



**2021 MASTER PRODUCT AND SERVICES AGREEMENT
STATEMENT OF WORK**

PROJECT	Chula Vista, CA	EFFECTIVE DATE: 10/26/21
	CUSTOMER: City of Chula Vista (“Customer” or “Entity”)	PALLET SPC (“PALLET”)
Contact Name	Angelica Davis	Benjamin Simons
Mailing Address	276 4th Ave, Chula Vista, CA 91910	PO BOX 77570 SEATTLE, WA 98177
Email Address	adavis@chulavistaca.gov	benjamin@palletshelter.com
Telephone	(619) 787-6738	(425) 595-4544
UBI/Business License No.		603 622 031
Federal Tax I.D.		8 2 - 1 5 1 6 7 2 2
PALLET BANKING INFORMATION		
Bank Name: Columbia Bank	Account Beneficiary Name: Pallet SPC	
Routing No.:	Account Beneficiary Address: PO Box 77570, Seattle, WA 98177	
Account No.:		
Account Type (check one): <input checked="" type="checkbox"/> Business Checking <input type="checkbox"/> Personal Checking <input type="checkbox"/> Business Savings <input type="checkbox"/> Personal Savings	Pallet hereby authorizes Customer to make direct deposits into Pallet’s bank account for the Purchase Price, Fees and Prepaid Expenses associated with these Terms.	



Product Purchase and Sale:				
Quantity and Type of Products Purchased:				
	Product	Sales Price	Quantity	Total Price
	Shelter 64 SQF .5" Insulated	\$5,495.00	63.00	\$346,185.00
	Shelter 100 SQF - 1.5" Insulated	\$8,995.00	3.00	\$26,985.00
	Shelter 400 SQF	\$36,995.00	2.00	\$73,990.00
	120v Electrical Kit w/ 1500w Heater	\$999.00	66.00	\$65,934.00
	Air Conditioner and Install Kit - Shelter 64	\$349.00	63.00	\$21,987.00
	Air Conditioner and Install Kit - Shelter 100	\$449.00	3.00	\$1,347.00
	Folding Bunk Bed	\$299.00	126.00	\$37,674.00
Custom Fit Mattress Pad	\$249.00	126.00	\$31,374.00	
Purchase Price for Products:	\$605,476			
Description of Services:	Pallet shall perform the following Services for the Project identified herein: Shipping and onsite assembly of shelters and accessories in Customer’s desired location are included in the Services. Pallet assembly excludes site grading, leveling of shelters, electrical or plumbing connections, and staking of units to ground. Customer shall provide 6,000 lbs. forklift with 8 foot forks for delivery and duration of the build.			
Payment for Services (Fees):	Assembly - \$57,500 Shipping - \$25,000			
Tax	\$52,979.15			
Payment Terms:	50% upon signing of this Statement of Work, and the remaining 50% upon assembly of units			
Total Purchase Price:	\$740,955.15			
Deposit Due Upon Signing:	\$370,477.58			
Subcontractors:	None			
Terms and Conditions:	This Statement of Work is subject to the Terms and Conditions attached hereto, which are incorporated herein by reference. Any and all documents, notes, memoranda or attachments made pursuant hereto are incorporated herein and made a part of this Statement of Work.			

PALLET**PALLET SPC**

a Washington social purpose corporation

By: _____
Amy King, President**CUSTOMER****CITY OF CHULA VISTA**

A chartered municipal corporation

By: _____
Maria V. Kachadoorian, City Manager



MASTER GOODS AND SERVICES AGREEMENT TERMS AND CONDITIONS

1. Terms and Conditions. As of the Effective Date set forth in the Statement of Work (the “**SOW**”), of which these Terms and Conditions are attached and incorporated into by reference (these “**Terms**”), Pallet hereby agrees to: (i) manufacture and sell to Customer temporary emergency shelters commonly known as “Pallet Shelters™” (the “**Products**”) and (ii) provide certain specialized installation services of the Products through its representatives or Subcontractors to and for the benefit of Customer (the “**Services**”), each as set forth in the SOW for the project site described in the SOW, and Customer shall purchase the Products and Services in accordance with these Terms. As consideration for Products delivered and Services to be rendered by Pallet under these Terms, Customer shall pay to Pallet the “Purchase Price” for the Products and all “Fees” Services.

