payments to Contractor equal the "not to exceed" amount, and absent a written modification to this Agreement signed by the Owner, Contractor shall complete all services required under this Agreement without further compensation or cost reimbursement.

3. Schedule of Performance for the Work.

Contractor shall commence and complete the Work by the following dates:

Commencement Date shall be on the date established in the Notice to Proceed. Owner reserves the right to modify or alter the Commencement Date of the Work.

Substantial Completion Date: Within 35 calendar days of Commencement Date for the delivery, installation, and setup of the buildings.

Final Completion Date: Within 40 calendar days of Substantial Completion for the delivery, installation, and setup of the buildings.

Project Completion Date: Anticipated to be 22 months, but may be extended based on the bid price. Removal of the modular buildings shall be done in a timely manner following the rental period. This shall be no longer than 40 calendar days for removal.

3.01 Liquidated Damage Amounts.

A. As liquidated damages for delay Contractor shall pay Owner \$1000 for each Day that expires after the time specified herein for Contractor to achieve Substantial Completion of the entire Work, until achieved.

B. As liquidated damages for delay Contractor shall pay Owner \$1000 for each Day that expires after the time specified herein for Contractor to achieve Final Completion of the entire Work, until achieved.

3.02 Scope of Liquidated Damages

A. Contractor and Owner agree that because of the nature of the Project, it would be impractical or extremely difficult to fix the amount of such actual damages incurred by Owner because of a delay in completion of all or any part of the Work. Contractor and Owner agree that specified measures of liquidated damages shall be presumed to be the amount of such damages actually sustained by Owner, and that because of the nature of the Project, it would be impracticable or extremely difficult to fix the actual damages.

B. Liquidated damages for delay shall cover administrative, overhead, interest on bonds, and general loss of public use damages suffered by Owner as a result of delay. Liquidated damages shall not cover the cost of completion of the Work, damages resulting from Defective Work, lost revenues or costs of substitute facilities, or damages suffered by others who then seek to recover their damages

from Owner (for example, delay claims of other contractors, subcontractors, tenants, or other third-parties), and defense costs thereof. Owner may deduct from any money due or to become due to Contractor subsequent to time for completion of entire Work and extensions of time allowed pursuant to provisions hereof, a sum representing then-accrued liquidated damages.

4. Terms and Conditions.

4.01 Contractor shall perform the Work in accordance with the terms and conditions of this Agreement and the following attachments (together, **Contract Documents**):

- A.** Appendix A – Scope of Work
- B.** Appendix B – General Conditions
- C.** Appendix C – Insurance
- D.** Appendix D – Construction Performance Bond
- E.** Appendix E – Construction Labor and Materials Payment Bond
- F.** Appendix F – Supplemental Conditions
- G.** Appendix G – COVID-19 Amendment/Attachment
- H.** Appendix H – Rental Addendum

4.02 The Contract Documents are the sole and exclusive provisions that govern the Work described herein. Any provision contained in any purchase order issued in connection with this Agreement or the Work described herein shall be null and void and shall have no force or effect.

Agreement number must appear on all invoices and correspondence. Send invoices in duplicate immediately upon performance of Work ordered hereon to:

City of Foster City
610 Foster City Boulevard,
Foster City, CA 94404

CITY OF FOSTER CITY:

By: _____
Patrick Sullivan, Mayor

APPROVED AS TO FORM:

By: _____
Benjamin Stock, City Attorney

CONTRACTOR

Name: _____

By: _____
(signature)

Its: _____
Title (If Corporation: Chairman, President or Vice President)

By: _____
(signature)

Its: _____
Title (If Corporation: Chairman, President or Vice President)

1099 INFORMATION

Contractor Taxpayer I.D. No.: _____
Incorporated: ☐ Yes ☐ No

Appendix A to Contract

SCOPE OF WORK

Scope of work shall include all necessary labor, tools, personnel, and equipment to install the structures as shown on the attached drawings including but not limited to; furnishing and installing **(1) 48' x 40' modular trailer, (2) 24' x 40' trailers and (1) 12'x40' restroom trailer which will include male/female sections as shown in the enclosed documentation (site plan). The Restroom Modular shall contain men's and women's sections with a minimum of services as follows:**

Women's restroom 1 handicap accessible toilet, plus 4 regular toilets and 3 lavatories.

Men's restroom: 1 handicap accessible toilet plus two regular toilets, three urinals and 3 lavatories.

The trailers shall include block and leveling, delivery haulage permits, wet-stamped engineered foundation drawings, installation of foundation tie-downs compliant with city ordinance, installation of ADA ramps and access stairs to each of the modular buildings, installation of skirting to all modular buildings, outfitting of restrooms with toilets, mirrors and lavatories as well as the necessary support devices and installation (stub-outs and connections for electrical services, water and sewer) The city will provide the electrical connectivity as well as the water and sewer connectivity to the restroom modular, up to the modular buildings. The modular buildings shall provide a 125-amp single-phase connector for electrical connection. The restroom modular shall provide a 3" waste line connection and 1-1/4" copper connection for water. Each of the modular buildings shall be equipped with a stand-alone fire alarm notification system, horn and pull box, as well as battery operated smoke detectors and CO2 detectors. The windows shall all be furnished with window coverings/blinds, and the exterior doors shall be furnished with door bars and locksets for security. All wall panels shall feature electrical plugs, and the modular buildings shall be provided with the necessary HVAC systems to keep the modular buildings cool or warm as necessary during the summer and winter seasons.

The walls on the modular buildings shall be all freshly painted and the floors shall have a uniform color of the vinyl or carpet tiles. Although the modular buildings are not expected to be new, the expectation is that the wall paneling finishes and light fixtures will be presentable, clean and in ready to use condition, especially the restroom fixtures.

The scope of work shall also include cost for equipment removal in its totality.

The 48' x 40' unit and the 24' x 40' units shall be DSA Class "E" occupancy (Classrooms) these units will be primarily used for a recreation center.

Pricing shall include all permits required.

The expected installation of the modular buildings is around July, 2024

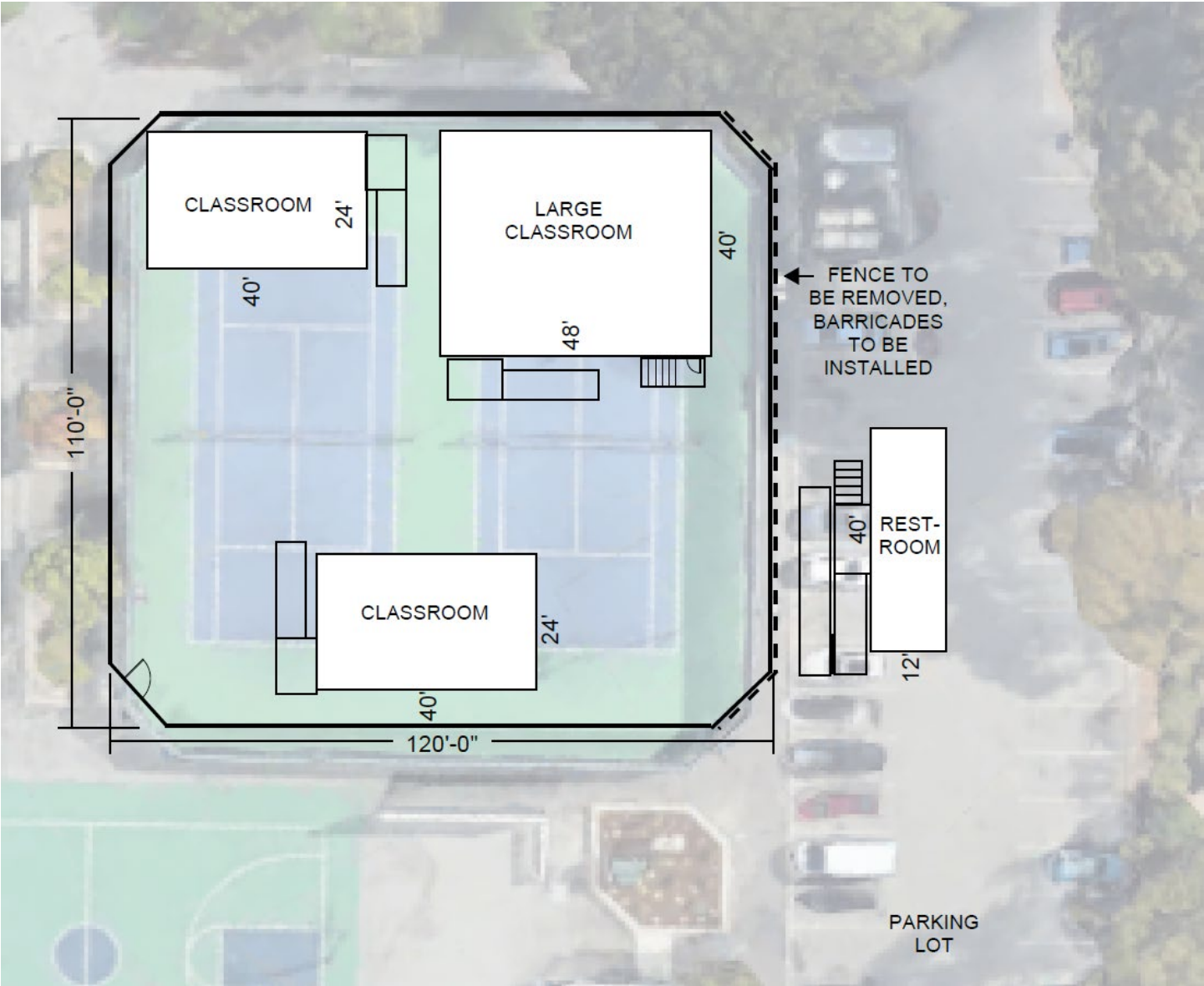
The contract will be awarded on or about June, 2024

The city will provide a dry, compacted asphalt parking lot site accessible by normal truck delivery. The three modular buildings (48' x 40' and (2) 24'x 40') will be placed on the Tennis courts, the restroom trailer will be placed on the parking lot as noted in the enclosed plan, attached hereto and hereinafter incorporated by reference as Appendix A-1. Contractor shall do what they can to place the restrooms within the parking stalls to not conflict with the travel way.

EXCLUSIONS: Pricing shall not include any clearing or grading of the site, obstruction removal or any asphalt transitions. no furniture, casework, appliances, doorstops, data or phone lines shall be included in the proposal.



Appendix A- 1



(End of Appendix A)

Appendix B to Contract **GENERAL CONDITIONS**

ARTICLE 1 TERMS OF PERFORMANCE

1.01 Construction Services Agreement (Agreement) Force and Effect. The provisions of the Agreement and other Contract Documents constitute the entire agreement between the Contractor and Owner regarding the Work described herein. No representation, term or covenant not expressly specified in the Contract Documents shall, whether oral or written, be a part of this agreement. The Agreement and other Contract Documents shall govern the Work described herein (whenever performed), and shall supersede all other purchase orders and agreements between Contractor and Owner, and any proposal, with respect to the Work described herein.

1.02 No Modification or Waiver. The Contract Documents may not be modified, nor may compliance with any of its terms be waived, except by written instrument executed and approved by fully authorized representatives of Owner and Contractor. Contract Documents headings are for convenience only and do not affect the construction of the Contract Documents.

