



TO: SOUTHERN NEVADA DISTRICT BOARD OF HEALTH **DATE:** June 25, 2020

RE: *Approve Lease Agreement for drinking and waste water services for the Non-Congregational Shelter (NCS)*

PETITION #48-20

That the Southern Nevada District Board of Health *approves the Lease Agreement with MTD USA LLC*

PETITIONERS:

Sean Beckham, Facilities Manager *SB*
Karen White, Chief Financial Officer *KW*
Fermin Leguen, MD, MPH Acting Chief Health Officer *FL*

DISCUSSION:

The Health District proposes a lease agreement with MTD USA LLC to provide temporary infrastructure for drinking and waste water handling.

FUNDING:

Total amount including installation and removal is \$78,000.



TEMPORARY INFRASTRUCTURES FOR
DRINKING AND WASTE WATER
SERVICES AGREEMENT
BETWEEN
SOUTHERN NEVADA HEALTH DISTRICT
AND
MTD USA LLC
C2000144

THIS TEMPORARY INFRASTRUCTURES FOR DRINKING AND WASTE WATER SERVICES AGREEMENT is entered into by and between the Southern Nevada Health District ("Health District") and MTD USA LLC ("MTD") (individually "Party" and collectively "Parties").

WHEREAS, pursuant to Nevada Revised Statutes (NRS) Chapter 439, Health District is the public health authority for Clark County, Nevada with jurisdiction over all public health matters therein; and

WHEREAS, as part of its response to the current COVID-19 pandemic, Health District requires temporary infrastructures for drinking and waste water handling (the "Systems"), and requires the necessary equipment, professional installation services, and removal services ("Services") of an experienced temporary water and disposal supply firm to assist with Systems associated with the installation and subsequent operation of two (2) Emergency Prefabricated Temporary Non-Congregational Shelter Buildings (the "NCS Buildings"), which will be installed by the NCS Buildings Manufacturer ("Manufacturer") at Health District's 280 S. Decatur Boulevard, Las Vegas, Nevada location (the "Project"); and

WHEREAS, MTD is a global supplier of temporary water supply and disposal equipment and services, with a U.S. location at 5101 Chatooga Drive, Lithonia, Georgia, and desires to provide such Services to Health District; and

WHEREAS, Health District and MTD desire to provide in writing a full statement of their respective rights and obligations in furtherance of the above described purposes; and

NOW, THEREFORE in consideration of the mutual promises and undertakings herein specified, the Parties agree as follows:

- 1) TERM, TERMINATION AND AMENDMENT. This Agreement shall be effective from the date of the last signature affixed hereto through November 30, 2020 unless sooner terminated by either Party as set forth in this Agreement.
 - 1.01 This Agreement may be terminated by mutual consent of both Parties or unilaterally by either Party with or without cause. Any termination of this Agreement shall not prejudice any rights or remedies which may have accrued to either Party up until

the date of the termination including the right to claim actual damages in respect of any breach of the Agreement which existed at or before the date of termination.

- 1.02 This Agreement may be terminated by either Party prior to the date set forth in this Section 1, provided that, unless terminated for cause, termination shall not be effective until fifteen (15) days after a Party has served written notice upon the other Party.
 - 1.03 Upon termination, MTD will be entitled to payment for services actually provided prior to date of termination and for which MTD has submitted an invoice but has not been paid. Final payment is contingent upon submission of all work to-date and the return of all Health District documents, data, and any other materials provided or received in furtherance of this Agreement.
 - 1.04 This Agreement is subject to the availability of funding and shall be terminated immediately if for any reason state and/or federal funding ability, or private grant funding ability, budgeted to satisfy this Agreement is withdrawn, limited, or impaired.
 - 1.05 This Agreement may only be amended, modified or supplemented by a writing signed by a duly authorized agent/officer of each Party and effective as of the date stipulated therein.
- 2) **INCORPORATED DOCUMENTS.** The Services to be performed and the consideration therefore shall be specifically described in the attachments to this Agreement, which are expressly incorporated into and are specifically a part of this Agreement, as follows:
- Attachment A: Scope of Work
Attachment B: Payment
- 3) **COMPENSATION.** MTD shall complete the Services in a professional and timely manner consistent with Attachment A, Scope of Work. MTD will be reimbursed for expenses incurred as provided in Attachment B: Payment.
- 4) **MTD RESPONSIBILITIES.**
- 4.01 In providing Services required to provide, install, and remove the Systems, MTD will:
 - a) Use MTD's best efforts, skill, judgment, and abilities to perform Services in an expeditious and timely manner consistent with professional industry standards and the orderly progress of the Project.
 - b) Provide sufficient personnel and equipment to accomplish the Services in a timely manner.
 - c) Coordinate other professional services as necessary for the complete performance of MTD's obligations under this Agreement;
 - d) Review with Health District, as applicable, alternative approaches to Project

design and assembly.