2. Purchase Price; Fees. Payment of the purchase price for the Products (the “**Purchase Price**”), and the fees, costs and expenses for the purchase of the Services (collectively, the “**Fees**”) will be made in accordance with the applicable SOW. Pallet shall invoice the Customer for its Products delivered and Services performed on a periodic basis as set forth in the SOW. Unless otherwise stated in the SOW, all approved and agreed upon amounts invoiced to Customer shall be paid within thirty (30) days of the Customer’s receipt of the invoice. Customer shall promptly pay to Pallet any and all Fees and prepaid expenses reasonably incurred by Pallet in connection with the performance of the Services.

3. Term; Termination. The term of these Terms shall extend from the Effective Date through Customer’s approval that Pallet has completed all Services as set forth in the SOW (the “**Term**”), subject to the following termination provisions. Pallet or Customer may terminate the SOW and these Terms, in whole or in part, for “Cause” upon ten (10) days prior written notice to the other party. For purposes of these Terms, “Cause” includes, but is not limited to, any of the following: (a) a material breach of these Terms or SOW, including, without limitation, any non-payment of the Purchase Price, or any Fees or Prepaid Expenses when due; provided that Pallet has first provided written notice to Customer of said non-payment and provided Customer a reasonable opportunity to cure said non-payment; (b) violation by Pallet or Customer of any applicable federal, state and local laws, rules, order and regulations (collectively, “**Laws**”); or (c) if Pallet or Customer is voluntarily or involuntarily dissolved, or is adjudged to be Bankrupt or is subject to a general assignment for the benefit of its creditors, or if a receiver should be appointed on account of Pallet’s or Customer’s insolvency. For the purpose of this Section, “Bankrupt” shall mean the filing of a voluntary or involuntary petition of bankruptcy or similar relief from creditors, insolvency, the appointment of a trustee or receiver, or any similar occurrence reasonably indicating an imminent inability to perform substantially all of the Pallet’s or Customer’s duties under these Terms. Upon any early termination of these Terms or otherwise, the parties shall meet-and-confer to determine the Purchase Price remaining unpaid (if any), and all Fees incurred to date (if any), and any amounts still owed to Pallet or amounts needed to be refunded to Customer. Any further amounts owed or to be refunded shall be paid within thirty (30) days after such amounts have been determined by the parties.

4. Products; Shipment of Products.

(a) Purchase of Products. As consideration for the sale of the Products and performance of the Services, the Customer shall pay to Pallet the total Purchase Price as set forth on the SOW. The Purchase Price is exclusive of any sales, use or privilege tax, personal property taxes, excise tax based on gross revenue or any similar tax or charge that might be levied as a result of the production, sale or shipment of any Products or the use of the Products by Customer (the “**Taxes**”). Customer agrees to pay and otherwise be fully responsible for any and all such Taxes (except any taxes based on the net income of Pallet).

(b) Shipment of Products. The Products shall be delivered to the Customer at the location as set forth in the SOW by not later than December 31, 2021 (“**Delivery Date**”). Notwithstanding the foregoing, Pallet will notify the Customer of any delays that may affect the expected delivery date of the Products. If Pallet notifies Customer in accordance with these Terms, Pallet shall be afforded at least ten (10) additional days to deliver the Products. Unless otherwise set forth in the SOW, Pallet shall be responsible for arranging for and coordinating the shipment of the Products to the Customer. If Pallet fails to deliver Products in full by the Delivery Date, Customer may terminate this Agreement in accordance with Section 3 of these Terms.

(c) Delivery; Risk of Loss. All Products will be prefabricated at Pallet’s factory headquarters and shipped flat-packed in individual panels to the designated Project site. Pallet will not “drop ship” to any other location other than Project site. Unless otherwise instructed in writing by Customer, Pallet will have the sole and exclusive right to select the carrier for the shipment and delivery of the Products. Pallet may deliver the Products in installments. If any shipment of Products is delayed at Customer’s request, Pallet may invoice the Customer for such Products, and risk of loss to such products shall pass to Customer on the date Pallet is prepared to make shipment to the Customer.