1.03 Performance of Work/No Assignment. Time is of the essence in the performance of the Work. Contractor will perform the Work in a skillful and workmanlike manner; comply fully with criteria established by Owner, and with applicable laws, codes, and all applicable industry standards. Contractor shall maintain its work area in a clean and sanitary condition, clear debris and trash at the end of each work day, and shall not damage or disrupt any property unless specifically part of the scope of the Agreement. Contractor shall not contract any portion of the Work or otherwise assign the Agreement without prior written approval of Owner, and any assignment without Owner's prior written approval shall be null and void. (Contractor shall remain responsible for compliance with all terms of the Contract Documents, regardless of the terms of any such assignment.) The Contractor shall permit Owner (or its designees) access to the work area, Contractor's shop, or any other facility, to permit inspection of the Work at all times during construction and/or manufacture and fabrication. The granting of any progress payment, and any inspections, reviews, approvals or oral statements by any Owner representative, or certification by any governmental entity, shall in no way limit Contractor's obligations under the Contract Documents. Either party's waiver of any breach, or the omission or failure of either party, at any time, to enforce any right reserved to it, or to require strict performance of any provision of the Contract Documents, shall not be a waiver of any other right to which any party is entitled, and shall not in any way affect, limit, modify or waive that party's right thereafter to enforce or compel strict compliance with every provision hereof. Owner shall have, at all times, set-off rights with respect to any payment and Contractor's failure to perform the terms of the Contract Documents.

ARTICLE 2 LEGAL AND MISCELLANEOUS

2.01 Records and Payment Requests. Contractor shall submit all billings with all necessary invoices or other appropriate evidence of proper performance, after which Owner shall make payment within thirty (30) days. Upon Owner's written request, Contractor shall make available to Owner, its authorized agents, officers, or employees, any and all ledgers, books of accounts, invoices, vouchers, cancelled checks, and other records or documents evidencing or relating to the Work or the expenditures and disbursement charged to Owner, and all correspondence, internal memoranda, calculations, books and accounts, records documenting its Work under the Agreement, and invoices, payrolls, timecards, records and all other data related to matters covered by the Agreement. Contractor shall furnish to Owner, its authorized agents, officers, or employees, such other evidence or information as Owner may require with regard to the Work or any such expenditure or disbursement charged by Contractor. Contractor shall maintain all such documents and records prepared by or furnished to Contractor during the course of performing the Work for at least five years following completion of the Work, except that all such items pertaining to hazardous materials shall be maintained for at least thirty (30) years. Contractor shall permit Owner to audit, examine and make copies, excerpts and transcripts from such records. The State of California or any federal agency having an interest in the subject of the Agreement shall have the same rights conferred to Owner by this section. Such rights shall be specifically enforceable.

2.02 Independent Contractor. Contractor is an independent Contractor and does not act as Owner's agent in any capacity, whatsoever. Contractor is not entitled to any benefits that Owner provides to Owner employees including, without limitation, insurance, worker's compensation benefits or payments, pension benefits, health benefits or insurance benefits. Terms within the Contract Documents regarding directives apply to and concern the result of the Contractor's provision of Work not the means, methods, or scheduling of the Contractor's Work. Contractor shall be solely responsible for the means, methods, techniques, sequences and procedures with respect to its provision of Work under the Contract Documents. Contractor shall pay all payroll taxes imposed by any governmental entity and will pay all other federal, state, or local taxes not specifically identified in the Contract Documents as Owner's responsibility.

2.03 Indemnity/Liability. Contractor shall defend, indemnify, and save harmless, to the fullest extent permitted by law, the Owner and each of its council members, officers, directors, representatives, agents, employees, and volunteers (**Owner Indemnities**), against all claims, suits, actions, loss, cost, damage, expense, and liability arising from or related to bodily injury to or death of any person or damage to any property, or resulting from any breach and/or Contractor's negligence in performing the Work pursuant to the Contract Documents. Notwithstanding any provision of the Contract Documents, Owner shall not be liable to Contractor or anyone claiming under it, in contract or tort, for any special, consequential, indirect or incidental damages arising out of or in connection with the Contract Documents or the Work. Owner's rights and remedies, whether under the Agreement or other applicable law, shall be cumulative and not subject to limitation. Contractor's obligations to defend, indemnify, and save harmless the Owner Indemnities are undertaken in addition to, and shall not in any way be limited by, the insurance obligations contained within this Agreement. Contractor's responsibility for such defense and indemnity obligations shall survive the termination or completion of this Agreement for the full period of time allowed by law.

2.04 Defective Work; Warranties. Contractor warrants that all construction services shall be performed in accordance with generally accepted professional standards of good and sound construction practices, all Contract Documents requirements, and all laws, codes, standards, licenses, and permits. Contractor warrants that all materials and equipment shall be new, of suitable grade of their respective kinds for their intended uses, and free from defects. Contractor hereby grants to Owner for a period of one year following the date of completion its unconditional warranty of the quality and adequacy of all of the Work including, without limitation, all labor, materials and equipment provided by Contractor and its Subcontractors of all tiers. If either prior to completion of the Work, or within one year after completion, any Work (completed or incomplete) is found to violate any of the foregoing warranties (**Defective Work**), Contractor shall promptly, without cost to Owner and in accordance with Owner's written instructions, correct, remove and replace the Defective Work with conforming Work, and correct, remove and replace any damage to other Work or other property resulting therefrom. If Contractor fails to do so, Contractor shall pay all of the Owner's resulting claims, costs, losses and damages. Where Contractor fails to correct Defective Work, or defects are discovered outside the correction period, Owner shall have all rights and remedies granted by law.

2.05 Compliance with Laws; Conflict of Interests. Contractor agrees to comply with all applicable federal and state laws, regulations and policies, as amended, including those regarding discrimination, unfair labor practices, anti-kick-back, collusion, and the provisions of the Americans with Disability Act. Contractor, its officer, partners, associates, agents, and employees, shall not make, participate in making, or in any way attempt to use the position afforded them by the Contract Documents to influence any governmental decision in which he or she knows or has reason to know that he or she has a financial interest under applicable state, federal and local conflict of interest regulations. Contractor warrants that no person or agency has been employed or retained to solicit or obtain the Agreement upon an agreement or understanding for a contingent fee, except a bona fide employee or agency. Contractor shall not engage in unlawful employment discrimination including, but not limited to, discrimination

based upon a person's race, religion, color, national origin, ancestry, physical handicap, medical condition, marital status, gender, citizenship, sexual orientation, or sexual identity as prohibited by state or federal law.

2.06 Termination; Suspension; Disputes. Owner may direct Contractor to terminate, suspend, delay, interrupt or accelerate Work, in whole or in part, for such periods of time as Owner may determine in its sole discretion. Owner will issue such directives in writing, and may do so, in whole or in part, for its convenience or due to Contractor's fault. Owner will compensate Contractor for extra costs resulting from such directives only to the extent that Owner issues such directives for its convenience and not due to Contractor's fault (but Owner shall not compensate Contractor for costs, profit or overhead anticipated to be earned or incurred on Work terminated for Owner's convenience.) Contractor shall continue its Work throughout the course of any dispute, and Contractor's failure to continue Work during a dispute shall be a material breach of the Contract Documents. All claims by Contractor against Owner shall be submitted in writing to Owner, and shall be governed by Public Contract Code Sections 9204 and 20104 – 20104.6, after which time the one year time period in Government Code Section 911.2 shall be, pursuant to Government Code Section 930.2, reduced to 90 days. Should Contractor be terminated for default, and such termination is subsequently determined to be wrongful, such termination will be converted to a termination for convenience as provided herein.

2.07 Execution; Venue; Limitations. The Agreement shall be deemed to have been executed in the City of Foster City, California. Enforcement of the Contract Documents shall be governed by the laws of the State of California, excluding its conflict of laws rules. Except as expressly provided in the Contract Documents, nothing in the Contract Documents shall operate to confer rights or benefits on persons or entities not party to the Agreement. As between the parties to the Agreement, any applicable statute of limitations for any act or failure to act shall commence to run on the date of Owner's issuance of the final Certificate for Payment, or termination of the Contract Documents, whichever is earlier, except for latent defects, for which the statute of limitation shall begin running upon discovery of the defect and its cause.

2.08 Employee Wages; Records; Apprentices. Contractor shall pay prevailing wages to its employees on any contract in excess of \$1,000.00. Copies of the general prevailing rates of per diem wages for each craft, classification, or type of worker needed to execute the Contract, as determined by Director of the State of California Department of Industrial Relations, are on file at the City's Public Works Department and may be obtained from the California Department of Industrial Relations website [<http://www.dir.ca.gov/OPRL/DPreWageDetermination.htm>].

Contractor shall comply with the 8-hours per day/40 hours per week/overtime/working hours restrictions for all employees, pursuant to the California Labor Code. Contractor and all subcontractors shall keep and maintain accurate employee payroll records for Work performed under the Agreement. The payroll records shall be certified and submitted as required by law, including Labor Code Sections 1771.4 (if applicable) and 1776, including to the Labor Commissioner no less frequently than monthly. Contractor shall comply fully with Labor Code Section 1777.5 in the hiring of apprentices for work relating to the Agreement. If the Agreement exceeds \$2,000 and is funded with federal funds, then Contractor shall pay federal Davis Bacon wages and comply with applicable federal requirements.

2.09 Mandatory Contractor and Subcontractor Registration. Pursuant to Labor Code Section 1771(a), Contractor represents that it and all of its Subcontractors are currently registered and qualified to perform public work pursuant to Labor Code Section 1725.5. Contractor covenants that any additional or substitute Subcontractors will be similarly registered and qualified.

2.10 Worker's Compensation. Pursuant to Labor Code Sections 1860 and 1861, in accordance with the provisions of Section 3700 of the Labor Code, every contractor will be required to secure the payment of compensation to his employees. Contractor represents that it is aware of the provisions of Labor Code Section 3700 that 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 Contractor shall comply with such provisions before commencing the performance of the Work.

2.11 Construction Performance Bond; Construction Labor and Materials Payment Bond; Securities in Lieu of Retention Escrow Account.

A. If Contract Sum under the Agreement exceeds (or is expected to exceed) **25,000**, Contractor shall provide a construction performance bond in form attached hereto as Appendix D – Construction Performance Bond and a construction labor and material payment bond, in accordance with Civil Code Section 9550 and in form attached hereto Appendix E – Construction Labor and Materials Payment Bond. Contractor may not substitute cash in lieu of the required bond(s).

B. If the Agreement specifies performance retention, Contractor may elect to substitute securities or direct payment to an escrow account, pursuant to Public Contract Code Section 22300 (incorporated herein by this reference).

2.12 Earthwork and Underground Facilities. If the Work involves digging trenches or other excavations that extend deeper than four feet below the surface, Contractor shall notify Owner in writing of any material that Contractor believes may be hazardous waste that is required to be removed in accordance law, subsurface or latent physical conditions at the site differing from those indicated by information about the site made available to bidders prior to the deadline for submitting bids, or unknown physical conditions at the site of any unusual nature, different materially from those ordinarily encountered and generally recognized as inherent in work of the character provided for in the Contract Documents, pursuant to Section 7104 of the Public Contract Code. For any Work involving trench shoring that costs in excess of \$25,000, Contractor shall submit and Owner (or a registered civil or structural engineer employed by Owner) must accept, in advance of excavation, a detailed plan showing the design of shoring, bracing, sloping, or other provisions to be made for worker protection from the hazard of caving ground during the excavation of such trench or trenches, pursuant to Labor Code Section 6705. If such plan varies from the shoring system standards, the plan shall be prepared by a registered civil or structural engineer. Consistent with Government Code Section 4215, as between Owner and Contractor, Owner will be responsible for the timely removal, relocation, or protection of existing main or trunk line utility facilities located on the Site only if such utilities are not identified in the Contract Documents or information made available for bidding.