- e) Be responsible for the accuracy and adequacy of the plans and promptly correct any known or discovered error, omission, or other defect in the plans, drawings, specifications, or other Services provided by MTD without any additional cost or expense to Health District.**
- f) Advise Health District in writing when it is aware of any conflicts, errors, omissions in the Services documents or defects in installation of the Project.**
- g) Designate a representative primarily responsible for MTD's Services under this Agreement. The designated representative:**
 - (i) Will act on behalf of MTD with respect to all phases of MTD's Services and shall be available as required for the benefit of the Project and Health District.**
 - (ii) Will attend, upon request, Health District's scheduled Project progress and Board meetings providing updates of the Project status including schedule, costs, quality, and changes.**
 - (iii) Will not be changed without prior Health District's approval, which approval shall not be unreasonably withheld.**
- h) Carry such professional liability, and errors and omissions insurance, covering the services provided under this Agreement, with a minimum limit of \$2,000,000 per occurrence, accident, or claim, for CGL, CAL, and E&O, respectively. The fees for such insurance will be at MTD's expense. Upon request, MTD will deliver a Certificate of Insurance indicating the expiration date, and existence, of the professional liability insurance.**
- i) Carry Workers' Compensation coverage. MTD shall provide proof of current Workers' Compensation coverage to Health District's Contract Administrator upon execution of this Agreement, at execution of any subsequent Amendment as appropriate, and when requested by Health District. MTD is responsible for providing evidence of continued Workers' Compensation coverage throughout the term of this Agreement.**
- j) Identify to Health District the employees and other personnel that will be assigned to the Project including the applicable rate and any consultants that will be performing services for the Project.**
 - (i) MTD will not remove or replace the persons or entities assigned to the Project without Health District's written consent, which consent shall not be unreasonably withheld.**
 - (ii) Health District will be a beneficiary of any third-party contracts entered into in furtherance of this Project. Third-party contracts will contain a**

provision making Health District a third-party beneficiary and will require the same professional error and omissions insurance and commercial general insurance required of MTD.

(iii) If changed during the course of the Project, MTD will promptly update the list of persons and consultants.

k) Keep Project site free from the accumulation of waste materials and debris arising from the Services. Upon completion of work, any tools, scaffolding, surplus materials and debris shall be removed, and the site left "broom clean" to the Health District's satisfaction.

5) **HEALTH DISTRICT RESPONSIBILITIES.**

5.01 Health District will:

- a) Provide MTD with a full description of the requirements of the Project.
- b) Review the drawings, specifications and other Services documents produced by MTD in the performance of its obligations under this Agreement, as required.
- c) Notify MTD of any design fault or defect in MTD's Services documents of which Health District becomes aware.
- d) Provide required information, approvals, and decisions as expeditiously as necessary for the orderly progress of MTD's Services.
- e) Designate the Facilities Services Manager to act on Health District's behalf with respect to Project. Health District's representative:
 - (i) Gives MTD written notice of any change in the Project quality and scope.
 - (ii) Has authority to give general direction to MTD.
 - (iii) Approves and initiates any change orders.
 - (iv) Authorizes MTD to perform special services.

6) **CHANGE ORDERS.** Prior to commencement of any additional services, MTD will notify Health District of any time delays and additional fees that may be incurred.

7) **OWNERSHIP.**

7.01 Health District will have ownership of all documents and will be provided copies upon request.

7.02 Health District will have an irrevocable license to:

- a) Use, reproduce or make derivative works from these documents for any renovations, maintenance, or remodeling of the Project; and
- b) Use and reproduce the image of the Project and to reproduce documents and

data obtained within the documents.