(d) Inspection; No Refunds. Pallet agrees to notify Customer in writing upon delivery of the Products to the Project site. Upon receipt of the Products, Customer shall inspect all Products promptly upon receipt thereof at the Project site and may reject any Products in accordance with this Section 4(d) which fail in any significant, material respect to meet Pallet’s current acceptance specifications. Unless a written claim (a “**Rejection Notice**”) that a Product is defective or the delivery is incomplete is made and delivered to the Pallet within thirty (30) days from the date of delivery of the Products, the Customer agrees that it shall have accepted the Products as-delivered, as-is and with all faults and defects. Such Rejection Notice must provide adequate notice of the basis for the rejection which may, but not need, to include: (i) the total amount of Products that are alleged to be defective or undelivered; or (ii) the specific details of the alleged defects,



including specific defective parts or parts undelivered. As promptly as possible, but not later than ten (10) days after receipt by Pallet of Customer's Rejection Notice, Pallet shall, at its option and expense, notify Customer whether it agrees with or disputes Customer's Rejection Notice and if it agrees with Customer's Rejection Notice how it intends to remedy the defective or incomplete delivery.

5. Limited Warranty of Pallet. In addition to all other warranties provided herein, Pallet agrees to warrant all Products in accordance with the terms of its standard limited warranty (the "Limited Warranty") for each Product, as modified by Pallet from time-to-time in Pallet's sole and exclusive discretion. Pallet's current form of Limited Warranty can be found here: www.palletshelter.com/warranty. In the event the Products fail to comply with Pallet's Limited Warranty and Customer timely reports such failure in accordance with these Terms.

6. Customer's Duties. Customer shall cooperate in good faith with Pallet in its delivery of the Products and performance of the Services, and provide to Pallet true, complete and correct copies of all reasonably requested documentation or information reasonably necessary, desirable or required by Pallet in connection with the delivery of the Products and performance of the Services. Additionally, the Customer shall cooperate in good faith with Pallet to provide Pallet with reasonable access to any Customer facilities, officers, directors, employees, contractors, partners, joint venturers or affiliates as reasonably necessary, desirable or required by Pallet in connection with the performance of the Services. Customer represents and warrants that the individual executing the SOW on its behalf has all necessary, legal and requisite power and authority to execute, deliver the SOW and perform these Terms on behalf of the Customer, and all other agreements and instruments to be executed and delivered in connection with these Terms. While Pallet will provide the Products and Services set forth herein, Customer shall be responsible and liable for: (i) ensuring that all transactions, documents and operations in connection with these Terms, including, without limitation, all operations at the Project site, are in compliance with all applicable Laws; (ii) procuring all applicable permits, certifications, licenses and approvals necessary under all applicable Laws for the delivery of all Products and performance of all Services; and (iii) maintaining the Products and the safety of the Product's users and the Project site after the completion of the Services, except to the extent such maintenance is required under Pallet's Limited Warranty.

7. Subcontractors. Subject to the terms and conditions of these Terms and obtaining the prior written consent of Customer, Pallet may assign its rights, duties or obligations under these Terms to its partners, joint venturers, contractors, agents and subcontractors (collectively, "**Subcontractors**") with respect to the performance of Services only, on a per Project basis, subject to the limitation set forth in these Terms and any SOW. Pallet shall deliver to Customer written notice of the terms of any proposed subcontractor agreement with any Subcontractors, including the proposed Subcontractor's identity. In the event of the termination or expiration of these Terms, all subcontract rights will terminate effective as of the termination or expiration of these Terms.

8. Relationship of the Parties; Independent Contractor. These Terms are intended to create an independent contractor relationship between the Parties. Nothing contained herein shall be construed to: (i) give either Party the power to direct or control the day-to-day activities of the other; (ii) constitute the Parties as partners, joint venturers, co-owners or otherwise as participants in a joint or common undertaking; or (iii) allow either Party to create or assume any obligation on behalf of the other Party for any purpose whatsoever, including, without limitation, representations, contractual obligations, or obligations based on warranties or guarantees. Pallet shall have and retain sole and exclusive control over the time, place and manner in which it performs the Services.