2.13 Public Records Act. Contractor is aware that this Agreement and any documents provided to the Owner may be subject to the California Public Records Act and may be disclosed to members of the public upon request. It is the responsibility of the Contractor to clearly identify information in those documents it considers to be confidential under the California Public Records Act. To the extent that Owner agrees with that designation, such information will be held in confidence whenever possible. All other information will be considered public.

2.14 Claims.

A. Should any clarification, determination, action or inaction by Owner, Work, or any other event, in the opinion of Contractor, exceed the requirements of or not comply with Contract Documents, or otherwise result in Contractor seeking additional compensation in time or money or damages for any reason (collectively "Disputed Work"), then Contractor and Owner will make good faith attempts to resolve informally any and all such issues, claims and/or disputes. Before commencing the Disputed Work, or within seven Days after Contractor's first knowledge of the Disputed Work, whichever is earlier, Contractor shall file a written notice and cost proposal for the Disputed Work with City stating clearly and in detail its objection and reasons for contending the Work or interpretation is outside the requirements of Project Documents. If a written notice and cost proposal for Disputed Work is not issued within this time period, or if Contractor proceeds with the Disputed Work without first having given the notice required by this paragraph, Contractor shall waive its rights to further claim on the specific issue.

B. Owner will review Contractor's timely notice and cost proposal for Disputed Work and provide a decision. If, after receiving the decision, Contractor disagrees with it or still considers the Work required of it to be outside of the requirements of Project Documents, it shall so notify Owner, in writing, within seven Days after receiving the decision, by submitting a notice of potential claim, stating that a formal claim will be issued. Within 30 Days of receiving the decision, Contractor shall submit its claim in the form specified herein and all arguments, justification, cost

or estimates, schedule analysis, and detailed documentation supporting its position. Contractor's failure to furnish notification within seven Days and all justifying documentation within 30 Days will result in Contractor waiving its right to the subject claim.

C. Claim Format

1. A. Contractor shall submit the claim justification in the following format:

- (a) Cover letter and certification;
- (b) Summary of claim, including underlying facts, entitlement, schedule analysis, quantum calculations, Project provisions supporting relief;
- (c) List of documents relating to claim including Specifications, Drawings/Plans clarifications/requests for information, schedules, notices of delay, cost calculations and any others;
- (d) Chronology of events and correspondence;
- (e) Analysis of claim merit;
- (f) Analysis of claim cost; and
- (g) Attach supporting documents referenced in paragraph 2.14,C.1(c), above.

D. Required Provisions on Contract Claim Resolution

1. Public Contract Code Section 9204 specifies provisions on resolving contract claims of any size, and Public Contract Code Section 201014, et seq., specifies required provisions on resolving contract claims less than \$375,000. Those statutes constitute a part of this Contract. In the event any other Contract provision violates such statutes, the applicable statute controls.

2.15 Force Majeure. Except for defaults of subcontractors at any tier, Contractor shall not be liable for any excess costs if the failure to perform the Agreement arises from causes beyond the control and without the fault or negligence of Contractor, including without limitation failure to reasonably mitigate any adverse impacts (Force Majeure). Force Majeure events include the following:

Acts of God, fires, floods, earthquake, other natural disasters, epidemics and pandemics (other than COVID-19 or variants), abnormal weather conditions beyond the parameters otherwise set forth in this Article, nuclear accidents, strikes, lockouts, freight embargos, interruptions in service by a regulated utility, or governmental statutes or regulations enacted or imposed after the fact (together, "force majeure events").

(End of Appendix B)

Appendix C to Contract

INSURANCE

1. Commercial General Liability Insurance, written on an "occurrence" basis, which shall provide coverage for bodily injury, death and property damage resulting from operations, liability for slander, false arrest and invasion of privacy, blanket contractual liability, broad form endorsement, and completed operations, personal and advertising liability, with limits of not less than **\$4,000,000** general aggregate and **\$2,000,000** each occurrence, subject to a deductible of not more than **\$1,000** payable by Contractor.

2. Business Automobile Liability Insurance with limits not less than **\$1,000,000** each occurrence including coverage for owned, non-owned and hired vehicles, subject to a deductible of not more than **\$1,000** payable by Contractor.

3. Workers' Compensation Employers' Liability limits not less than **\$1,000,000, per statute..** Contractor's Workers' Compensation Insurance policy shall contain a Waiver of Subrogation against City of Foster City, its council members, officers, directors, officials, agents, employees and volunteers. In the event Contractor is self-insured, it shall furnish Certificate of Permission to Self-Insure signed by Department of Industrial Relations Administration of Self-Insurance, State of California.

4. Builder's Risk Insurance including, without limitation, coverage against loss or damage to the Work by fire, lightning, wind, hail, aircraft, riot, vehicle damage, explosion, smoke, falling objects, vandalism, malicious mischief, collapse, and other such hazards as are normally covered by such coverage. Such insurance shall be in amount equal to the replacement cost (without deduction for depreciation and subject to stipulated value in lieu of average clause) of all construction constituting any part of the Work, excluding the cost of excavations, of grading and filling of the land, and except that such insurance may be subject to deductible clauses not to exceed **\$10,000** for any one loss. Such insurance will not cover loss or damage to Contractor's equipment, scaffolding or other materials not to be consumed in the construction of the Work. The insurer shall waive all rights of subrogation against Owner.

5. Installation Floater covering the work performed under this Contract, against all risks of direct physical loss. The policy shall cover the Contractor's labor, materials and equipment, including materials and equipment in transit or away from the project site, to be installed in the existing structure(s). The coverage shall be written for an amount equal to the initial contract amount plus the value of any subsequent change orders, subject to a deductible of not more than **\$10,000** payable by Contractor.

6. Pollution Liability Insurance, with limits of not less than Five Million dollars (\$5,000,000) per occurrence and in the annual aggregate, covering losses involving hazardous material(s) and caused by pollution incidents or conditions that arise from the Project or under this Agreement or might be required by federal, state, regional, municipal and local laws, including coverage for bodily injury, sickness, disease, mental anguish or shock sustained by any person, including death, property damage including the resulting loss of use thereof, clean-up costs, and the loss of use of tangible property that has not been physically damaged or destroyed, and defense costs.

7. Any available insurance proceeds broader than or in excess of the specified minimum insurance coverage requirements and/or limits shall be available to the Owner Indemnities as Additional Insureds. The requirements for coverage and limits shall be the greater of either the minimum coverage and limits specified in this Agreement or the broader coverage and maximum limits of coverage of any insurance policy or proceeds available to the named insured.

8. Insurance policies in this Appendix C shall contain an endorsement containing the following terms:

8.01 Owner Indemnities shall be named as Additional Insureds, but only with respect to liability arising out of the activities of the named insured, and there shall be a waiver of subrogation as to each named and Additional Insured. Contractor agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether or not the Owner has received a waiver of subrogation endorsement from the insurer.

8.02 The policies shall apply separately to each insured against whom claim is made or suit is brought except with respect to the limits of the company's liability.

8.03 Written notice of cancellation, non-renewal or of any material change in the policies shall be mailed to City of Foster City thirty (30) days in advance of the effective date thereof.

8.04 Contractor insurance shall be primary insurance as to Owner and no other insurance or self-insured retention carried or held by any named or Additional Insureds other than Contractor shall be called upon to contribute to a loss covered by insurance for the named insured.

8.05 Certificates of Insurance and Endorsements shall have clearly typed thereon the Project Name, shall clearly describe the coverage and shall contain a provision requiring the mailing of written notices of cancellation described in clause 6.03 above. Contractor shall furnish the Owner with original certificates and amendatory endorsements or copies of the applicable policy language effecting coverage required by this clause. All certificates and endorsements are to be received and approved by the Owner before work commences. However, failure to obtain the required documents prior to the work beginning shall not waive the Contractor's obligation to provide them. The Owner reserves the right to require complete, certified copies of all required insurance policies, including endorsements required by these specifications, at any time.

9. All policies of insurance shall be placed with insurers acceptable to Owner. The insurance underwriter(s) must be duly licensed to do business in the State of California and (other than for workers' compensation) must have an A. M. Best Company rating of **A-, VII** or better. Required minimum amounts of insurance may be increased should conditions of Work, in the opinion of Owner, warrant such increase. Contractor shall increase required insurance amounts upon direction by Owner.

10. The insurance coverage limits may be satisfied by a combination of primary and umbrella or excess insurance. Any umbrella or excess insurance shall contain or be endorsed to contain a provision that such coverage shall also apply on a primary and non-contributory basis for the benefit of Owner and Additional Insureds, to the extent required by this Agreement, before the Owner's insurance or self-insurance may be called upon to protect Owner as a named insured.

11. All self-insured retentions (SIR) must be disclosed to Owner for approval and shall not reduce the limits of liability coverage. Policies containing and SIR provision shall provide or be endorsed to provide that the SIR may be satisfied by either the named Contractor/named insured or Owner.

12. Contractor agrees to include with all subcontractors in their subcontracts the same requirements and provisions of this Agreement that is required of Contractor including, without limitation, the indemnity and insurance requirements to the extent they apply to the scope of the subcontractor's work. Subcontractors hired by Contractor shall agree to be bound to Contractor and Owner in the same manner and to the same extent as Contractor is bound to Owner under this Contract and its accompanying documents. Subcontractors shall further agree to include these same provisions with any lower tier subcontractors. A copy of the indemnity and insurance provisions of this Agreement will be furnished to the Subcontractor upon request. Contractor shall require all subcontractors to provide a valid Certificate of Insurance and the required endorsements included in the subcontract agreement, and will provide proof of compliance to the Owner prior to commencement of any work by the subcontractor.

13. Special Risks or Circumstances: 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.

(End of Appendix C)

Appendix D to Contract
CONSTRUCTION PERFORMANCE BOND

KNOW ALL PERSONS BY THESE PRESENTS:

1. THAT WHEREAS, **City of Foster City (Owner)** has awarded to McGrath RentCorp DBA Mobile Modular Management Corporation, as Principal, a Purchase Order Agreement, dated the 20th day of May, 2024 (**Agreement**), titled **THE RECREATION CENTER MODULAR BUILDING PROJECT** in the amount of \$363,415.94, which Agreement is by this reference made a part hereof, for the work described as follows:

2. See Appendix A for description of work.

3. AND WHEREAS, Principal is required to furnish a bond in connection with the Agreement, guaranteeing the faithful performance thereof;

4. NOW, THEREFORE, we, the undersigned Principal and _____ as Surety are held and firmly bound unto Owner in the sum of 100% OF THE CONTRACT SUM to be paid to Owner or its successors and assigns; for which payment, well and truly to be made, we bind ourselves, our heirs, executors, administrators, successors, and assigns, jointly and severally, firmly by these presents.

5. THE CONDITION OF THIS OBLIGATION IS SUCH, that if Principal, or its heirs, executors, administrators, successors, or assigns approved by Owner, shall promptly and faithfully perform the covenants, conditions, and agreements of the Agreement during the original term and any extensions thereof as may be granted by Owner, with or without notice to Surety, and during the period of any guarantees or warranties required under the Agreement, and shall also promptly and faithfully perform all the covenants, conditions, and agreements of any alteration of the Agreement made as therein provided, notice of which alterations to Surety being hereby waived, on Principal's part to be kept and performed at the time and in the manner therein specified, and in all respects according to their true intent and meaning, and shall indemnify, defend, protect, and hold harmless Owner as stipulated in the Agreement, then this obligation shall become and be null and void; otherwise it shall be and remain in full force and effect.