- 8) **DISPUTE RESOLUTION.** If any dispute arises out of or relates to this Agreement, or breach thereof, and if said dispute cannot be settled through direct discussions, the Parties agree to non-binding mediation before having recourse to a judicial forum. No written or oral representation made during the course of any mediation shall be deemed a Party admission.
- 9) **STATUS OF PARTIES; INDEPENDENT CONTRACTOR.** The Parties are associated with each other only for the purposes and to the extent set forth in this Agreement and in respect to performance of Services pursuant to this Agreement. In the performance of such Services, MTD and any person employed by or contracted with MTD shall at all times act as and be an independent contractor, and not an employee or agent of Health District. Further, it is expressly understood and agreed by the Parties that nothing contained in this Agreement will be construed to create a joint venture, partnership, association, joint employment or co-employment, or other affiliation or like relationship between the Parties.
 - 9.01 MTD has and shall retain the right to exercise full control over the employment, direction, compensation, and discharge of all persons employed by MTD in the performance of the services hereunder. MTD shall be solely responsible for all matters relating to the payment of its employees, including compliance with social security, withholding, and all other wages, salaries, benefits, taxes, demands, and regulations of any nature whatsoever.
- 10) **MUTUAL COOPERATION.** The Parties shall fully cooperate with one another in the furtherance of this Agreement, and provide assistance to one another in the investigation and resolution of any complaints, claims, actions or proceedings that may arise out of the provision of Services hereunder.
 - 10.01 The Parties shall take any additional acts or sign any additional documents as is reasonably necessary, appropriate, or convenient to achieve the purposes of this Agreement.
- 11) **NON-EXCLUSIVITY.** This Agreement is non-exclusive, and both Parties remain free to enter into similar agreements with third parties. During the term of this Agreement, MTD may perform services for any other clients, persons, or companies as MTD sees fit, so long as the performance of such services does not interfere with MTD's performance of obligations under this Agreement, and do not, in the opinion of Health District, create a conflict of interest.
- 12) **CONFIDENTIALITY.** No protected health information as that term is defined in the Health Insurance Portability and Accountability Act of 1996 ("HIPAA") or personally identifiable information will be shared with MTD during the course of this Agreement. Accordingly, no Business Associate Agreement is required.
- 13) **COMPLIANCE WITH LAWS.** MTD shall keep itself informed of and in compliance with all federal, state, and local laws, ordinances, regulations, and orders that may affect in any manner the provision and performance of the services or those engaged to perform Services

under this Agreement.

- 14) **BREACH; REMEDIES.** Failure of either Party to perform any obligation of this Agreement shall be deemed a breach. Except as otherwise provided for by law or this Agreement, the rights and remedies of the Parties shall not be exclusive and are in addition to any other rights and remedies provided by law or equity, including but not limited to actual damages, and to a prevailing Party, the right to seek reasonable attorneys' fees and costs.
- 15) **WAIVER OF BREACH.** Failure to declare a breach or the actual waiver of any particular breach of the Agreement or its material or nonmaterial terms by either Party shall not operate as a waiver by such Party of any of its rights or remedies as to any other breach.
- 16) **LIMITED LIABILITY.** Health District will not waive and intends to assert available NRS Chapter 41 liability limitations in all cases. Agreement liability of both Parties shall not be subject to punitive damages. To the extent applicable, actual agreement damages for any breach shall be limited by NRS 353.260 and NRS 354.626.
- 17) **FORCE MAJEURE.** Neither Party shall be deemed to be in violation of this Agreement if it is prevented from performing any of its obligations hereunder due to general labor disturbances such as but not limited to boycott, strike, and lock-out, go-slow, occupation of factories and premises, failure of public transportation, act of authority whether lawful or unlawful, compliance with any law or governmental order, rule, regulation or direction, curfew restriction, expropriation, compulsory acquisition, seizure of works, requisition, nationalization, act of public enemy, act of terrorism, accidents, fires, explosions, destruction of machines, equipment, factories and any kind of installation, prolonged break-down of transport, telecommunication or electric current; acts of God or natural disaster such as but not limited to violent storm, cyclone, typhoon, hurricane, tornado, blizzard, earthquake, volcanic activity, landslide, tidal wave, tsunami, floods, winds, damage or destruction by lightning, and/or drought; or shortage or inability to obtain critical material or supplies. In such an event the intervening cause must not be through the fault of the Party asserting such an excuse, and the excused Party is obligated to promptly perform in accordance with the terms of the Agreement after the intervening cause ceases.
- 18) **INDEMNIFICATION.** Neither Party waives any right or defense to indemnification that may exist in law or equity.
- 19) **STATEMENT OF ELIGIBILITY.** MTD acknowledges to the best of its knowledge, information, and belief, and to the extent required by law, neither MTD nor any of its employees/contractors is/are: i) currently excluded, debarred, suspended, or otherwise ineligible to participate in federal health care programs or in federal procurement or non-procurement programs; and ii) has/have not been convicted of a federal or state offense that falls within the ambit of 42 USC 1320a-7(a).
- 20) **NON-DISCRIMINATION.** As an Equal Opportunity Employer, MTD has an ongoing commitment to hire, develop, recruit and assign the best and most qualified individuals possible. MTD employs employees without regard to race, sex, color, religion, age, ancestry, national origin, marital status, status as a disabled veteran, or veteran of the Vietnam era,