9. Indemnification; Indemnification Procedure; Insurance.

(a) **Indemnification.** Pallet shall indemnify, defend, and hold Customer, and its officers, directors, owners, employees, affiliates, subsidiaries, subcontractors, successors and assigns (collectively, the "**Customer Parties**") harmless from and against all losses, damages, liabilities, deficiencies, claims, actions, judgments, settlements, interest, awards, penalties, fines, costs, or expenses of whatever kind, including reasonable attorneys' fees and the cost of enforcing any right to indemnification hereunder (collectively, "**Losses**") arising out of or resulting from any third party claim, suit, investigation, action, or other proceeding (each, an "**Action**") related to or arising out of or resulting from: (i) Pallet's breach of any representation, warranty, covenant, or obligation under these Terms or any SOW; (ii) any negligence, willful misconduct, violation of Law or any acts, errors or omissions of Pallet or any of Pallet's employees, officials, officers, agents or contractors (collectively, "**Pallet Parties**"), including, without limitation any errors, acts or omissions in violation of these Terms, or any applicable Law; (iii) the manufacture or delivery of the Products; or (iv) the performance of the Services, the results of such performance, or this Agreement; provided, that the above indemnification obligations shall not require Pallet to indemnify any Customer Party for Customer's sole negligence or willful misconduct.

(b) **Indemnification Procedure.** The Party seeking indemnification (the "**Indemnified Party**") shall promptly notify the other Party (the "**Indemnifying Party**") in writing of any Action and cooperate with the Indemnified Party at the Indemnifying Party's sole cost and expense. The Indemnifying Party shall immediately take control of the defense and investigation of the Action and shall employ counsel reasonably acceptable to the Indemnified Party to handle and defend the Action, at the Indemnifying Party's sole cost and expense. The Indemnifying Party shall not settle any Action in a manner that adversely affects the rights of the Indemnified Party without the Indemnified Party's prior written consent, which consent may not be unreasonably withheld or delayed. The Indemnified Party's failure to perform any obligations under this Section 9(b) will not relieve the Indemnifying Party of its obligation under this Section except to the extent the Indemnifying Party can demonstrate that it has been materially prejudiced as a result of the failure. The Indemnified Party may participate in and observe the proceedings at its own cost and expense with counsel of its own choosing.



(c) Obligations Not Limited or Modified. Pallet's obligations under this Section 9 shall not be limited to insurance proceeds, if any, received by any Indemnified Party, or by any prior or subsequent declaration by the Pallet. Furthermore, Pallet's obligations under this Section 9 shall in no way limit, modify, or excuse any of Pallet's other obligations or duties under the SOW or these Terms.

(d) Insurance. Pallet must procure and maintain, for the Term, and for twelve months after the Term, the policies of insurance described on the attached Exhibit A, which is incorporated into the Agreement by this reference (the "Required Insurance").

10. Limitation of Liability. Intentionally Omitted.

11. Miscellaneous.

(a) Entire Agreement; Conflicts. These Terms and the SOW attached hereto, collectively represent the full, final and comprehensive agreement and understanding of the Parties and any modification thereof shall not be effective unless contained in writing and signed by both Parties (the "Agreement"). Any prior or contemporaneous agreements, whether oral or written, relating to the subject matter discussed herein have been merged into these Terms. In the event of any conflict between the terms and provisions of these Terms and those of any SOW or other document, the following order of precedence will govern: (a) first, these Terms, excluding the SOW; (b) the SOW; and (c) third, any other documents incorporated herein or in the SOW by reference.

(b) Severability. Each provision of these Terms shall be considered severable such that if any one provision or clause conflicts with existing or future applicable law, or may not be given full effect because of such law, this shall not affect any other provision of these Terms that can be given effect without the conflicting provision of clause; provided however, that such provision shall be modified, to the minimum extent possible and necessary, to be enforceable to the fullest extent and in compliance with any such applicable laws, prior to it being severed from these Terms in its entirety.

(c) No Right to Assign; Third-Party Beneficiaries. Customer may not assign these Terms without the prior written consent of Pallet. These Terms are for the sole benefit of the Parties and their respective successors and permitted assigns and nothing herein, express or implied, is intended to or will confer upon any other Person any legal or equitable right, benefit, or remedy of any nature whatsoever, under or by reason of these Terms.