6. No extension of time, change, alteration, modification, or addition to the Agreement, or of the work required thereunder, shall release or exonerate Surety on this bond or in any way affect the obligation of this bond; and Surety does hereby waive notice of any such extension of time, change, alteration, modification, or addition.

7. Whenever Principal shall be and declared by Owner in default under the Agreement, Surety shall promptly remedy the default, or shall promptly:

7.01 Undertake through its agents or independent contractors, reasonably acceptable to Owner, to complete the Agreement in accordance with its terms and conditions and to pay and perform all obligations of Principal under the Agreement including, without limitation, all obligations with respect to warranties, guarantees, indemnities, and the payment of liquidated damages; or

7.02 Obtain a bid or bids for completing the Agreement in accordance with its terms and conditions, and, upon determination by Owner of the lowest responsible bidder, reasonably acceptable to Owner, arrange for a contract between such bidder and Owner and make available as work progresses (even though there should be a default or a succession of defaults under the contract or contracts of completion arranged under this paragraph) sufficient funds to pay the cost of completion less the balance of the Contract Sum, and to pay and perform all obligations of Principal under the Agreement including, without limitation, all obligations with respect to warranties, guarantees, and the payment of liquidated damages; but, in any event, Surety's total obligations hereunder shall not exceed the amount set forth in the third paragraph hereof. The term "balance of the Contract Sum," as used in this paragraph, shall mean the total amount payable by Owner to the Principal under the Agreement and any amendments thereto, less the amount Owner paid to Principal.

8. Surety's obligations hereunder are independent of the obligations of any other surety for the performance of the Agreement, and suit may be brought against Surety and such other sureties, jointly and severally, or against any one or more of them, or against less than all of them

without impairing Owner's rights against the others. Surety may not use Contractor to complete the Agreement absent Owner's written consent.

9. No right of action shall accrue on this bond to or for the use of any person or corporation other than Owner or its successors or assigns.

10. Surety may join in any proceedings brought under the Agreement and shall be bound by any judgment.

11. Correspondence or claims relating to this bond shall be sent to Surety at the address set forth below.

IN WITNESS WHEREOF, we have hereunto set our hands
this _____ day of _____, 202__.

CONTRACTOR AS PRINCIPLE

Company: Mobile Modular Management Corp (Corp. Seal)

Signature

Name

Title

Street Address

City, State, Zip Code

SURETY

Company: _____ (Corp. Seal)

Signature

Name

Title

Street Address

City, State, Zip Code

(End of Appendix D)

Appendix E to Contract
CONSTRUCTION LABOR AND MATERIAL PAYMENT BOND

KNOW ALL PERSONS BY THESE PRESENTS:

12. THAT WHEREAS, City of Foster City (**Owner**) has awarded to **McGrath RentCorp DBA Mobile Modular Management Corporation**, as Principal, a Construction Services Agreement, dated the 20th day of May, 2024 (**Agreement**), titled THE RECREATION CENTER MODULAR BUILDING PROJECT located at 650 Shell Blvd, Foster City in the amount of \$363,415.94, which Agreement is by this reference made a part hereof, for the work described as follows:

See Appendix A for Project Description.

13. AND WHEREAS, Principal is required to furnish a bond in connection with the Agreement to secure the payment of claims of laborers, mechanics, material suppliers, and other persons as provided by law;

14. NOW, THEREFORE, we, the undersigned Principal and _____ as Surety, are held and firmly bound unto Owner in the sum of 100% OF THE CONTRACT SUM (\$363,415.94), for which payment well and truly to be made we bind ourselves, our heirs, executors, administrators, successors, and assigns, jointly and severally, firmly by these presents.

15. THE CONDITION OF THIS OBLIGATION IS SUCH, that if Principal, or its heirs, executors, administrators, successors, or assigns approved by Owner, or its subcontractors shall fail to pay any of the persons named in California Civil Code Section 9100, or amounts due under the State of California Unemployment Insurance Code with respect to work or labor performed under the Agreement, or for any amounts required to be deducted, withheld, and paid over to the State of California Employment Development Department from the wages of employees of Principal and subcontractors pursuant to California Unemployment Insurance Code Section 13020 with respect to such work and labor, that Surety will pay for the same in an amount not exceeding the sum specified in this bond, plus reasonable attorneys' fees, otherwise the above obligation shall become and be null and void.

16. This bond shall inure to the benefit of any of the persons named in California Civil Code Section 9100, as to give a right of action to such persons or their assigns in any suit brought upon this bond. The intent of this bond is to comply with the California Mechanic's Lien Law.

17. Surety, for value received, hereby expressly agrees that no extension of time, change, modification, alteration, or addition to the undertakings, covenants, terms, conditions, and agreements of the Agreement, or to the work to be performed thereunder, shall in any way affect the obligation of this bond; and it does hereby waive notice of any such extension of time, change, modification, alteration, or addition to the undertakings, covenants, terms, conditions, and agreements of the Agreement, or to the work to be performed thereunder.

18. Surety's obligations hereunder are independent of the obligations of any other surety for the payment of claims of laborers, mechanics, material suppliers, and other persons in connection with the Agreement; and suit may be brought against Surety and such other sureties, jointly and severally, or against any one or more of them, or against less than all of them without impairing Owner's rights against the other.

19. Correspondence or claims relating to this bond shall be sent to Surety at the address set forth below.

IN WITNESS WHEREOF, we have hereunto set our hands this _____ day of _____, 202__.

CONTRACTOR AS PRINCIPLE

Company: _____ (Corp. Seal)

Signature

Name

Title

Street Address

City, State, Zip Code

SURETY

Company: _____ (Corp. Seal)

Signature

Name

Title

Street Address

City, State, Zip Code

(End of Appendix E

)

Appendix F to Contract
SUPPLEMENTAL CONDITIONS

PART 1 - GENERAL

1.1 DEFINITIONS

Wherever in the specifications and other contract documents the following terms or pronouns in place of them are used, the intent and meaning shall be interpreted as follows:

- A. City/District: The City of Foster City/Estero Municipal Improvement District.
- B. Council: The City Council of the City of Foster City.
- C. Board of Directors: The Board of Directors of the Estero Municipal Improvement District.
- D. Proposer: Any individual, partnership, joint venture, or corporation submitting a proposal for the work contemplated, acting directly or through a duly authorized representative.
- E. Contractor: The individual, partnership, joint venture, or corporation with whom the contract is made by the City/District.
- F. Engineer: The City/District Engineer acting directly or through properly authorized agents, such agents acting within the scope of the particular duties entrusted to them. See Paragraph 1.08 regarding the authority of the Engineer.
- G. Manager: The City Manager or District Manager of the City of Foster City/Estero Municipal Improvement District.
- H. Days: Unless otherwise designated, days as used in the specifications will be understood to mean calendar days.

1.2 TRANSFER OF INTEREST

No interest in the contract shall be transferred to any other party without permission of the City.

1.3 WORKING HOURS

- A. Work or activity of any kind shall be limited to the hours from 8:00AM to 5:00PM, Monday through Friday, except as otherwise stipulated in the contract documents. Work hours shall be limited to 9:00AM to 3:00PM on all Boulevards.
- B. Work in excess of eight hours per day, on Saturdays, on Sundays, or on City holidays requires prior consent of the Engineer and is subject to Cost of Overtime Construction Inspection.
- C. City holidays are:

New Year's Day
Martin Luther King's Birthday
Presidents' Day (3rd Monday in February)
Memorial Day (last Monday in May)
Independence Day
Labor Day
Veteran's Day
Thanksgiving Day and following Friday
Christmas Eve
Christmas Day
New Year's Eve

1.4 SUBCONTRACTORS

- A. When requested, the Contractor shall furnish the name and address of each subcontractor contracting directly with the Contractor, together with a statement showing the character and location of the work, time limit, if any, and if requested, the amount of money involved in each subcontract. Each subcontract shall contain a reference to the contract between the City and the principal Contractor, and the terms of the contract and all parts thereof shall be made part of each subcontract insofar as applicable to the work covered thereby. Each subcontract shall provide for its annulment at the order of the Engineer, if, in the Engineer's opinion, the subcontractor fails to comply with the requirements of the principal contractor insofar as the same may be applicable to the Contractor's work.
- B. Nothing contained in this Specification shall be construed as creating any contractual relationship between any subcontractor and the City. The sections of this Specification are not intended to control the Contractor in dividing the work among subcontractors or to limit the work performed by any trade.
- C. The Contractor shall be considered the employer of and as fully responsible to the City for the acts and omissions of subcontractors and of persons employed by them as the Contractor is for the acts and omissions of persons directly employed by the Contractor.
- D. The Contractor shall be responsible for the coordination of the trades, subcontractors, and material personnel engaged upon the Contractor's work. It shall be the Contractor's duty to see that all of the subcontractors commence their work at the proper time and carry it on with due diligence so that they do not delay or injure either the work or materials; and that all damage caused by them or their workers is made good by them or by the Contractor at the Contractor's expense.

Appendix F to Contract
SUPPLEMENTAL CONDITIONS

E. The City will not undertake to settle differences between the Contractor and their subcontractors or between subcontractors.

F. The Contractor shall utilize the services of specialty subcontractors, without additional expense to the City, on those parts of the work which are specified to be performed by specialty contractors.

1.5 CHANGES

A. General:

The City reserves the right to make such alterations, deviations, additions to or deletions from the drawings and specifications, including the right to increase or decrease the quantity of any item or portion of work or to omit any item or portion of the work, and to require such changes in the work as are determined by the Engineer to be necessary or advisable for proper completion or construction of the whole work contemplated.

Work will be issued to the Contractor as a Work Order on an as-needed basis during the two year contract period. Each Work Order will identify the location and type of work to be performed, the effective date for commencement of work, specific work item quantities and the Work Order amount based on the unit prices listed in the Contractor's Proposal Schedule. The Contractor shall complete any given work order within thirty (30) calendar days of commencement of work.

B. Increases or Decreases in Unit Price Quantities:

1. Increased or Decreased Quantities:

Increases or decreases in the quantity of a contract item of work will be determined by comparing the quantity of work as listed in the proposal schedule with the actual quantity of work performed by the Contractor, as measured by the Engineer. The City shall have the right to make changes in the plans and/or specifications and the Contractor shall perform the work as changed.

No adjustment to the unit price for any item in the Proposal Schedule shall be made in the event the number of repair locations are increased or decreased from the scheduled maintenance program. All work performed shall be measured and paid based on the contract unit price included in the proposal schedule.

2. Eliminated Items:

a. The City of Foster City reserves the right to eliminate any of the scheduled work. The unit price shall not be subject to change based on the deletion of work.

Unit Prices shall apply to Work covered by unit prices so long as actual quantities performed on the Project are not less than 75 percent or greater than 125 percent of the estimated quantities bid or otherwise stated in the Contract Documents. If actual quantities exceed these parameters, then the unit price shall be adjusted by an amount to reflect the Contractor's incremental cost differential resulting from increased or decreased economies of scale.

Should any contract item of the work be eliminated in its entirety, unless otherwise provided for in the contract, payment will be made to the Contractor for actual costs incurred in connection with such eliminated contract item if incurred prior to the date of notification in writing by the Engineer of such elimination.

The City shall have the right for the partial or full removal of Bid Alternate 1 from the scope of work and will not provide compensation for removed items.