disability, sexual orientation or gender identity or expression. MTD likewise agrees that it will comply with all state and federal employment discrimination statutes, including but not limited to Title VII, rules enforced by the Nevada Equal Rights Commission, and the American with Disabilities Act, in connection with this Agreement.

- 21) **THIRD PARTY INTEREST.** Except as stated in 4.01(j)(ii), the Parties do not intend to create in any other individual or entity the status of a third party beneficiary, and this Agreement shall not be construed to create such a status. The rights, duties, and obligations contained in this Agreement shall operate only between the Parties to this Agreement, and shall inure solely to the benefit of the Parties determining and performing their obligations under this Agreement.
- 22) **SEVERABILITY.** If any provision contained in this Agreement is held to be unenforceable by a court of law or equity, this Agreement shall be construed as if such provision did not exist and the nonenforceability of such provision shall not be held to render any other provision or provisions of this Agreement unenforceable.
- 23) **ASSIGNMENT.** Neither Party shall assign, transfer or delegate any rights, obligations or duties under this Agreement without the prior written consent of the other Party.
- 24) **PUBLIC RECORDS.** Pursuant to NRS Chapter 239, information or documents, including this Agreement, and any other documents generated incidental thereto may be opened by Health District to public inspection and copying. Health District will have a duty to disclose unless a particular record is made confidential by law or a common law balancing of interests.
- 25) **PROPER AUTHORITY.** The Parties hereto represent and warrant that the person executing this Agreement on behalf of each Party has full power and authority to enter into this Agreement and that the Parties are authorized by law to perform the services set forth in the documents incorporated herein.
- 26) **ENTIRE AGREEMENT.** This Agreement constitutes the entire Agreement between the Parties and supersedes any prior contracts or agreement between the Parties regarding the subject matter hereof.
- 27) **TIME.** MTD agrees that time is of the essence in this Agreement.
- 28) **GOVERNING LAW.** This Contract and the rights and obligations of the Parties hereto shall be governed by, and construed according to the laws of the State of Nevada, with Clark County, Nevada as the exclusive venue of any action or proceeding related to or arising out of this contract.
- 29) **NOTICES.** All notices permitted or required under this Agreement shall be made by personal delivery, overnight delivery, or via U.S. certified mail, return receipt requested, to the other Party at its address as set forth below:

**ATTACHMENT A
SCOPE OF WORK**

MTD's Services to provide the Health District with Systems for the NCS Buildings (see Exhibits 1 and 2 of this Attachment A, Scope of Work, Final Manufacturer Drawings for NCS Building #1 and NCS Building #2, respectively), will include the following:

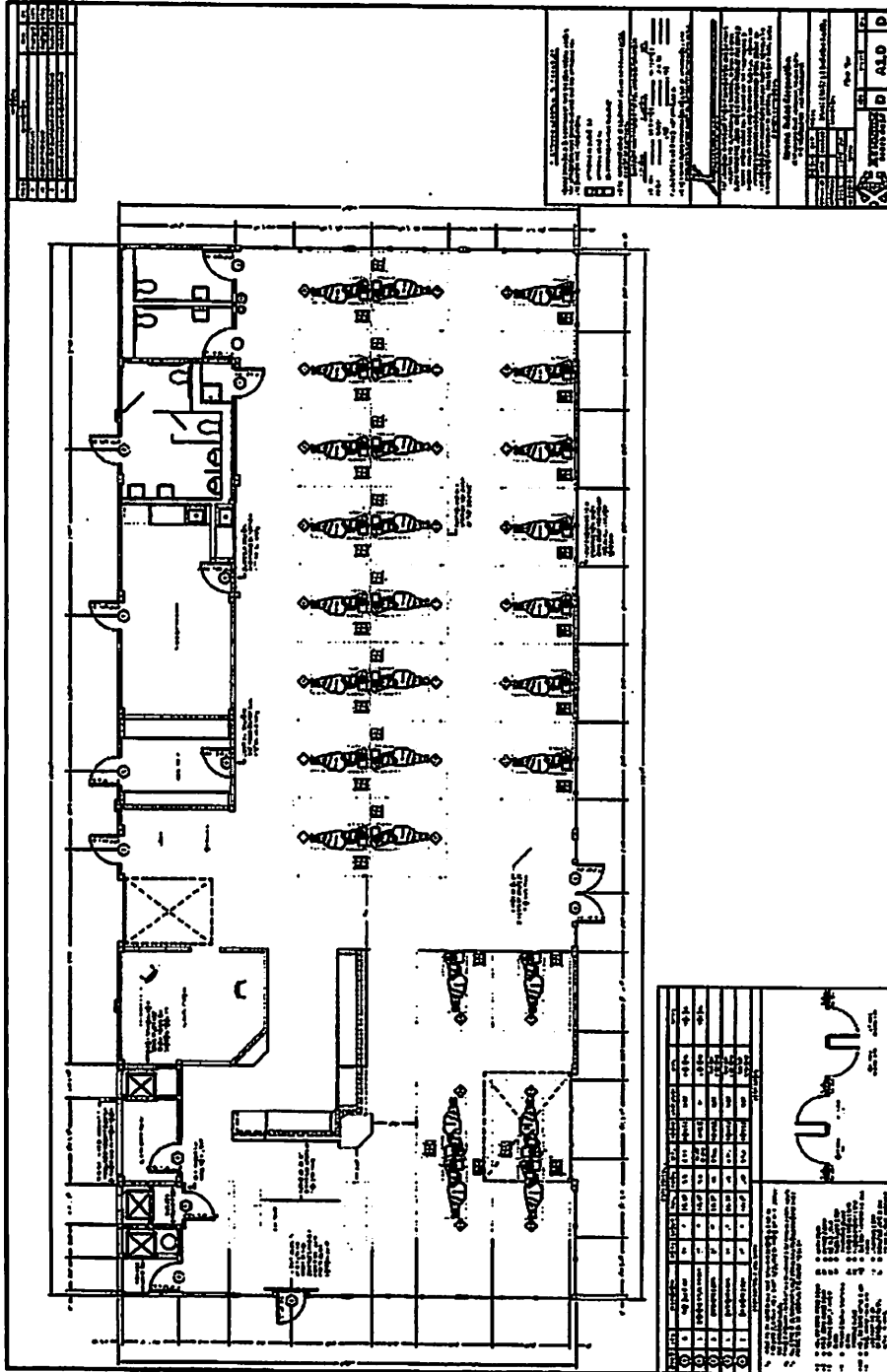
- A. Phase 1 Services for NCS Building #1 will include:
 - A.1 Design and provision of a temporary water infrastructure to supply water to the following, including all pumps, piping and connections ("Phase 1 System"):
 - (1) Three (3) showers
 - (2) Seven (7) sinks
 - (3) Six (6) toilets/urinals
 - (4) Hook up to hydrant for potable water source
 - (5) Waste Water Bag (5,420 gallons)
 - A.2 Project management
 - A.3 Labor to install, maintain, and remove Phase 1 System. Phase 1 System Scheduling and Key Dates information includes:
 - (1) Load in/Installation of Phase 1 System: 6/15/2020
 - (2) Hand Over Date: 6/22/2020
 - (3) On site technician: Install & Dismantle; two (2) days for three (3) month maintenance check
 - (4) Load Out/Tear Down: To be determined
 - (5) Phase 1 System off site: To be determined
 - A.4 Build-up and Break-down of Phase 1 System
 - A.5 Disinfection of Phase 1 System
 - A.6 Sampling on critical points (maximum six (6) points)
 - A.7 Service of one (1) technician at three (3) month maintenance mark
 - A.8 Transportation of all Phase 1 System materials
 - A.9 Hotel and expenses for MTD engineers
 - A.10 24 hour on call phone support for Phase 1 System
 - A.11 A technician on site within 24 hours in the event of an equipment failure

- B. Phase 2 Services for NCS Building #2 will include:**
 - B.1 Design and provision of a temporary water infrastructure to supply water to the following, including all pumps, piping and connections ("Phase 2 System"):**
 - (1) Seven (7) sinks**
 - (2) Hook up to hydrant for potable water source**
 - (3) Waste Water Bag (5,420 gallons)**
 - B.2 Project management**
 - B.3 Labor to install, maintain, and remove Phase 2 System**
 - B.4 Build-up and Break-down of Phase 2 System. Phase 2 System Scheduling and Key Dates information includes:**
 - (1) Load in/Installation of Phase 2 System: 6/15/2020**
 - (2) Hand Over Date: 6/22/2020**
 - (3) On site technician: Install & Dismantle; two (2) days for three (3) month maintenance check**
 - (4) Load Out/Tear Down: To be determined**
 - (5) Phase 2 System off site: To be determined**
 - B.5 Disinfection of Phase 2 System**
 - B.6 Sampling on critical points (maximum six (6) points)**
 - B.7 Service of one (1) technician at three (3) month maintenance mark**
 - B.8 Transportation of all Phase 2 System materials**
 - B.9 Hotel and expenses for MTD engineers**
 - B.10 24 hour on call phone support for Phase 2 System**
 - B.11 A technician on site within 24 hours in the event of an equipment failure**
- C. EXCLUSIONS.**
 - C.1 The following items are not included in MTD's Services:**
 - (1) Disinfection of third-party equipment**
 - (2) Forklift to unload/load truck and spot equipment**
 - (3) Any required permits**
 - (4) Area security for any spare parts left onsite**

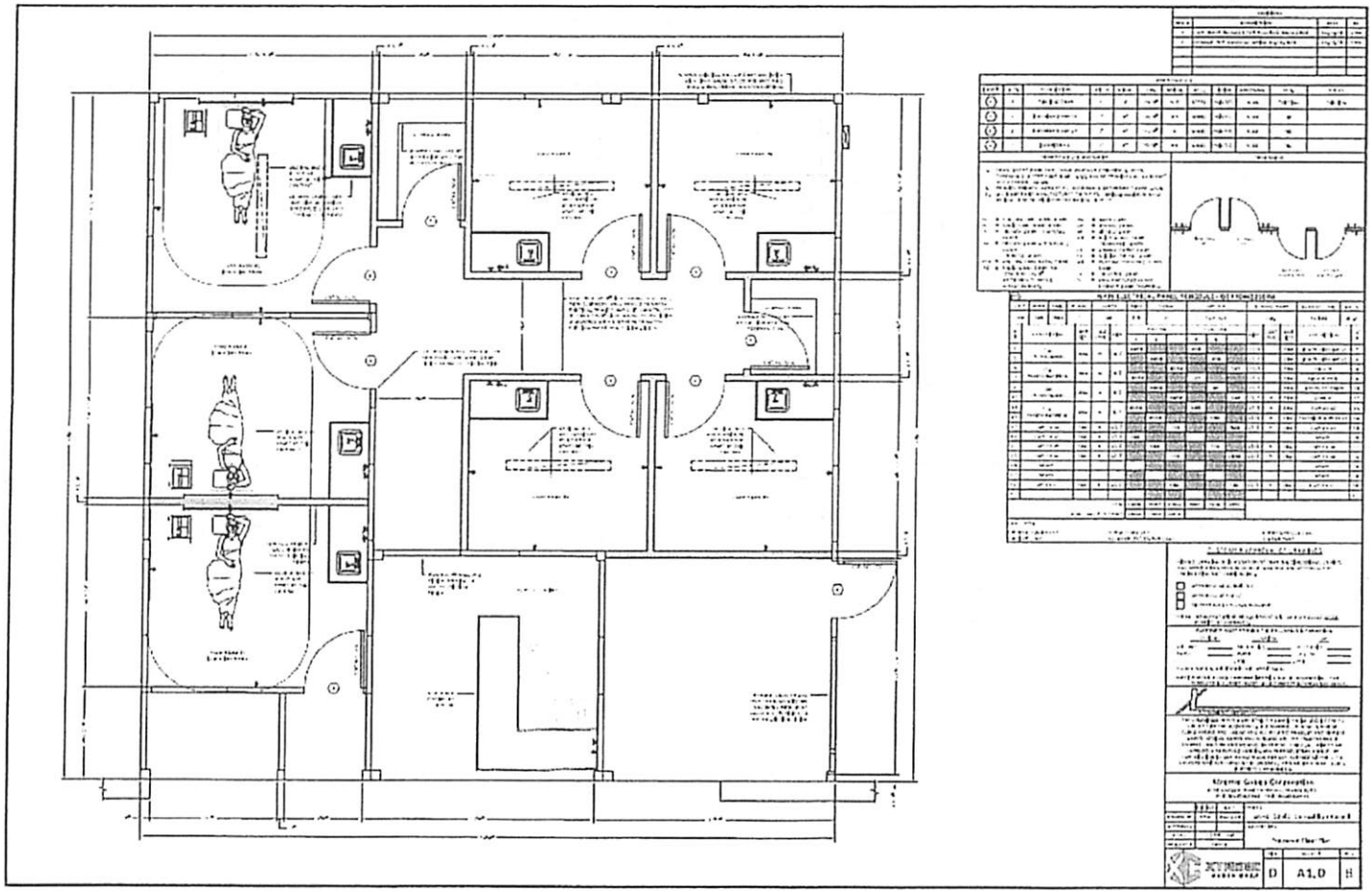
(5) Water meter from city

(6) Any access pass and/or parking pass needed for MTD technicians to be onsite

**EXHIBIT 1 TO ATTACHMENT A, SCOPE OF WORK
FINAL MANUFACTURER DRAWING FOR NCS BUILDING #1**



**EXHIBIT 2 TO ATTACHMENT A, SCOPE OF WORK
FINAL MANUFACTURER DRAWING FOR NCS BUILDING #2**



**ATTACHMENT B
PAYMENT**

A. PROJECT BUDGET

A.1 MTD will provide the Services as outlined pursuant to Attachment A, Scope of Work, for a total amount not-to-exceed \$78,000. MTD will bill for fixed fees as detailed in the below Section B, Payment Detail. The Parties acknowledge that MTD's provision of goods and/or services not contained within the Scope of Work may result in additional costs. No additional costs will be billed to Health District without Health District's prior written authorization.

B. PAYMENT DETAIL.

B.1 MTD's fixed fee for Services associated with the Phase 1 System will not exceed \$57,000:

Phase 1 System Progress Payments			
Phase 1 Progress Payment #	Milestone and Percentage of Fixed Fee to be billed	Amount of Progress Payment	Progress Payment Payable
1	50% upon execution of Agreement	\$28,500	Payment due prior to shipment of Phase 1 System. Invoice to be submitted to ap@snhd.org
2	25% due three (3) months after Hand Off of Phase 1 System to Health District	\$14,250	Payment due within thirty (30) days of submittal of invoice to ap@snhd.org.
3	25% due upon removal of Phase 1 System	\$14,250	Payment due within thirty (30) days of submittal of invoice to ap@snhd.org.

B.1 MTD's fixed fee for Services associated with the Phase 2 System will not exceed \$21,000:

Phase 2 System Progress Payments			
Phase 2 Progress Payment #	Milestone and Percentage of Fixed Fee to be billed	Amount of Progress Payment	Progress Payment Payable
1	50% upon execution of Agreement	\$10,500	Payment due prior to shipment of Phase 2 System. Invoice to be submitted to ap@snhd.org
2	25% due three (3) months after Hand Off of Phase 1 System to Health District	\$5,250	Payment due within thirty (30) days of submittal of invoice to ap@snhd.org.
3	25% due upon removal of Phase 1 System	\$5,250	Payment due within thirty (30) days of submittal of invoice to ap@snhd.org.

- C. Health District shall not be liable for interest charges on late payments.
- D. In the event items on an invoice are disputed, payment on those items will be held until the dispute is resolved. Undisputed items will not be held with the disputed items.
- E. MTD's invoices shall be submitted monthly for months during which services are performed, as applicable, which detail work performed and milestones under each item identified in the Project budget. Backup documentation including but not limited to invoices, receipts, proof of payments, or any other documentation requested by Health District, is required, and shall be maintained by MTD in accordance with cost principles applicable to this Agreement. MTD invoices shall be signed by MTD's official representative, and shall include a statement certifying that the invoice is a true and accurate billing.