(d) Governing Law; Venue; Arbitration; Equitable Relief.

(i) Governing Law; Venue. These Terms shall be governed by and construed in accordance with the domestic laws of the state of California without giving effect to any choice of law or conflict of laws provision or rule (of any other jurisdiction. In the event of any litigation between the Parties hereto arising out of these Terms, the prevailing Party shall be allowed all reasonable attorneys' fees, court costs and expenses incurred in such litigation, including all such expenses incurred on appeal, together with all reasonable costs and disbursements necessary to enforce these Terms.

(iii) Equitable Relief. Each Party acknowledges that a material breach by the other Party of these Terms may cause the non-breaching Party irreparable harm, for which an award of damages would not be adequate compensation and, in the event of such a material breach or threatened breach, the non-breaching Party will be entitled to seek equitable relief, including in the form of a restraining order, orders for preliminary or permanent injunction, specific performance, and any other relief that may be available from any court, and the Parties hereby waive any requirement for the securing or posting of any bond or the showing of actual monetary damages in connection with such relief. These remedies are not exclusive but are in addition to all other remedies available under these Terms at law or in equity, subject to any express exclusions or limitations in these Terms to the contrary.

(e) Survival. The provisions of Sections 2, 3, 6, 8, and 9-11 shall survive the termination or expiration of these Terms.

(f) Notices. Any notice required or permitted by these Terms shall be in writing and delivered in person, sent by documented overnight delivery service, mailed by certified or registered mail, postage prepaid, or sent via email to the appropriate designated address of the intended recipient, transmission verification required, to the appropriate Party or Parties at the addresses referenced in the applicable SOW, or to such other address as the Parties may hereafter designate to the other in writing.

(g) Force Majeure. A Party (referred to in this Section as a "**Force Majeure Party**") shall be excused from the performance of its applicable obligation(s) under these Terms to the extent that such performance is made commercially impracticable, illegal, or impossible by an event of Force Majeure that is beyond the Force Majeure Party's reasonable control, and the Force Majeure Party provides written notice of the prevention within ten (10) business days of the occurrence of the Force Majeure event to the other Party (including details of the Force Majeure event, its anticipated duration and any action being taken to avoid or minimize its effect) and uses commercially reasonable efforts to avoid the effects of such Force Majeure and to perform the affected obligation(s) to the extent reasonably possible. Such excuse of performance shall be continued for so long as the condition constituting Force Majeure continues and the Force Majeure Party takes reasonable efforts to remove the condition or otherwise perform the affected obligation(s). For purposes of these Terms, "**Force Majeure**" shall mean only acts of God, strikes, civil disturbances, fires, earthquakes, governmental order or proclamation, outbreak or pandemic, supply chain interruption (to the extent such interruption is not caused by the negligence of such Party), acts of terrorism, floods,



explosions, riots, war, rebellion, sabotage or failure or default of public utilities or common carriers. For clarity, notwithstanding the existence of a Force Majeure impacting a Party's performance hereunder, such Force Majeure Party shall continue performing all of its other obligations hereunder, and the other Party shall be excused from performing such of its obligations under these Terms that it cannot reasonably perform due to the non-performance by the Force Majeure Party due to such Force Majeure, until such Force Majeure Party completes performance of such obligations that are prevented by such Force Majeure.

(h) Construction. The Parties hereby reaffirm that each has read the foregoing Terms, that each Party has had the opportunity to review, negotiate and participate in the creation of these Terms through independent counsel. The provisions contained herein shall not be construed or interpreted for or against any Party hereto because that Party drafted or caused that Party's legal representative to draft any of its provisions.

(i) Business License. Prior to commencement of work, Pallet shall obtain a business license from City.

(j) Compliance with Laws. In its manufacture and delivery of the Products, and in its performance of the Services, Pallet shall use its commercially reasonable, good faith efforts to comply with any and all applicable federal, state and local laws, including all prevailing wage laws, as applicable.