- a. If acceptable material is ordered by the Contractor for the eliminated item prior to the date of notification of such elimination by the Engineer, and if orders for such material cannot be canceled, it will be paid for at the actual cost to the Contractor. In such case, the material paid for shall become the property of the City and the actual cost of any further handling will be paid for. If the material is returnable to the vendor and if the Engineer so directs, the material shall be returned and the Contractor will be paid for the actual cost of charges made by the vendor for returning the material. The actual cost of handling returned material will be paid for. Written documentation of costs of cancellation or return must be submitted.
- b. The actual costs or charges to be paid by the City to the Contractor as provided in this section will be computed based on the unit prices listed in the Proposal Schedule.

C. Protest Procedure (Change Orders):

1. Should the Contractor disagree with any terms or conditions set forth in an approved change order which the Contractor has not executed, the Contractor shall submit a written protest to the Engineer within 15 calendar days after the receipt of such approved contract change order. The protest shall state the points of disagreement, contract references, quantities, and costs involved. The Engineer shall consider and investigate such protest within a reasonable time. If a written protest is not submitted, adjustment of the contract time and payment will be made as set forth in the approved contract change order and shall constitute full compensation for all work included therein or required thereby. An unprotested change order will be considered as an executed contract change order.

2. When the protest concerning an approved change order relates to compensation, the Contractor shall keep full and complete records of the costs of such work and shall permit the Engineer to have such access thereto as may be necessary to assist in the determination of the compensation payable for such work.

Appendix F to Contract SUPPLEMENTAL CONDITIONS

3. When the protest concerning an approved work order relates to the adjustment of contract time for the completion of the work, the time to be allowed will be determined as provided in Paragraph 1.15 of this section.

D. Extra Work:

Extra work will not be paid for unless ordered in writing by the Engineer. When authorized, extra work will be paid for in accordance with the Proposal Schedule or by a negotiated adjustment.

E. REPORTING, INVOICING, AND PAYMENT

1. All work shall be reported monthly upon Total Work Order Sheets furnished by the Engineer to the Contractor and signed by both parties, which monthly reports shall thereafter be considered the true record of work done.
2. Contractor shall submit a record of work completed with each payment request against. Record of work shall include detailed invoices. Those not so detailed will not be processed for payment until details are furnished.

A.

3. Completed work shall be paid for on a monthly basis by Contract Change Order.

1.6 COST OF OVERTIME CONSTRUCTION INSPECTION

Overtime construction work performed at the option of, or for the convenience of, the Contractor will be inspected by the City at the expense of the Contractor. For any such overtime beyond the regular 8-hour day and for any time worked on Saturday, Sunday, or holidays, the charges for City personnel will be as shown in the currently adopted rate schedule, available at the Public Works office. There will be no charges for the inspection of overtime work ordered by the Engineer. ALL OVERTIME MUST BE APPROVED BY THE CITY ENGINEER.

1.7 CHANGES AT THE CONTRACTOR'S REQUEST

If the Contractor, on account of conditions developing during the progress of the work, finds it impracticable to comply strictly with this Specification and applies in writing for a modification of the requirements or of methods of work, such change may be authorized by the Engineer, if not detrimental to the work and if without additional cost to the City. The Contractor's written request for deviation shall be submitted prior to the start of affected work with enough time allowed to give the Engineer a reasonable review period. Only written authorization from the Engineer will permit deviations from the specifications.

1.8 AUTHORITY OF THE ENGINEER

A. On all questions concerning the acceptability of material or machinery, the classification of material, the execution of the work, and conflicting interests of contractors performing related work, the decision of the Engineer shall be final and binding upon both parties, except in the case of gross error.

B. The Engineer will make periodic observations of materials and completed work to observe their compliance with plans, specifications, and design and planning concepts, but the Contractor shall be responsible for the superintendence of construction processes, coordination of subcontractors or materials, site conditions, operations, equipment, personnel, or the maintenance of a safe place to work or any safety in, on, or about the site of the work.

C. Authority and Duties of Engineer's Field Representatives:

1. Field representatives of the Engineer may be stationed on the project site to report to the Engineer as to the progress of the work, the manner in which it is being performed, and to report whenever it appears that material furnished and work performed by the Contractor fail to fulfill the requirements of the contract documents. The representative may direct the attention of the Contractor to such failure or infringement but such construction review shall not relieve the Contractor from any obligation to furnish acceptable materials or to provide completed construction in a safe and satisfactory manner in every particular.

2. In case any dispute arises between the Engineer's field representative and the Contractor as to materials furnished or the satisfactory performance of the work, the representative shall have the authority to reject materials or recommend suspension of the work by the Engineer until the question and issue can be referred to and decided by the Engineer. Such authority, however, shall not give rise to any duty on the part of Engineer's field representative to exercise this right for the benefit of Contractor or any other party. Field representatives are not authorized to revoke, alter, enlarge, relax or release any requirements of the contract documents nor to issue instructions contrary to the contract documents. Field representatives shall in no case act as foremen, superintendents, or perform other duties for the Contractor or interfere with the management of the work by the Contractor.

1.9 INSPECTION BY CITY, QUALITY ASSURANCE BY CONTRACTOR, TESTING

B. A. All materials furnished and work done under this contract will be subject to inspection. The Contractor shall furnish, without extra charge, the necessary test pieces and samples, including facilities and labor for obtaining them, as requested by the Engineer. Work or material that does not conform to the specifications may be rejected at any stage of the work notwithstanding previous inspections by the Engineer.

B. Quality control of the work to ensure compliance with the contract documents is the responsibility of the Contractor. Testing and inspection of the work, or the lack thereof, by the City does not relieve the Contractor of the responsibility to provide a quality assurance program to ensure compliance with the contract documents.

C. The Engineer may perform or have the Contractor perform tests of material and equipment to demonstrate compliance with the contract documents. If such tests were not required to be performed by the Contractor by the contract documents, the cost of testing will be paid for by the City when tests show that materials or equipment comply with the contract documents, and shall be paid for by the Contractor when tests show that materials or equipment fail to comply with the contract documents.

**Appendix F to Contract
SUPPLEMENTAL CONDITIONS**

1.10 DATA TO BE FURNISHED BY THE CONTRACTOR

The Contractor shall furnish the Engineer reasonable facilities for obtaining such information as the Engineer may desire respecting the character of the materials and the progress and manner of work, including information necessary to determine its costs, such as the number of personnel employed, their pay, the time during which they worked on the various classes of construction, and other pertinent data.

1.11 SUPERINTENDENCE

A. The Contractor shall designate in writing before starting work one authorized representative who shall have the authority to represent and act for the Contractor.

B. Said authorized representative shall be present at the site of the work at all times while work is actually in progress on the contract. When work is not in progress and during periods when work is suspended, arrangements acceptable to the Engineer shall be made for any emergency work which may be required. The superintendent or foreman in charge shall be deemed to be the authorized representative of the Contractor and accepts such orders on behalf of the Contractor.

1.12 SPECIFICATIONS AND DRAWINGS

The Contractor shall keep on the work a copy of all specifications, drawings, and change orders pertaining to the work and shall at all times give the Engineer access thereto. Anything mentioned in the specifications and not shown on the drawings or shown on the drawings and not mentioned in the specifications shall be of like effect as though shown or mentioned in both.

1.13 LINES, GRADES, AND MEASUREMENTS

C. All lines and grades shall be established by the Contractor. The cost of surveying to establish lines and grades shall be included in the various items of work and no separate payments will be made.

1.14 RIGHT OF WAY

- A. The site for the installation of equipment or the right of way for the works to be constructed under this contract will be provided by the City.
- B. The City will provide the appropriate rights of way and property for pipelines and structures. The Contractor will be held responsible for any damage to structures, streets, and roads, and for any damage that may result from the Contractor's use of City property.
- C. In case areas in addition to those available on the City's right of way or property are required by the Contractor for the Contractor's operations, the Contractor shall make arrangements with the property owners for the use of such additional areas at the Contractor's own expense.

D.

1.15 DELAYS AND EXTENSION OF TIME

A. If any delay having a direct effect on the work is caused by factors within the Contractor's control, it is non-excusable and the Contractor will not be entitled to compensation for damages resulting directly or indirectly therefrom, or for any extension of time.

- B. If any delay having a direct effect on the work is caused by unusually severe weather conditions, including periods exceeding the "Normal Rainfall Days", or by strikes, or act of God, such delay may be excusable and may entitle the Contractor to an equivalent extension of time, provided that the Contractor has taken reasonable precautions to foresee and prevent delays due to such causes and provided that the Contractor has notified the Engineer in writing of the causes of the delay within 7 calendar days from the beginning of any such delay. In such event the Contractor shall be entitled to time only. Additional costs incurred because of the delay will be paid for by the Contractor at no additional cost to the City.

1. No extension of time will be granted for normal rainfall. However, during the specified contract time, a day-for-day extension of time will be given for each day the rainfall is in excess of 0.1 inch of rain when the total number of rainy days (0.1 inch or greater) exceed the normal based on monthly precipitation records for the previous 10-year period from the weather recording station at the San Francisco International Airport.

Normal number of rain days for which rainfall has exceeded 0.1 inches for the 10-year period from 2006 to 2015 is as follows:

Jan	Feb	Mar	Apr	May	Jun	July	Aug	Sept.	Oct.	Nov.	Dec.
5	7	6	4	1	1	0	0	0	2	4	8

- C. If any delay having a direct effect on the work is caused by the specific orders of the Engineer to stop work, or by the performance of extra work ordered by the Engineer, or by failure of the City to provide material, or necessary instructions for carrying on the work, or to provide the necessary right of way or site for installation, or failure of a utility to remove or relocate an existing facility, such delay may be compensable and may entitle the Contractor to an equivalent extension of time, and may entitle the Contractor to damages resulting directly from any of the causes of delay hereinabove specified or from delays or hindrances to the work, provided that the Contractor has taken reasonable precautions to prevent delays due to such causes and provided that the Contractor has notified the Engineer in writing of the causes of the delay within 10 calendar days from the beginning of any such delay.
- D. When a Contractor experiences two concurrent delays, one compensable and the other non-compensable, no compensation other than time extensions will be allowed.

Appendix F to Contract SUPPLEMENTAL CONDITIONS

E. An extension of time must be approved by the Engineer to be effective, but an extension of time whether with or without consent of the sureties, shall not release the sureties from their obligations, which shall remain in full force until the discharge of the contract.

1.16 CLIMATIC CONDITIONS

The Engineer may order the Contractor to suspend any work that may be subject to damage by climatic conditions. In such event the Contractor shall be entitled to time only. Additional costs incurred because of the delay will be paid for by the Contractor at no additional cost to the City. When delay is caused by an order to suspend work given on account of climatic conditions that could have been reasonably foreseen, the Contractor will not be entitled to any extension of time on account of such order.

1.17 ROADS AND FENCES

Roads subject to interference from the work covered by this contract shall be kept open, and the fences subject to interference shall be kept up by the Contractor until the work is finished.

1.18 INFRINGEMENT OF PATENTS

The Contractor shall hold and save the City, its officers, agents, servants, and employees harmless from and against all and every demand or demands, of any nature or kind, for or on account of the use of any patented invention, process, equipment, article, or appliance employed in the execution of the work or included in the material or supplies agreed to be furnished under the contract, and should the Contractor, the Contractor's agents, servants, or employees, or any of them, be enjoined from furnishing or using any inventions, processes, equipment, articles, materials, supplies, or appliances supplied or required to be supplied or used under this contract, the Contractor shall promptly substitute other inventions, processes, equipment, articles, materials, supplies, or appliances in lieu thereof, of equal efficiency, quality, finish, suitability, and market value, and satisfactory in all respects to the Engineer. Or in the event that the Engineer elects, in lieu of such substitution, to have supplied, and to retain and use, any such inventions, processes, equipment, articles, materials, supplies, or appliances, as may by this contract be required to be supplied and used, the Contractor shall at the Contractor's expense pay such royalties and secure such valid licenses as may be requisite and necessary to enable the City, its officers, agents, servants, and employees, or any of them, to use such inventions, processes, equipment, articles, materials, supplies, or appliances without being disturbed or in any way interfered with by any proceeding in law or equity on account thereof. Should the Contractor neglect or refuse promptly to make the substitution hereinbefore required, or to pay such royalties and secure such licenses as may be necessary and requisite for the purpose aforesaid, then in that event the Engineer shall have the right to make such substitution, or the City may pay such royalties and secure such licenses and charge the cost thereof against any money due the Contractor from the City, or recover any amount thereof from the Contractor and the Contractor's surety, notwithstanding final payment under this contract may have been made.

1.19 PROTECTION OF PERSONS AND PROPERTY

A. Contractor's Responsibility:

Notwithstanding any other provision of these specifications, the Contractor shall be solely and completely responsible for conditions of the job site, including safety of all persons and property, during performance of the work. This requirement will apply continuously and will not be limited to normal working hours. Safety and sanitary provisions shall conform to applicable Federal, State, County, and local laws, regulations, ordinances, standards, and codes. Where any of these are in conflict, the more stringent requirement shall be followed.

B. Public Safety:

During the performance of the work, the Contractor shall erect and maintain all necessary temporary fences, bridges, railings, lights, signals, barriers, or other safeguards as shall be appropriate under the circumstances in his judgment for the prevention of accidents; and the Contractor shall take other precautions as necessary for public safety including, but not limited to, traffic control.

C. Engineer's Responsibility:

1. The Engineer's review of the Contractor's construction performance is not intended to include review of the adequacy of the Contractor's safety or sanitary measures in, on, or near the construction site. The City assumes no responsibility for the inspection of safety precautions or for the enforcement of safety precautions required by law.

2. The Engineer may suspend operations if the Contractor determines that an imminent safety hazard exists.

1.20 CONTRACTOR'S FINANCIAL OBLIGATION

The Contractor shall promptly make payments to all persons supplying labor and materials in the execution of the contract.

1.21 PROTESTS - CONTRACT REQUIREMENTS

- A. If work demanded of the Contractor is considered by the Contractor to be outside the requirements of the contract, or if the Contractor considers any record or ruling of the Engineer or any inspector to be unfair, the Contractor shall immediately upon such work being demanded or such record or ruling being made, ask for written instructions or decision, whereupon the Contractor shall proceed without delay to perform the work or conform to the record or ruling. If the Contractor still wishes to protest, the Contractor shall, within 15 calendar days after receipt of same, file a written protest with the Engineer, stating clearly and in detail the Contractor's objections and reasons therefor. Except for such grounds or protest or objections as are made of record in the manner specified and within the time stated herein, the Contractor hereby waives all grounds for protest or objections to the records, rulings, instructions, or decisions of the Engineer, and hereby agrees that as to all matters not included in such protests, the records, instructions, and decisions of the Engineer shall be final and conclusive.

Appendix F to Contract **SUPPLEMENTAL CONDITIONS**

B. No later than thirty (30) calendar days following the submission of a protest in accordance with subsection A, the Contractor shall submit to the Engineer his claim concerning the matter so noticed. The claim shall set forth clearly and in detail, for each item of additional compensation or time adjustment claimed, the reasons for the claim, references to applicable provisions of the specifications, the nature and amount of cost or time involved, or both, the computations used in determining such cost or time, or both, and all other pertinent factual data. The Contractor shall furnish such clarification and further available information and data as may be requested in writing by the Engineer within the time specified in such request. In addition, the Contractor shall maintain complete and accurate daily records of the cost of any portion of the work for which additional compensation is claimed, and shall give the Engineer access thereto or certified copies thereof as requested.

C. Any decision, order, instructions, notice, or act or omission of the Engineer for which the Contractor has submitted a protest shall be final and conclusive on the Contractor if the Contractor fails to submit or document a claim with respect thereto in the manner and within the times above stated, and such failure shall constitute a waiver of all claims in connection therewith, whether direct or consequential in nature, provided that the Engineer may, if the Contractor shows good cause, and if the interests of the City will not be prejudiced, consider and decide a properly documented claim on its merits notwithstanding the Contractor's failure to submit it within the time above stated. The foregoing provision shall create no right to the Contractor, and failure or refusal of the Engineer to exercise the Engineer's authority thereunder shall not be subject to claim by the Contractor.

1.22 CONTRACTOR'S RESPONSIBILITIES FOR LOSSES OR LIABILITIES

A. Risk of Loss:

Except as otherwise provided in the contract documents and except as to the cost of repair or restoration of damage to the work caused by an act of God as that term is defined in Section 7105 of the Public Contract Code of the State of California, the Contractor shall bear all losses resulting to the Contractor on account of the amount or character of the work, or from any unforeseen obstructions or difficulties which may be encountered, or from any encumbrances on the line of the work, or because the nature of the ground in or on which the work is done is different from what is assumed, or on account of the weather, or floods, or other causes.

B. Materials and Facilities:

1. The Contractor shall be responsible for materials and facilities as hereinafter provided and in the event of the Contractor's failure to carry out said responsibilities, the same may be carried out by the City at the expense of the Contractor.

a. The Contractor shall be responsible for any material furnished the Contractor and for the care of all work until its completion and final acceptance, and the Contractor shall at the Contractor's own expense replace damaged or lost material and repair damaged parts of the work.

b. The Contractor shall protect the City facilities from damage resulting from the Contractor's work. City facilities damaged by or as a result of the Contractor's work under this contract shall be repaired or replaced, as directed by the Engineer, at the Contractor's expense.

c. The Contractor shall remove from the vicinity of the completed work all buildings, rubbish, unused material, concrete forms, and other materials belonging to the Contractor or used under the Contractor's direction during construction.

1.23 CONTRACTOR USE OF PREMISES

- A. Confine operations at site to areas permitted by the contract documents.
- B. Do not encumber site with excessive material or equipment.
- C. Do not impose any load on any structure that will damage or endanger structure.
- D. Take precautions necessary to prevent annoyance to occupants adjacent to or in the vicinity of the work.

1.24 COOPERATION WITH OTHER WORK FORCES

A. Other Contractors, other utilities and public agencies or their Contractors, other City Contractors, and City personnel may be working in the vicinity during the project construction period.

B. There may be some interference between these activities and the work under this Specification. The Contractor shall cooperate and coordinate their work with that of other work forces to assure timely contract completion.

C. Coordinate all activities in and around repair locations.

D. Any costs for providing cooperation with other work forces shall be considered as included in the proposal price for the various contract items of work and no separate payment will be made therefor.

1.25 PRECONSTRUCTION CONFERENCE

A. A preconstruction conference will be held at the time and place designated by the Engineer.

B. The Contractor shall be present or be represented by an agent with authority to act for the Contractor and in responsible charge of the work to be accomplished.

1.26 MATERIAL AND WORKMANSHIP

A. Omissions from the Plans and Specifications:

Where the plans or specifications describe portions of the work in general terms, but not in complete detail, it is understood that the Contractor shall provide and install such materials as necessary for a complete and functional facility at no additional cost to the City. All work shall be done and workmanship

Appendix F to Contract

SUPPLEMENTAL CONDITIONS

completed consistent with the quality of work standard for the industry for commercial work, notwithstanding any omission from the specifications or the drawings. It shall be the duty of the Contractor to call attention to apparent errors and omissions and request instructions before proceeding with the work. The Engineer may, by appropriate instructions, correct errors and omissions, which instructions shall be as binding upon the Contractor as though contained in the original specifications or drawings.

B. Compliance with Jurisdictional Agency Requirements:

All work performed under this Specification may be inspected as provided in Paragraph 1.09. All work performed within city or county streets or State of California freeway rights of way shall meet the requirements of the agency having jurisdiction. All materials furnished and all work done must be satisfactory to the Engineer. Work, material, or equipment not in accordance with the contract documents shall be made to conform thereto. Unsatisfactory material and equipment will be rejected, and if so ordered by the Engineer, shall, at the Contractor's expense, be immediately removed from the vicinity of the work.

1.27 SATURDAY, SUNDAY, AND HOLIDAY WORK

Without the written consent of the Engineer, no installation or construction work shall be done on Saturdays, Sundays, or holidays. Holidays are defined as City holidays which are listed in Document 00800, Paragraph 1.04.

1.28 COOPERATION

The City reserves the right to perform other work at or near the site at any time by the use of its own forces or other contractors. The Contractor shall coordinate their work and cooperate with City forces and other contractors to the end that any delay or hindrance to their work will be avoided.

1.29 AGREEMENTS WITH ADJACENT PROPERTY OWNERS

Agreements with property owners for spoiling excavated material, storing materials, or other purpose related to the work shall be made in writing and a copy submitted to the Engineer for their information.

1.30 EMERGENCY WORK

A. During Working Hours:

In case of an emergency which threatens loss or injury of property, and/or safety of life during working hours, the Contractor shall act, without previous instructions from the City, as the situation may warrant. The Contractor shall notify the Engineer of the emergency and the action taken immediately thereafter. Any compensation claimed by the Contractor, together with substantial documents in regard to expense, shall be submitted to the Engineer within 15 calendar days after the emergency. Compensation, if allowed, will be paid for as extra work.

B. Outside Working Hours:

Whenever in the opinion of the City there shall arise outside of the regular working hours on the contract work, an emergency involving utility services to the public or danger to public safety, the City's forces may choose to handle such emergency work. If such emergency arises out of or is the result of operations by the Contractor, the cost of the corrective measures will be billed to the Contractor and deducted from their payment as provided in the contract documents. The performance of emergency work by City forces will not relieve the Contractor of any of his responsibilities, obligations, or liabilities under the contract.

1.31 CONFLICT AMONG DRAWINGS, SPECIFICATIONS, AND/OR STANDARDS

In case of conflict among contract documents, the document of highest precedence shall prevail. The descending order of precedence shall be:

1. Permits and Agreements with Other Agencies
2. City Codes
3. Technical Specifications
4. Contract Requirements
5. Project Drawings
6. City Standards
 - a. Specifications
 - b. Drawings
7. Referenced Specifications and Standards
8. Referenced Drawings

1.32 FIRE PROTECTION

A. The Contractor shall provide access to all fire hydrants located along the line of their work. Such access shall meet the approval of the City Public Safety Department, and should it be necessary to close a portion of a street for a limited time, such street shall not be closed until the Contractor has the approval of said Department.

B. The City Public Safety Department shall be notified when a street is opened after it has been closed.

C. Approval shall be obtained from that Department for the use of any fire hydrant.

1.33 ORDER OF WORK

A. When required by specifications or plans, the Contractor shall follow the sequence of operations as set forth therein.

Appendix F to Contract SUPPLEMENTAL CONDITIONS

B. Full compensation for conforming to such requirements will be considered as included in the prices paid for the various contract items of work and no additional compensation will be allowed therefor.

1.34 DIFFERING SITE CONDITIONS

A. The Contractor shall promptly, and before the following conditions are disturbed, notify the City, in writing, of any:

1. Material that the Contractor believes may be material that is hazardous waste, as defined in Section 25117 of the Health and Safety Code that is required to be removed to a Class I, Class II, or Class III disposal site in accordance with provisions of existing law.
2. Subsurface or latent physical conditions at the site differing from those indicated.
3. Unknown physical conditions at the site of any unusual nature, different materially from those ordinarily encountered and generally recognized as inherent in work of the character provided for in the contract.

B. The City shall promptly investigate the conditions, and if it finds that the conditions do materially so differ, or do involve hazardous waste, and cause a decrease or increase in the Contractor's cost of, or the time required for, performance of any part of the work, the City shall issue a change order under the procedures described in the contract.

C. In the event that a dispute arises between the City and the Contractor whether the conditions materially differ, or involve hazardous waste, or cause a decrease or increase in the Contractor's cost of, or time required for, performance of any part of the work, the Contractor shall not be excused from any scheduled completion date provided for by the contract, but shall proceed with all work to be performed under the contract. The Contractor shall retain any and all rights provided either by contract or by law which pertain to the resolution of disputes and protests between the contracting parties.

1.35 PROCEDURES FOR FILING AND RESOLVING CLAIMS

Any claim arising under this contract which the Contractor wishes to assert against the City shall be governed by California Public Contract Code Section 9204. Claims which do not exceed three hundred seventy-five thousand dollars (**\$375,000**) are also subject to the provisions of Article 1.5 of the California Public Contract Code (commencing with Section 20104).

Pursuant to California Public Contracts Code Section 9204, claims shall be resolved as follows:

(1) (a) Upon receipt of a claim pursuant to this section, the public entity to which the claim applies shall conduct a reasonable review of the claim and, within a period not to exceed 45 days, shall provide the claimant a written statement identifying what portion of the claim is disputed and what portion is undisputed. Upon receipt of a claim, a public entity and a contractor may, by mutual agreement, extend the time period provided in this subdivision.

(b) The claimant shall furnish reasonable documentation to support the claim, pursuant to Appendix B (General Conditions), Section 2.16.

(c) If the public entity needs approval from its governing body to provide the claimant a written statement identifying the disputed portion and the undisputed portion of the claim, and the governing body does not meet within the 45 days or within the mutually agreed to extension of time following receipt of a claim sent by registered mail or certified mail, return receipt requested, the public entity shall have up to three days following the next duly publicly noticed meeting of the governing body after the 45-day period, or extension, expires to provide the claimant a written statement identifying the disputed portion and the undisputed portion.

(d) Any payment due on an undisputed portion of the claim shall be processed and made within 60 days after the public entity issues its written statement. If the public entity fails to issue a written statement, paragraph (3) shall apply.

(2) (a) If the claimant disputes the public entity's written response, or if the public entity fails to respond to a claim issued pursuant to this section within the time prescribed, the claimant may demand in writing an informal conference to meet and confer for settlement of the issues in dispute. Upon receipt of a demand in writing sent by registered mail or certified mail, return receipt requested, the public entity shall schedule a meet and confer conference within 30 days for settlement of the dispute.

(b) Within 10 business days following the conclusion of the meet and confer conference, if the claim or any portion of the claim remains in dispute, the public entity shall provide the claimant a written statement identifying the portion of the claim that remains in dispute and the portion that is undisputed. Any payment due on an undisputed portion of the claim shall be processed and made within 60 days after the public entity issues its written statement. Any disputed portion of the claim, as identified by the contractor in writing, shall be submitted to nonbinding mediation, with the public entity and the claimant sharing the associated costs equally. The public entity and claimant shall mutually agree to a mediator within 10 business days after the disputed portion of the claim has been identified in writing. If the parties cannot agree upon a mediator, each party shall select a mediator and those mediators shall select a qualified neutral third party to mediate with regard to the disputed portion of the claim. Each party shall bear the fees and costs charged by its respective mediator in connection with the selection of the neutral mediator. If mediation is unsuccessful, the parts of the claim remaining in dispute shall be subject to applicable procedures outside this section.

(c) For purposes of this section, mediation includes any nonbinding process, including, but not limited to, neutral evaluation or a dispute review board, in which an independent third party or board assists the parties in dispute resolution through negotiation or by issuance of an evaluation. Any mediation utilized shall conform to the timeframes in this section.

(d) Unless otherwise agreed to by the public entity and the contractor in writing, the mediation conducted pursuant to this section shall excuse any further obligation under Section 20104.4 to mediate after litigation has been commenced.

(e) This section does not preclude a public entity from requiring arbitration of disputes under private arbitration or the Public Works Contract Arbitration Program, if mediation under this section does not resolve the parties' dispute.

Appendix F to Contract
SUPPLEMENTAL CONDITIONS

(3) Failure by the public entity to respond to a claim from a contractor within the time periods described in this subdivision or to otherwise meet the time requirements of this section shall result in the claim being deemed rejected in its entirety. A claim that is denied by reason of the public entity's failure to have responded to a claim, or its failure to otherwise meet the time requirements of this section, shall not constitute an adverse finding with regard to the merits of the claim or the responsibility or qualifications of the claimant.

(4) Amounts not paid in a timely manner as required by this section shall bear interest at 7 percent per annum.

(5) If a subcontractor or a lower tier subcontractor lacks legal standing to assert a claim against a public entity because privity of contract does not exist, the contractor may present to the public entity a claim on behalf of a subcontractor or lower tier subcontractor. A subcontractor may request in writing, either on his or her own behalf or on behalf of a lower tier subcontractor, that the contractor present a claim for work which was performed by the subcontractor or by a lower tier subcontractor on behalf of the subcontractor. The subcontractor requesting that the claim be presented to the public entity shall furnish reasonable documentation to support the claim. Within 45 days of receipt of this written request, the contractor shall notify the subcontractor in writing as to whether the contractor presented the claim to the public entity and, if the original contractor did not present the claim, provide the subcontractor with a statement of the reasons for not having done so.

A waiver of the rights granted by this section is void and contrary to public policy, provided, however, that (1) upon receipt of a claim, the parties may mutually agree to waive, in writing, mediation and proceed directly to the commencement of a civil action or binding arbitration, as applicable; and (2) a public entity may prescribe reasonable change order, claim, and dispute resolution procedures and requirements in addition to the provisions of this section, so long as the contractual provisions do not conflict with or otherwise impair the timeframes and procedures set forth in this section.

Nothing in this section shall impose liability upon a public entity that makes loans or grants available through a competitive application process, for the failure of an awardee to meet its contractual obligations.

Appendix F to Contract
SUPPLEMENTAL CONDITIONS

1.36 PROCEDURES FOR CIVIL ACTIONS FILED TO RESOLVE CLAIMS

A. The following procedures are established for all civil actions filed to resolve claims subject to this article in accordance with the State of California, Public Contract Code, Section 20104.4.

1. Within 60 days, but no earlier than 30 days, following the filing of responsive pleadings, the court shall submit the matter to nonbinding mediation unless waived by mutual stipulation of both parties. The mediation process shall provide for the selection within 15 days by both parties of a disinterested third person as mediator, shall be commenced within 30 days of the submittal, and shall be concluded within 15 days from the commencement of the mediation unless a time requirement is extended upon a good cause showing to the court.

2. If the matter remains in dispute, the case shall be submitted to judicial arbitration pursuant to Chapter 2.5 (commencing with Section 1142.10) of Title 3 of Part 3 of the Code of Civil Procedure, notwithstanding Section 1141.11 of that code. The Civil Discovery Act of 1986 (Article 3 (commencing with Section 2016) of Chapter 3 of Title 3 of Part 4 of the Code of Civil Procedure) shall apply to any proceeding brought under this subdivision consistent with the rules and pertaining to judicial arbitration.

E.

3. In addition to Chapter 2.5 (commencing with Section 1141.10) of Title 3 of Part 3 of the Code of Civil Procedure, (a) arbitrators shall, when possible, be experienced in construction law, and (b) any party appealing an arbitration award who does not obtain a more favorable judgment shall in addition to payment of costs and fees under that chapter, also pay the attorney's fees on appeal of the other party.

1.37 PERMITS AND LICENSES

A. The Contractor shall secure and pay for, as necessary for proper execution and completion of work:

1. All permits, including CAL/OSHA excavation permit, not specifically furnished by the City.
 4. Government fees.
 5. Licenses.
 6. Certifications.
 7. Business License from the City of Foster City.
 8. Building, Plumbing, and Electrical Permits from the City of Foster City.

B. Give required notices as required by the permits prior to work.

C. Comply with codes, ordinances, rules, regulations, orders, and other legal requirements of public authorities which bear on performance of work.

E. Provide copies of all permits to the Engineer prior to work.

1.38 EQUAL EMPLOYMENT OPPORTUNITY POLICY

It is the policy of the City that all qualified persons shall be afforded equal opportunities of employment on any public works contract entered into with the City. To prohibit discrimination because of race, color, religion, sex or national origin, all proposers shall be prepared to demonstrate that they and their subcontractors have undertaken a continuing program to promote the full realization of equal employment opportunities.

1.39 OWNER'S RIGHT TO CORRECT DEFICIENCIES

F.

G. If the Contractor should neglect to prosecute the work properly in accordance with the contract documents, the owner, after 10 consecutive calendar days following written notice to the contractor and their surety may, without prejudice to any other remedy the owner may have, and without declaring the contract in default or terminating the contract, correct such deficiencies in work intended to become a permanent part of the project, and may deduct the cost thereof from the payment then or thereafter due the Contractor or the entire cost thereof shall be paid by the Contractor or the Contractor's surety. The owner reserves the right to take over work in the event of an emergency.

(End of Appendix F)

Appendix G to Contract
COVID 19

This COVID-19 Amendment/Attachment amends the Agreement between _____ ("City") and _____ ("Contractor") dated _____.

1. Definitions

A. The 2019 novel coronavirus and the disease it causes are collectively referred to herein as "**COVID-19**".

B. A "**COVID-19 Condition**" is something attributable to COVID-19 not caused by the Contractor (which for purposes herein includes all subcontractors) and beyond its reasonable control including but not limited to COVID-19 Proclamations and supply chain disruptions due to COVID-19, and other circumstances concerning COVID-19 not caused by the Contractor and which are beyond its reasonable control.

C. A "**COVID-19 Proclamation**" includes but is not limited to orders, directives and guidance concerning COVID-19 that have been issued, and which may be issued from time to time, by public agencies or regulatory bodies, the CDC or OSHA or Cal/OSHA, including without limitation the Cal/OSHA COVID-19 Prevention Emergency Temporary Standards. Contractor acknowledges that those orders, directives and guidance may require the Project to shut down or otherwise increase the Contractor's cost or time of performance by calling for things such as social distancing and the use of personal protective equipment. In the event of conflicting COVID-19 Proclamations, the Contractor shall follow the most applicable, restrictive and newest COVID-19 Proclamations.

D. An "**Unknown COVID-19 Condition**" is a COVID-19 Condition the Contractor did not know about, and reasonably should not have known about, as of the date the Contractor submitted its proposal. The requirements contained in COVID-19 Proclamations issued before submission of a proposal are not Unknown COVID-19 Conditions, and the Contractor will be deemed to have knowledge of those requirements.

E. An "**Unknown COVID-19 Cost**" is a cost that: (i) is solely attributable to an Unknown COVID-19 Condition; (ii) is reasonable and unavoidable under the circumstances; (iii) is not the result of the Contractor's failure to comply with the contract documents or a COVID-19 Proclamation; and (iv) is not the result of a subcontractors failure to comply with a COVID-19 Proclamation in connection with the performance of the Services.

2. COVID-19 Conditions and Proposal. Contractor is expected to know and is deemed to have known about COVID-19 Conditions when it submits its proposal, and COVID-19 Conditions must be accounted for in the Contractor's price and schedule. In order to be entitled to any relief from a COVID-19 Condition, the Contractor must demonstrate that the issue, cost or delay is due to an Unknown COVID-19 Condition.

3. Compliance with COVID-19 Proclamations.

A. Contractor shall comply with COVID-19 Proclamations in the performance of the Services, irrespective of when the COVID-19 Proclamations are issued, and as they pertain to performance of the Services. The cost of such compliance is non-compensable, except as otherwise expressly stated herein.

B. Contractor is responsible to ensure that its subcontractors and suppliers comply with COVID-19 Proclamations at all times in connection with the performance of their Services.

4. Delay. The Contractor is entitled to a reasonable time extension for an Unknown COVID-19 Condition. Such time extension is non-compensable.

5. City Directed Suspension. The City may suspend Services due to COVID-19 health concerns, even though the Contractor may be allowed to proceed with the Services based on COVID-19 Proclamations. The City may suspend the Services for its convenience. The Contractor is entitled to a time extension for a City Directed Suspension, and the contract amount will be equitably adjusted if and to the extent Contractor incurs increased costs that are Unknown COVID-19 Costs.

6. Compensation for COVID-19 Costs. City will reimburse the Contractor for Unknown COVID-19 Costs which are not included in the schedule of values.

7. Safe Work Practices. Contractor shall implement safe work practices recommended by CDC or OSHA or Cal/OSHA, which may include, inter alia, screening all employees, subcontractors, or others ("worker(s)") at all locations where Services are performed for signs and symptoms of COVID-19; adopting staggered work schedules, e.g., providing alternating workdays or extra shifts, to reduce the total number of employees on a site at any given time and to ensure physical distancing; identifying choke points where workers are forced to stand together, such as hallways and elevators, ingress and egress points, break areas, and buses, and implement policies to maintain social distancing; coordinating deliveries in line with the employer's minimal contact and cleaning protocols; and instituting a rigorous housekeeping program to reduce dust levels at all exterior locations. Contractor remains fully responsible for following and complying with changes to recommended safe work practices from time to time.

8. Monitoring and Reporting. City may require the Contractor to actively monitor the health of its workers through temperature checks and questionnaires of major COVID-19 symptoms, including but not limited to cough, fever above 100.4 degrees Fahrenheit and shortness of breath. Contractor shall immediately report to City any outbreaks of COVID-19 among its workers. The Contractor shall not knowingly allow any worker who has tested positive with COVID-19 to enter a City building. In the event of an outbreak or an exposure to COVID-19, the City may impose appropriate mitigation strategies which may be in consultation with the public health officer.

9. Conflicts. In the event of an inconsistency between this COVID-19 Amendment and the Agreement, this Addendum shall control.

IN WITNESS WHEREOF, the City and Contractor have executed this Covid-19 Amendment as of the date set forth above.

CONTRACTOR:

CITY:

Signature

Signature

Print Name & Title

Print Name & Title

(End of Appendix G)

Appendix H to Contract **Rental Addendum**

Addendum to Construction Services Agreement (the "Agreement") between Mobile Modular Management Corporation ("Lessor" or "Contractor") and City of Foster ("Lessee" or "Owner")

- A. ENTIRE AGREEMENT:** This Addendum is hereby incorporated in its entirety into the Agreement referenced above. In the event of any conflicts between the Agreement, including any of the Contract Documents (as defined in the Agreement) and this Addendum, the terms of this Addendum shall prevail as they apply to any Equipment (defined below) or any associated rental services.
- B. LOSS OR DAMAGE:** Upon delivery and until the modular building(s) and other accessories (the "Equipment") leased under this Agreement is returned to Lessor, Lessee assumes all risk of loss or damage to the Equipment. Should any of the Equipment damaged be capable of repair, the Agreement shall not terminate, but at Lessee's cost and expense the Equipment shall be repaired and restored to its condition existing prior to such damage. In the event any of the Equipment is damaged beyond repair or is lost, stolen or wholly destroyed, the Agreement shall cease and terminate as to such Equipment as of the date of the event, accident or occurrence causing such loss or destruction, and Lessee shall pay Lessor within ten (10) days thereafter, an amount equal to the full replacement value of the Equipment.
- C. INSURANCE:** Lessee shall provide, maintain, and pay all premiums for insurance covering the loss, theft, destruction, or damage of the Equipment in an amount not less than the Insurance Value for each building as indicated in the table below, naming Lessor as loss payee of the proceeds. Lessee shall also provide, maintain, and pay all premiums for general liability insurance (minimum of \$1,000,000 per occurrence), naming Lessor as an additional insured. All insurance shall be in a form and with a company satisfactory to Lessor, and shall not be subject to cancellation without thirty (30) day's prior, written notice to Lessor. Lessee shall deliver to Lessor certificates of insurance proving the existence of all policies meeting the above requirements. In the event that Lessee is self-insured, Lessee may provide proof of self-insurance meeting requirements equivalent to those imposed herein.

EQUIPMENT INSURANCE VALUE:

Item Description	Quantity	Insurance Value
Classroom, 24x40 DSA (Item 1001)	2	\$85,500.00 (Each)
Classroom, 48x40 DSA (NonStd)	1	\$128,700.00 (Each)
Restroom, 12x44 HCD (NonStd)	1	\$45,900.00 (Each)

- D. WAIVER AND INDEMNIFICATION:** Lessee hereby waives and releases all claims against Lessor for loss of or damage to all property, goods, wares and merchandise in, upon or about the Equipment, and for injuries to Lessee, Lessee's agents and third persons, irrespective of the cause of such loss, damage or injury except resulting from Lessor's negligence. Lessee agrees to indemnify and hold harmless Lessor from and against any and all losses, liabilities, costs, expenses (including attorney fees), claims, actions, and demands ("Claims") arising out of the maintenance, possession or use of the Equipment by Lessee, its employees, agents or any person invited, suffered or permitted by Lessee to use or be in, on or about the Equipment. In no event shall Lessor be responsible for Claims resulting from Lessee's negligence or willful misconduct. Each party's duty of indemnification shall be in proportion to its allocated share of joint negligence.
- E. CONSEQUENTIAL DAMAGES:** Under no circumstances shall either party be liable to the other party for any special, incidental or consequential damages resulting from lease or use of the Equipment, including, but not limited to, anticipated loss or loss of business or profits.
- F. BILLING AND PAYMENT:** For the purposes of this Agreement, a month is defined as 30 calendar days. The first 30-day billing period will commence upon delivery of the Equipment and subsequent rental invoices will be issued every thirty (30) days thereafter until the Equipment is returned to Lessor. The initial invoice shall include one-time charges related to the delivery and installation of the Equipment and the first month of rent, plus any tax or personal property expense charges, if applicable. Upon return of the Equipment, rent will be pro-rated in half month increments. If Equipment is returned within the first 15 days of the billing period, rent will be due for the first half of the billing period; if Equipment is returned between the 16th and 30th days of the billing period, rent will be due for the entire billing period. The final invoice will include one-time charges related to the removal and return of the Equipment along with any applicable charges for damage or missing items, pursuant to section I below. To the extent applicable, Lessor expressly rejects Lessee's requirements related to retention, applications for payment, schedules of values or lien releases related to the payment of rental invoices, and payment by owner shall not be a condition precedent to payment. Payment for each invoice is due Net 30 days from the invoice date.
- G. LEASE TERM; TERMINATION:** Lessee agrees to lease the Equipment for a minimum of 22 months (the initial "Lease Term"). In the event that Lessee terminates the lease of the Equipment prior to the expiration of the Lease Term for any reason other than Lessor's default, Lessor shall be entitled to charge an early termination fee, even if such termination occurs prior to delivery of the Equipment. Such fee shall be determined by Lessor following the receipt of the termination request. Such early termination fee may include charges related to the preparation of the Equipment for delivery and/or the rental value of the Agreement. In no event shall such early termination fee exceed the total value of the Agreement.
- H. HOLDING OVER; LEASE EXTENSION:** Following the expiration of the initial lease term, the lease of Equipment and the terms and conditions of the Agreement and Addendum shall be extended on a month-to-month basis until the Equipment is returned to Lessor. In this event, Lessor may establish a revised rental rate which shall constitute the monthly rent. The charges upon return and any other charges related to the return of the Equipment may be reasonably revised from those reflected in the Agreement at Lessor's discretion, should the lease be extended beyond the initial lease term.
- I. MAINTENANCE AND REPAIRS; EQUIPMENT CONDITION:** Lessor shall bear the expense of all repairs that it determines are needed to ameliorate normal wear and tear or defects in the Equipment; the expense of all other repairs shall be borne by Lessee. Lessee shall not make any alterations, modifications, additions or improvements to the Equipment without Lessor's prior written consent. Lessee shall maintain the Equipment in good condition and repair, normal wear and tear excluded, in accordance with Lessor's Service Guide, which is attached hereto and incorporated herein by reference (<https://www.mobilemodular.com/resources/product-guides>). Following the return of the Equipment, an inspection will be performed by Lessor. If such inspection reveals that the Equipment is damaged beyond normal wear and tear or is missing any components or accessories, Lessee will be charged for repairs and/or replacement required to return the Equipment to its standard condition.
- J. WARRANTIES; DISCLAIMER.** Lessor warrants to Lessee that the Equipment, when delivered and set up, will be in good condition and repair, be properly set up and comply with all applicable regulations. Lessee acknowledges and agrees that the foregoing warranties are in lieu of all other warranties contained in the agreement as respects the Equipment. **LESSOR HAS MADE NO OTHER WARRANTIES OR REPRESENTATIONS, EITHER EXPRESS OR IMPLIED, RELATING TO ANY OF THE EQUIPMENT, INCLUDING WITHOUT LIMITATION, THE CONDITION OF THE EQUIPMENT, ITS MERCHANTABILITY OR ITS FITNESS FOR ANY PARTICULAR PURPOSE.**
- K. COMPLIANCE WITH LAW:** Lessee assumes all responsibility for any and all licenses, clearances, permits and other certificates as may be required for Lessee's lawful operation, use, possession and occupancy of the Equipment. Lessee 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 Lessor 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.
- L. FEDERAL CONTRACTOR:** As a federal contractor, Lessor's contracts are subject to the provisions of (i) Executive Order 11246, (41 CFR 60-1.4); (ii) section 503 of the Rehabilitation Act of 1973, (41 CFR 60-741.5(a); and (iii) section 4212 of the Vietnam Era Veterans Readjustment Act of 1974, (41 CFR 60-300.5(a). **Lessor shall abide by the requirements of 41 CFR 60-741.5(a) and 41 CFR 60-300.5(a). These regulations prohibit discrimination against qualified individuals on the basis of disability, and qualified protected veterans, and require affirmative action by covered prime contractors and subcontractors to employ and advance in employment qualified individuals with disabilities, and qualified protected veterans.**

Appendix H to Contract
Rental Addendum

[SIGNATURES FOLLOW ON NEXT PAGE]

The parties hereto, Mobile Modular Management Corp., a California corporation, as Lessor and City of Foster, as Lessee hereby agree to the terms and conditions set forth in this Addendum. The individuals signing this Addendum affirm that they are duly authorized to execute and commit to these terms on behalf of the above named parties.

LESSOR: Mobile Modular Management Corporation By: _____ Name: _____ Title: _____ Date: _____	LESSEE: City of Foster By: _____ Name: _____ Title: _____ Date: _____
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