(k) Administrative Claims Requirements and Procedures. No suit or arbitration shall be brought arising out of this Agreement against City unless a claim has first been presented in writing and filed with City and acted upon by City in accordance with the procedures set forth in Chapter 1.34 of the Chula Vista Municipal Code, as same may be amended, the provisions of which, including such policies and procedures used by City in the implementation of same, are incorporated herein by this reference. Upon request by City, Pallet shall meet and confer in good faith with City for the purpose of resolving any dispute over the terms of this Agreement.



EXHIBIT A

REQUIRED INSURANCE

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

MINIMUM SCOPE AND LIMIT OF INSURANCE

Coverage shall be at least as broad as:

1. **Commercial General Liability (CGL):** Insurance Services Office (ISO) Form CG 00 01 12 07 covering CGL on an “occurrence” basis, including products-completed operations, personal & advertising injury, with limits no less than **\$1,000,000** per occurrence. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit.
2. **Automobile Liability:** ISO Form Number CA 00 01 covering any auto (Code 1), or if Pallet has no owned autos, hired, (Code 8) and non-owned autos (Code 9), with limit no less than **\$1,000,000** per accident for bodily injury and property damage.
3. **Workers’ Compensation:** as required by the State of California, with Statutory Limits, and Employer’s Liability Insurance with limit of no less than **\$1,000,000** per accident for bodily injury or disease.
4. **Professional Liability (Errors and Omissions):** Insurance appropriate to Pallet’s profession, with limit no less than \$1,000,000 per occurrence or claim, \$2,000,000 aggregate. *(If applicable – see footnote next page)*

If Pallet maintains higher limits than the minimums shown above, the Entity requires and shall be entitled to coverage for the higher limits maintained by Pallet.

Other Insurance Provisions

The insurance policies are to contain, or be endorsed to contain, the following provisions:

Additional Insured Status

The Entity, its officers, officials, employees, and volunteers are to be covered as additional insureds on the CGL policy with respect to liability arising out of work or operations performed by or on behalf of Pallet including materials, parts, or equipment furnished in connection with such work or operations. General liability coverage can be provided in the form of an endorsement to Pallet’s insurance at least as broad as ISO Form CG 20 10 11 85 or if not available, through the addition of both CG 20 10 and CG 20 37 if a later edition is used). Specifically, endorsement must not exclude Products / Completed Operations.

Primary Coverage

For any claims related to this contract, Pallet’s insurance coverage shall be primary insurance as respects the Entity, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by the Entity, its officers, officials, employees, or volunteers shall be excess of Pallet’s insurance and shall not contribute with it.



Notice of Cancellation

Each insurance policy required above shall provide that coverage shall not be canceled, except with notice to the Entity.

Waiver of Subrogation

Pallet hereby grants to Entity a waiver of any right to subrogation which any insurer of said Pallet may acquire against the Entity by virtue of the payment of any loss under such insurance. Pallet agrees to obtain any endorsement that may be necessary to effect this waiver of subrogation, but this provision applies regardless of whether or not the Entity has received a waiver of subrogation endorsement from the insurer.

Deductibles and Self-Insured Retentions

Any deductibles or self-insured retentions must be declared to and approved by the Entity. The Entity may require Pallet to purchase coverage with a lower deductible or retention or provide proof of ability to pay losses and related investigations, claim administration, and defense expenses within the retention.

Acceptability of Insurers

Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A:VII, unless otherwise acceptable to the Entity.

Claims Made Policies

If any of the required policies provide claims-made coverage:

1. The Retroactive Date must be shown, and must be before the date of the contract or the beginning of contract work.
2. Insurance must be maintained and evidence of insurance must be provided ***for at least five (5) years after completion of the contract of work.***
3. If coverage is canceled or non-renewed, and not replaced ***with another claims-made policy form with a Retroactive Date prior to*** the contract effective date, Pallet must purchase "extended reporting" coverage for a minimum of ***five (5)*** years after completion of work.

Verification of Coverage

Pallet shall furnish the Entity 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 Entity before work commences. However, failure to obtain the required documents prior to the work beginning shall not waive Pallet's obligation to provide them. The Entity reserves the right to require complete, certified copies of all required insurance policies, including endorsements required by these specifications, at any time.

Special Risks or Circumstances

Entity reserves the right to modify these requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances.