
CITY OF SUSANVILLE
66 N. Lassen Street • Susanville CA
Quincy McCourt, Mayor
Thomas Herrera, Mayor pro tem
Russ Brown • Mendy Schuster • Kevin Stafford

Susanville City Council
Special Council Meeting • City Council Chambers
Wednesday, February 22, 2023 – 9:00 AM

CALL THE MEETING TO ORDER
ROLL CALL

- 1. APPROVAL OF AGENDA: *(Additions and/or Deletions)***
- 2. PUBLIC COMMENT REGARDING CLOSED SESSION ITEMS (if any): *Any person may address the Council at this time upon any subject for discussion during Closed Session.***
- 3. CLOSED SESSION:**
 - A. CONFERENCE WITH LABOR NEGOTIATIONS – pursuant to Government Code §54957.6:**
 1. *Admin Unit*
 2. *Fire Unit*
 3. *Miscellaneous Unit*
 4. *Professional Technical Unit*
 5. *Public Works Unit*
- 4. RETURN TO OPEN SESSION: *(recess if necessary)***
 - *Reconvene in open session*
 - *Pledge of allegiance*
 - *Invocation*
 - *Report any changes to agenda*
 - *Report any action out of Closed Session*
- 5. BUSINESS FROM THE FLOOR: *Any person may address the Council at this time upon any subject on the agenda or not on the agenda within the jurisdiction of the City Council. However, comments on items on the agenda may be reserved until the item is discussed and any matter not on the agenda that requires action will be referred to staff for a report and action at a subsequent meeting.***

Presentations are subject to a five-minute limit.
- 6. CONSENT CALENDAR: **No Business.** *All matters listed under the Consent Calendar are considered to be routine by the City Council. There will be no separate discussion on these items. Any member of the public or the City Council may request removal of an item from the Consent Calendar to be considered separately.***
- 7. PUBLIC HEARINGS: **No Business.****
- 8. COUNCIL DISCUSSION/ANNOUNCEMENTS:**
- 9. NEW BUSINESS:**
 - 9.A** *Consider Resolution No. 23-6101, authorizing the Public Works Director to execute a purchase agreement with CXT Precast Concrete Products for the purchase and delivery of a restroom facility at Memorial Park and authorizing the Public Works Director to enter into a*

services contract agreement with Guzi-West Inspection and Consulting for asbestos and lead paint testing at current restroom facility located at Memorial Park

10. **CONTINUING BUSINESS:** No Business.

11. **CITY ADMINISTRATOR REPORTS:**

12. **FUTURE COUNCIL ITEMS:**

13. **ADJOURNMENT:**

- ***The next regular meeting of the Susanville City Council will be held on March 1, 2023 at 2023.***

AGENDA ITEM NO. 9.A
Action Item

SUSANVILLE CITY COUNCIL AGENDA ITEM

Submitted By: Jolene Arredondo, Administrative Services

Action Date: February 22, 2023

SUBJECT: Consider **Resolution No. 23-6101**, authorizing the Public Works Director to execute a purchase agreement with CXT Precast Concrete Products for the purchase and delivery of a restroom facility at Memorial Park and authorizing the Public Works Director to enter into a services contract agreement with Guzi-West Inspection and Consulting for asbestos and lead paint testing at current restroom facility located at Memorial Park

PRESENTED BY: Dan Newton, City Administrator

SUMMARY: Council has approved the grant activity to replace the current restroom facility located at Memorial Park. The project objectives are to replace the current facility with a newer restroom facility that can be open year-round and update the facility amenities. Staff has been meeting on a weekly basis to research and review quotes received, five quotes for the project have been obtained; in which four quotes were able to complete the project within the grant timeframe. The lowest quote received that encompassed all amenities staff felt were important came from CXT, this restroom provider is also the same provider of the bathroom facility located at Fruitgrowers Park. The quote includes transportation, crane rental, and custom options which include: timed electric lock system, anti-graffiti coating, and exterior mounted ADA drinking fountain. This restroom has two bathrooms, one men's restroom with urinal and stall and one women's restroom with two stalls. Staff has selected the exterior color to be hunter green with a cedar shake roof texture and barnwood wall textures. Parks and Facility Superintendent recommended going with CXT as parks and facility familiarization are currently in place as well as maintenance of the bathroom facility located at Fruitgrowers Park has been minimal in reference to graffiti removal, vandalism, and repairs.

In preparation for demolition of the current restroom facility located at Memorial Park, staff is recommending executing a contract with GuziWest for a survey of lead paint and asbestos. Guzi West will be in Susanville conducting similar surveys on Weatherlow properties whom are involved in current code enforcement abatement processes

and would like to add this survey to their site visit schedule for later this month.

FISCAL IMPACT:

Purchase of bathroom facility utilizing grant funding through CDBG CV 2/3 grant program and enter into an agreement for an asbestos and lead paint survey with Guzi-West for demolition of current bathroom facility for \$1,500 and purchase and delivery of a restroom facility through CXT, to not exceed \$200,000. No cost to general fund anticipated.

ACTION REQUESTED:

Motion to approve Resolution No. 23-6101, authorizing the Public Works Director to execute a purchase agreement with CXT Concrete Products for the purchase and delivery of a restroom facility at Memorial Park and authorizing the Public Works Director to enter into a services contract agreement with Guzi-West Inspection and Consulting for asbestos and lead paint testing at current restroom facility located at Memorial Park

ATTACHMENTS:

[23-6101.pdf](#)

[Susanville 4 door Dakota S-349_PriceSheet-SW 2.2023_Parks \(002\).pdf](#)

[CXT-DakotaDrawings.pdf](#)

[P_City of Susanville_1100 North Street_Asbestos and Lead Proposal_02-20-23.pdf](#)

RESOLUTION NO. 23-6101

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SUSANVILLE
AUTHORIZING THE PUBLIC WORKS DIRECTOR TO EXECUTE A PURCHASE
AGREEMENT WITH CXT RECAST CONCRETE PRODUCTS FOR THE PURCHASE AND
DELIVERY OF A RESTROOM FACILITY AT MEMORIAL PARK AND AUTHORIZING THE
PUBLIC WORKS DIRECTOR TO ENTER INTO A SERVICES CONTRACT AGREEMENT
WITH GUZI-WEST INSPECTION AND CONSULTING FOR ASBESTOS AND LEAD PAINT
TESTING AT CURRENT RESTROOM FACILITY LOCATED AT MEMORIAL PARK**

WHEREAS, the City of Susanville was awarded \$348,240 through the Community Block Development (CDBG) Program Coronavirus Response Program for a public restroom facility located at Memorial Park; and,

WHEREAS, staff has received four quotes for the restroom facility that meet the needs of the public in relation to amenities and meet the requirements of the grant with the quote from CXT Precast Concrete Products; and,

WHEREAS, to purchase the restroom facility and have the restroom facility delivered, the city must enter into a purchasing agreement with CXT Precast Concrete Products, not to exceed \$200,000; and,

WHEREAS, staff has determined that for Public Safety Lead Paint and Asbestos testing needs to be performed in order for the current restroom facility to be safely demolished; and,

WHEREAS, the City of Susanville has current agreements with Guzi-West Inspection and Consulting for asbestos and lead paint testing on various properties within city limit; and,

WHEREAS, staff has obtained a quote from Guzi-West Inspection and Consulting for \$1,500 to conduct asbestos and lead paint testing at Memorial Park upon completion of previously noted sit visits.

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Susanville hereby authorizes the Public Works Director to execute a Services Contract Agreement with Guzi-West Inspection and Consulting for lead paint and asbestos testing at Memorial Park and further authorizes the Public Works Director to enter into a purchasing agreement with CXT Precast Concrete Products to purchase a restroom facility to be placed at Memorial Park.

APPROVED: _____
Quincy McCourt, Mayor

ATTEST: _____
Heidi Whitlock, City Clerk

The foregoing Resolution was adopted at a special meeting of the City Council of the City of Susanville, held on the 22nd day of February, 2022 by the following vote:

AYES:
NOES:
ABSENT:
ABSTAIN:

Heidi Whitlock, City Clerk

APPROVED AS TO FORM: _____
Margaret Long, City Attorney



CXT® Precast Concrete Products manufactures restroom, shower and concession buildings in multiple designs, textures and colors. The roof and walls are fabricated with high strength precast concrete to meet all local building codes and textured to match local architectural details. All CXT buildings are designed to meet A.D.A. and to withstand heavy snow, high wind and category E seismic loads. All concrete construction also makes the buildings easy to maintain and withstand the rigors of vandalism. The buildings are prefabricated and delivered complete and ready-to-use, including plumbing and electrical where applicable. With thousands of satisfied customers nationwide, CXT is the leader in prefabricated concrete restrooms.

1. ORDERING ADDRESS(ES): CXT Precast Concrete Products, 606 N. Pines Road, Suite 202, Spokane Valley, WA 99206

2. ORDERING PROCEDURES: Fax 509-928-8270

3. PAYMENT ADDRESS(ES):

Remitting by check:

CXT, Inc., PO Box 676208, Dallas, TX 75267-6208

Remitting by ACH or wire transfer:

Beneficiary: CXT, Inc.

Beneficiary Bank: PNC Bank, Pittsburgh, PA

Account: 1077766885 ABA/Routing: 043000096

Email remittance details to AR@lbfoster.com

4. WARRANTY PROVISIONS: CXT provides a one (1) year warranty. The warranty is valid only when concrete is used within the specified loadings. Furthermore, said warranty includes only the related material necessary for the construction and fabrication of said concrete components. All other non-concrete components will carry a one (1) year warranty. CXT warrants that all goods sold pursuant hereto will, when delivered, conform to specifications set forth above. Goods shall be deemed accepted and meeting specifications unless notice identifying the nature of any non-conformity is provided to CXT in writing within the specified warranty. CXT, at its option, will repair or replace the goods or issue credit for the customer provided CXT is first given the opportunity to inspect such goods. It is specifically understood that CXT's obligation hereunder is for credit, repair or replacement only, F.O.B. CXT's manufacturing plants, and does not include shipping, handling, installation or other incidental or consequential costs unless otherwise agreed to in writing by CXT.

This warranty shall not apply to:

1. Any goods which have been repaired or altered without CXT's express written consent, in such a way as in the reasonable judgment of CXT, to adversely affect the stability or reliability thereof;

2. To any goods which have been subject to misuse, negligence, acts of God or accidents; or

3. To any goods which have not been installed to manufacturer's specifications and guidelines, improperly maintained, or used outside of the specifications for which such goods were designed.

5. TERMS AND CONDITIONS OF INSTALLATION (IF APPLICABLE): All prices subject to the "Conditions of Sale" listed on the CXT quotation form.

Customers are responsible for marking exact location building is to be set; providing clear and level site, free of overhead and/or underground obstructions; and providing site accessible to normal highway trucks and sufficient area for the crane to install and other equipment to perform the contract requirements. Customer shall provide notice in writing of low bridges, roadway width or grade, unimproved roads or any other possible obstacles to access. CXT reserves the right to charge the customer for additional costs incurred for special equipment required to perform delivery and installation. Customers will negotiate installation on a project-

by-project basis, which shall be priced as separate line items. For more information regarding installation and truck turning radius guidelines please see our website at <http://www.cxtinc.com>.

In the event delivery of the building/s ordered is/are not completed within 30 days of the agreed to schedule through no fault of CXT, an invoice for the full contract value (excluding shipping and installation costs) will be submitted for payment. Delivery and installation charges will be invoiced at the time of delivery and installation.

Should the delivery and installation costs increase due to changes in the delivery period, this increase will be added to the price originally quoted, and will be subject to the contract payment terms.

In the event that the delivery is delayed more than 90 days after the agreed to schedule and through no fault of CXT, then in addition to the remedies above, a storage fee of 1-1/2% of contract price per month or any part of any month will be charged.

****Customer is responsible for all local permits and fees.**

6. DELIVERY CHARGE: All prices F.O.B. origin prepaid and added to invoice. CXT operates three (3) manufacturing plants in the United States and will deliver from the closest location on our carriers.

7. PAYMENT TERMS: All orders are cash in advance. At CXT's discretion, credit may be given after approval of credit application. Payment to CXT by the purchaser of any approved credit amount is net 30 days after submission of invoice to purchaser. Interest at a rate equal to the lower of (i) the highest rate permitted by law; or (ii) 1.5% per month will be charged monthly on all unpaid invoices beginning with the 35th day (includes five (5) day grace period) from the date of the invoice. Under no circumstance can retention be taken. If CXT initiates legal proceeding to collect any unpaid amount, purchaser shall be liable for all of CXT's costs, expenses and attorneys' fees and costs of any appeal.

8. LIMITATION OF REMEDIES: In the event of any breach of any obligations hereunder; breach of any warranty regarding the goods, or any negligent act or omission of any party, the parties agree to submit all claims to binding arbitration. Any settlement reached shall include all reasonable costs including attorney fees. In no event shall CXT be subject to or liable for any incidental or consequential damages. Without limitation on the foregoing, in no event shall CXT be liable for damages in excess of the purchase price of the goods herein offered.

9. DELIVERY INFORMATION: All prices F.O.B. origin prepaid and added to invoice. CXT operates three (3) manufacturing plants in the United States and will deliver from the closest location on our carriers. Use the information below to determine the origin:

- F.O.B. 6701 E. Flamingo Avenue, Building 300, Nampa, ID 83687 applies to: AK, CA, HI, ID, MT, ND, NV, OR, SD, UT, WA, WY.

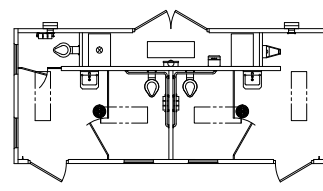
- F.O.B. 901 North Highway 77, Hillsboro, TX 76645 applies to AR, AZ, CO, IA, KS, LA, MN, MO, MS, NE, NM, OK, TX.

- F.O.B. 362 Waverly Road, Williamstown, WV 26183 applies to AL, CT, DE, FL, GA, IL, IN, KY, MA, MD, ME, MI, NC, NH, NJ, NY, OH, PA, PR, RI, SC, TN, VA, VT, WI, WV.

- Prices exclude all federal/state/local taxes. Tax will be charged where applicable if customer is unable to provide proof of exemption.

DAKOTA — 11' x 26'

Dakota with chase has two multiuser fully accessible flush restrooms. Standard features include simulated barnwood textured walls, simulated cedar shake textured roof, vitreous china fixtures, 4-gallon water heater, interior and exterior lights, off loaded, and set up at site.



CXT
800.696.5766
cxtinc.com

Price Per Unit			
Base Price		\$	\$
Added Cost Options		Click to Select	
Final Connection to Utilities		\$	
Optional Wall Texture- <i>choose one</i>	Split Face Block (\$5,500) Custom Texture (\$7,000)		
Optional Roof Texture	Ribbed Metal	\$	
Stainless Steel Water Closet (each)	Qty:	\$	
Stainless Steel Lavatory (each)	Qty:	\$	
Stainless Steel Urinal (each)	Qty:	\$	
Electric Hand Dryer (each)	Qty:	\$	
Electronic Flush Valve (each)	Qty:	\$	
Electronic Lavatory Faucet (each)	Qty:	\$	
Electronic Urinal Valve (each)	Qty:	\$	
Paper Towel Dispenser (each)	Qty:	\$	
Toilet Seat Cover Dispenser (each)	Qty:	\$	
Sanitary Napkin Disposal Receptacle (each)	Qty:	\$	
Baby Changing Table (each)	Qty:	\$	
Skylight in Restroom (each)	Qty:	\$	
Marine Grade Skylight in Restroom (each)	Qty:	\$	
Marine Package (<i>excluding fiberglass doors and frames</i>)		\$	
Exterior Mounted ADA Drinking Fountain w/Cane Skirt (each)	Qty:	\$	
2K Anti-Graffiti Coating		\$	
Optional Door Closure (each)	Qty:	\$	
Fiberglass Entry and Chase Doors and Frames (each)	Qty:	\$	
Timed Electric Lock System (2 doors- does not include chase door) (each)	Qty:	\$	
Exterior Frostproof Hose Bib with Box (each)	Qty:	\$	
Total for Added Cost Options:		\$	
Custom Options:		\$	
Engineering and State Fees:		\$	
Estimated One-Way Transportation Costs to Site (quote):		\$	
Estimated Tax:		\$	
Total Cost per Unit Placed at Job Site:		\$	

Estimated monthly payment on 5 year lease

This price quote is good for 60 days from date below, and is accurate and complete.

I accept this quote. Please process this order.

Company Name

CXT Sales Representative

Date

Company Representative

Date



Exterior Color(s) *(For single color mark an X. For two-tone combinations use W = Walls and R = Roof.)*

☐ Amber Rose	☐ Berry Mauve	☐ Buckskin	☐ Cappuccino Cream
☐ Charcoal Grey	☐ Coca Milk	☐ Evergreen	☐ Georgia Brick
☐ Golden Beige	☐ Granite Rock	☐ Hunter Green	☐ Java Brown
☐ Liberty Tan	☐ Malibu Taupe	☐ Mocha Caramel	☐ Natural Honey
☐ Nuss Brown	☐ Oatmeal Buff	☐ Pueblo Gold	☐ Raven Black
☐ Rich Earth	☐ Rosewood	☐ Sage Green	☐ Salsa Red
☐ Sand Beige	☐ Sun Bronze	☐ Toasted Almond	☐ Western Wheat
Special roof color # _____			
Special wall color # _____			
Special trim color # _____			

Rock Color

☐ Basalt ☐ Mountain Blend ☐ Natural Grey ☐ Romana

Roof Texture

☐ Cedar Shake ☐ Ribbed Metal

Wall Texture(s) *(For single color mark an X. For top and bottom textures use T = Top and B = Bottom.)*

☐ Barnwood	☐ Horizontal Lap	Can only be used as bottom texture ☐ Napa Valley Rock ☐ River Rock ☐ Flagstone	
☐ Split Face Block	☐ Board & Batt		
☐ Stucco/Skip Trowel	☐ Brick		

(Textures not included in CXT's quote are additional cost.)

Door Opener

☐ Non-locking ADA Handle ☐ Privacy ADA Latch ☐ Pull Handle/Push Plate

Deadbolt

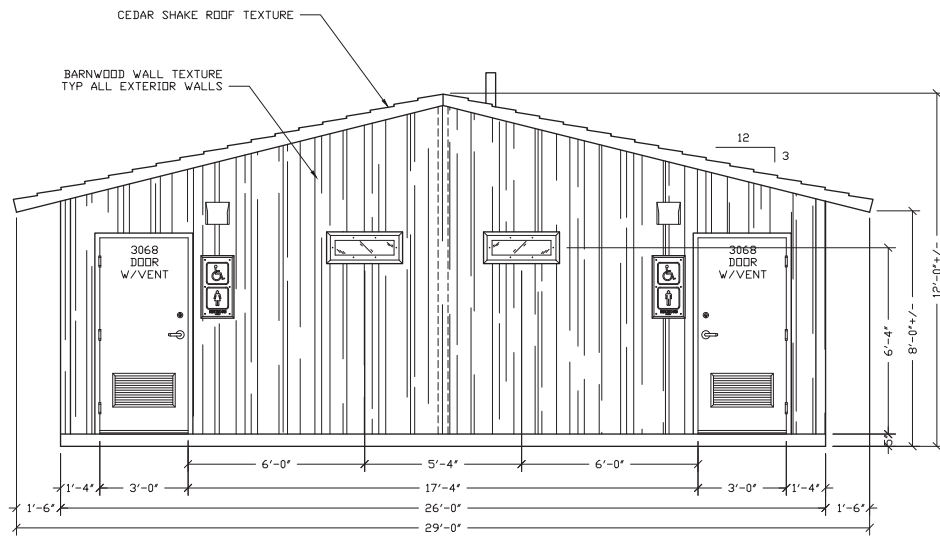
Accessible Signage

☐ Men ☐ Women ☐ Unisex

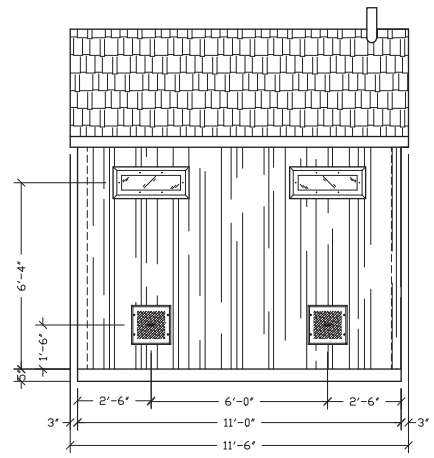
Toilet Paper Holder

☐ 2-Roll Stainless Steel ☐ 3-Roll Stainless Steel

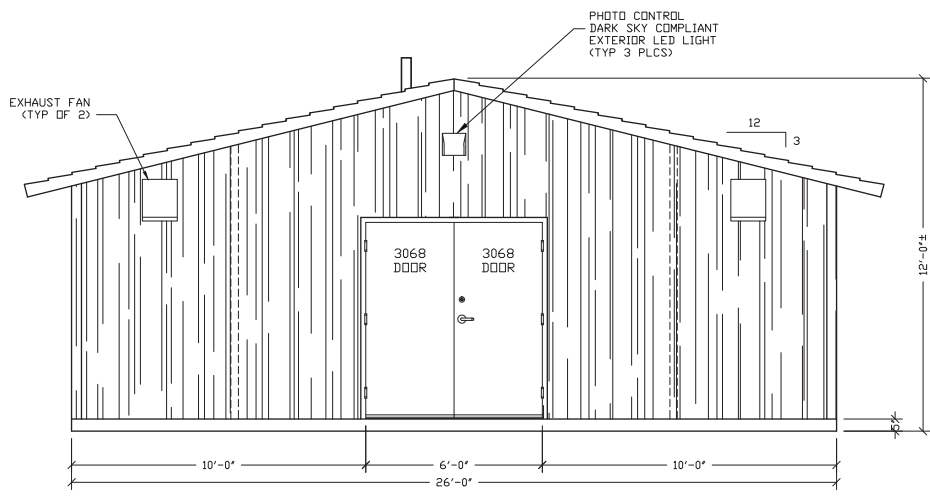
Notes:



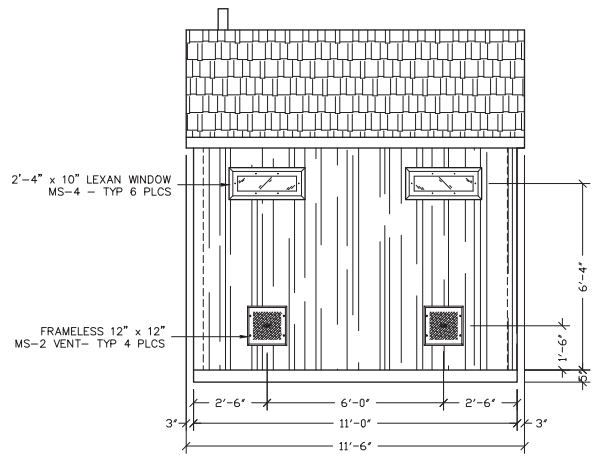
FRONT ELEVATION



RH ELEVATION



REAR ELEVATION



LH ELEVATION

3808 N. Sullivan Bldg. #7 Spokane, WA 99216

CXT
Precast Products

901 N. Highway 77 Hillaboro, TX 76645

PROJECT TITLE
DAKOTA
CXT STANDARD BUILDING

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CXT Incorporated

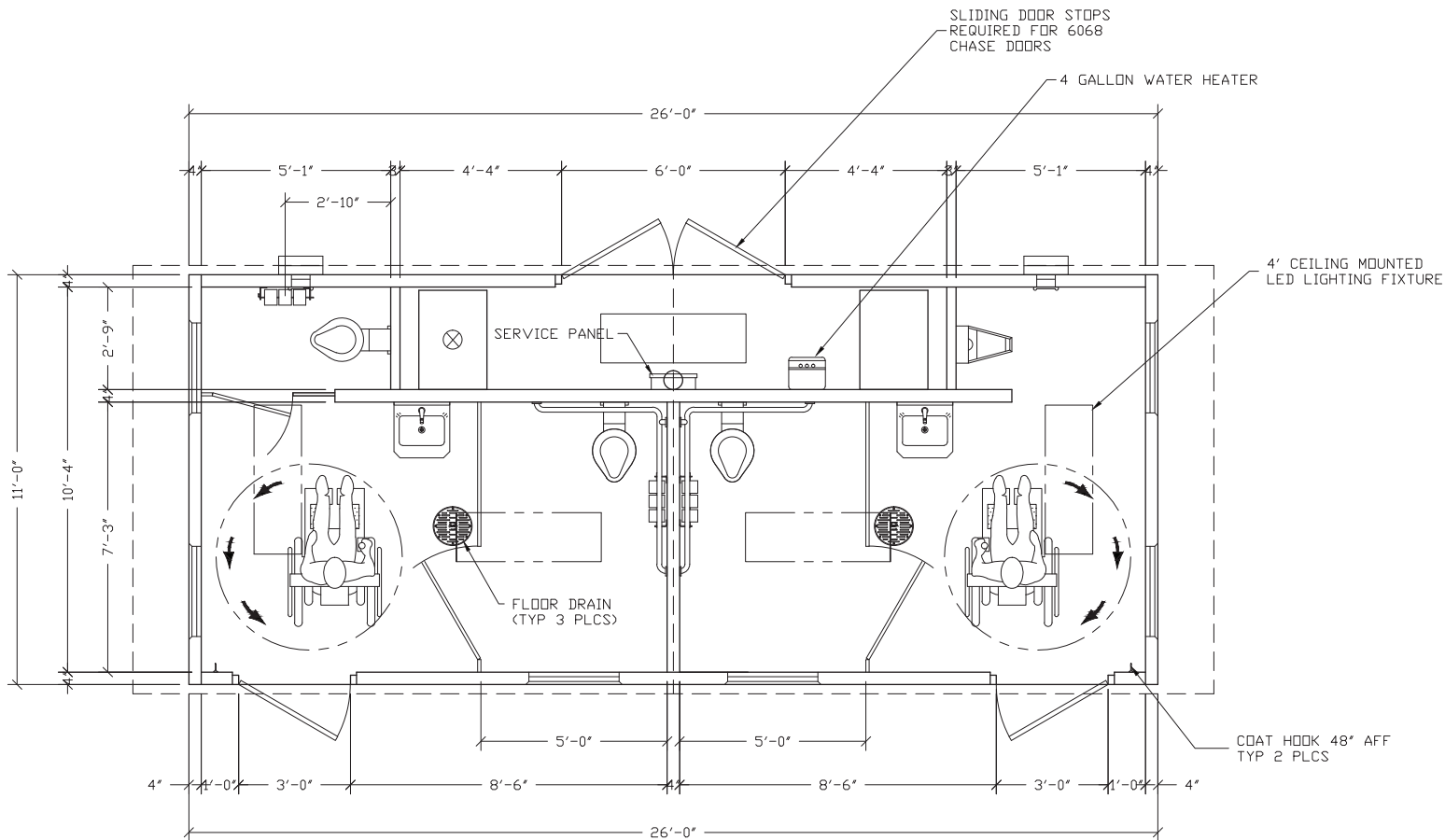
REV.	DESCRIPTION	APPROVAL	DATE
1	SCALE 1/4"=1'-0"		DATE 10-08-18
DRAWN	REV 3	FILE NO.	18-308P
CHECKED	REV	PLOT	48

BUILDING ELEVATIONS

DWG NO. DK-04

SHEET 4

REV. 25



NOTE: ELECTRICAL AND PLUMBING COMPONENTS ARE
SHOWN FOR GENERAL ARRANGEMENT ONLY. SEE
SHEETS DK-20 THRU DK-24 FOR COMPLETE
SYSTEM DESCRIPTIONS.

3808 N. Sullivan Bldg. #7 Spokane, WA 99216
CXT
Precast Products
901 N. Highway 77 Hillsboro, TX 76645

PROJECT NAME
DAKOTA
CXT STANDARD BUILDING

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CXT Incorporated grants no warranty, express or implied,
including a warranty of merchantability or of fitness for a
particular purpose.

CXT Incorporated			
DESIGNED BY	APPROVED BY	DATE	REV.
SCALE	1/4"=1'-0"	10-08-18	
DRAWN	FOR D. WALKER	FILE NO.	18-528P
CHECKED	FOR	FILE NO.	48

FLOOR PLAN

DWG NO.	SHEET	REV.
DK-03	3	25

February 20, 2023

Jolene Arredondo
Assistant to the City Administrator
City of Susanville
66 N. Lassen Street
Susanville, CA 96130
jarredondo@cityofsusanville.org

Proposal: Asbestos & Lead-Based Paint Consulting – 1100 North Street, Susanville, CA 96130

Dear Ms. Arredondo,

We are pleased to provide you with this proposal. It's our understanding the restroom located at Memorial Park has a proposed demolition plan and that determining the presence or absence of asbestos-containing materials and lead-based paint is required. Our certified asbestos and lead personnel will complete the survey and submit the samples under chain-of-custody documentation to a qualified laboratory for analysis on a 3-day turnaround. Following receipt of the laboratory results, Guzi-West personnel will complete a report of findings specifying the sampling methodology, analytical methods, locations of any asbestos-containing materials and/or lead-based paint, applicable federal, state, and local regulations, and general recommendations. Guzi-West will also assist with completion of the NESHAP notification form and assist in its submittal, if requested.

We propose to complete the work for a total project cost of \$1,500. Should this estimate meet your approval, please sign the contract provided in Attachment A and return to our office via e-mail. Thank you for the opportunity to bid on the project.

Sincerely,



Clay Guzi
Guzi-West Inspection and Consulting, LLC

Disclaimer: Guzi-West is not responsible for locating potentially hazardous building materials in concealed, internal, or inaccessible areas such as behind walls, above hard ceilings, beneath flooring, underground or as inherent mechanical components; Guzi-West accepts no legal liability for hazardous materials in these circumstances. Quantities listed on the COC are approximate and should be verified by the contractor.

CONTRACT, GENERAL TERMS, AND CONDITIONS FOR SERVICES

DATE: FEBRUARY 20, 2023

COST: \$1,500

SCOPE: SPECIFIED IN COVER LETTER

UNDERSTANDING: I HEREBY ACKNOWLEDGE RECEIPT OF, AND HEREBY AGREE TO, THE GUZI-WEST GENERAL TERMS AND CONDITIONS FOR SERVICES. SIGNING THIS FORM AUTHORIZES GUZI-WEST INSPECTION AND CONSULTING, LLC TO PROCEED WITH THE CONDUCTION OF THE SCOPE AND COSTS IDENTIFIED HEREIN.

AUTHORIZATION:

CUSTOMER SIGNATURE

DATE

1. Applicability.

These terms and conditions for services (these "**Terms**") are the only terms that govern the provision of services by Guzi-West Inspection and Consulting, LLC ("**Service Provider**") to The City of Susanville ("**Customer**"). The accompanying quotation and order confirmation (the "**Order Confirmation**") and these Terms (collectively, this "**Agreement**") comprise the entire agreement between the parties, and supersede all prior or contemporaneous understandings, agreements, negotiations, representations and warranties, and communications, both written and oral. In the event of any conflict between these Terms and the Order Confirmation, these Terms shall govern. These Terms prevail over any of Customer's general terms and conditions regardless whether or when Customer has submitted its request for proposal, order, or such terms. Provision of services to Customer does not constitute acceptance of any of Customer's terms and conditions and does not serve to modify or amend these Terms.

2. Services. Service Provider shall provide the services to Customer as described in the Order Confirmation (the "**Services**") in accordance with these Terms.

3. Customer's Obligations. Customer shall: (a) cooperate with Service Provider in all matters relating to the Services and provide such access to Customer's premises, and such office accommodation and other facilities as may reasonably be requested by Service Provider, for the purposes of performing the Services; (b) respond promptly to any Service Provider request to provide direction, information, approvals, authorizations, or decisions that are reasonably necessary for Service Provider to perform Services in accordance with the requirements of this Agreement; (c) provide such Customer materials or information as Service Provider may reasonably request and Customer considers reasonably necessary to carry out the Services in a timely manner and ensure that such Customer materials or information are complete and accurate in all material respects; and (d) obtain and maintain all necessary licenses and consents and comply with all applicable laws in relation to the Services before the date on which the Services are to start.

4. Customer's Acts or Omissions. If Service Provider's performance of its obligations under this Agreement is prevented or delayed by any act or omission of Customer or its agents, subcontractors, consultants, or employees, Service Provider shall not be deemed in breach of its obligations under this Agreement or otherwise liable for any costs, charges, or losses sustained or incurred by Customer, in each case, to the extent arising directly or indirectly from such prevention or delay.

5. Fees and Expenses; Payment Terms; Interest on Late Payments.

- (a) In consideration of the provision of the Services by Service Provider and the rights granted to Customer under this Agreement, Customer shall pay the fees set forth in the Order Confirmation.
- (b) Customer agrees to reimburse Service Provider for all reasonable travel and out-of-pocket expenses incurred by Service Provider in connection with the performance of the Services.
- (c) Customer shall pay all invoiced amounts due to Service Provider on within thirty (30) days from the date of Service Provider's invoice. Customer shall make all payments hereunder in US dollars by wire transfer/check/cash.
- (d) In the event payments are not received by Service Provider within 30 days after becoming due, Service Provider may:
 - (i) charge interest on any such unpaid amounts at a rate of 10% per month or the maximum amount permitted under applicable law, from the date such payment was due until the date paid; and

- (e) (ii) suspend performance for all Services until payment has been made in full.
- In the event payments are not received by Service Provider within 90 days after becoming due, Service Provider may:
- (i) send any past-due accounts to a collections agency, which may impact Customer's credit score and cause Customer to incur additional fees and/or liability to third parties accordingly.
- (ii) Charge a late fee of 35% of the total billed, which represents an approximation of Service Provider's cost of collecting past-due amounts. Both parties agree that this is a fair and reasonable estimate of Service Providers actual damages resulting from Customer's breach. In the event that these liquidated damages are disallowed by a court, Service Provider shall be entitled to the maximum amount allowable under the law.

6. Taxes. Customer shall be responsible for all sales, use and excise taxes, and any other similar taxes, duties and charges of any kind imposed by any federal, state, or local governmental entity on any amounts payable by Customer hereunder.

7. Representation and Warranty.

(a) Service Provider represents and warrants to Customer that it shall perform the Services using personnel of required skill, experience, and qualifications and in a professional and workmanlike manner in accordance with generally recognized industry standards for similar services and shall devote adequate resources to meet its obligations under this Agreement.

(b) The Service Provider shall not be liable for a breach of the warranty set forth in Section 7(a) unless Customer gives written notice of the defective Services, reasonably described, to Service Provider within 30 days of the time when Customer discovers or ought to have discovered that the Services were defective.

(c) Subject to Section 7(b), Service Provider shall, in its sole discretion, either:

- (i) repair or re-perform such Services (or the defective part); or
- (ii) credit or refund the price of such Services at the pro rata contract rate.

(d) THE REMEDIES SET FORTH IN SECTION 7(C) SHALL BE THE CUSTOMER'S SOLE AND EXCLUSIVE REMEDY AND SERVICE PROVIDER'S ENTIRE LIABILITY FOR ANY BREACH OF THE LIMITED WARRANTY SET FORTH IN SECTION 7(A).

8. Disclaimer of Warranties. **EXCEPT FOR THE WARRANTY SET FORTH IN SECTION 7(A) ABOVE, SERVICE PROVIDER MAKES NO WARRANTY WHATSOEVER WITH RESPECT TO THE SERVICES, INCLUDING ANY (A) WARRANTY OF MERCHANTABILITY; OR (B) WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE; OR (C) WARRANTY OF TITLE; OR (D) WARRANTY AGAINST INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS OF A THIRD PARTY; WHETHER EXPRESS OR IMPLIED BY LAW, COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE OF TRADE, OR OTHERWISE.**

9. Limitation of Liability.

(a) IN NO EVENT SHALL SERVICE PROVIDER BE LIABLE TO CUSTOMER OR TO ANY THIRD PARTY FOR ANY LOSS OF USE, REVENUE OR PROFIT [OR LOSS OF DATA OR DIMINUTION IN VALUE], OR FOR ANY CONSEQUENTIAL, INCIDENTAL, INDIRECT, EXEMPLARY, SPECIAL, OR PUNITIVE DAMAGES WHETHER ARISING OUT OF BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), OR OTHERWISE, REGARDLESS OF WHETHER SUCH DAMAGES WERE FORESEEABLE AND WHETHER OR NOT SERVICE PROVIDER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, AND NOTWITHSTANDING THE FAILURE OF ANY AGREED OR OTHER REMEDY OF ITS ESSENTIAL PURPOSE.

(b) IN NO EVENT SHALL SERVICE PROVIDER'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT, WHETHER ARISING OUT OF OR RELATED TO BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, EXCEED THE AGGREGATE AMOUNTS PAID OR PAYABLE TO SERVICE PROVIDER PURSUANT TO THIS AGREEMENT.

(c) The limitation of liability set forth in Section 9(b) above shall not apply to (i) liability resulting from Service Provider's gross negligence or willful misconduct and (ii) death or bodily injury resulting from Service Provider's negligent acts or omissions.

10. Termination. In addition to any remedies that may be provided under this Agreement, Service Provider may terminate this Agreement with immediate effect upon written notice to Customer, if Customer:

(a) fails to pay any amount when due under this Agreement [and such failure continues for 30 days after Customer's receipt of written notice of nonpayment;

(b) has not otherwise performed or complied with any of the terms of this Agreement, in whole or in part; or

(c) becomes insolvent, files a petition for bankruptcy or commences or has commenced against it proceedings relating to bankruptcy, receivership, reorganization, or assignment for the benefit of creditors.

11. Waiver. No waiver by Service Provider of any of the provisions of this Agreement is effective unless explicitly set forth in writing and signed by Service Provider. No failure to exercise, or delay in exercising, any rights, remedy, power, or privilege arising from this Agreement operates or may be construed as a waiver thereof. No single or partial exercise of any right, remedy, power, or privilege hereunder precludes any other or further exercise thereof or the exercise of any other right, remedy, power, or privilege.

12. Force Majeure. No party shall be liable or responsible to the other party, nor be deemed to have defaulted under or breached this Agreement, for any failure or delay in fulfilling or performing any term of this Agreement (except for any obligations of Customer to make payments to Service Provider hereunder), when and to the extent such failure or delay is caused by or results from acts beyond the impacted party's ("Impacted Party") reasonable control, including, without limitation, the following force majeure events ("Force Majeure Event(s)": (a) acts of God; (b) flood, fire, earthquake, epidemics, pandemics, or explosion; (c) war, invasion, hostilities (whether war is declared or not), terrorist threats or acts, riot or other civil unrest; (d) government order, law, or action; (e) embargoes or blockades in effect on or after the date of this Agreement; and] (f) national or regional emergency; and (g) strikes, labor stoppages or slowdowns or other industrial disturbances; and (h) shortage of adequate power or transportation facilities; and (i) other similar events beyond the reasonable control of the Impacted Party. The Impacted Party shall give notice within ten (10) days of the Force Majeure Event to the other party, stating the period of time the occurrence is expected to continue. The Impacted Party shall use diligent efforts to end the failure or delay and ensure the effects of such Force Majeure Event are minimized. The Impacted Party shall resume the performance of its obligations as soon as reasonably practicable after the removal of the cause. In the event that the Impacted Party's failure or delay remains uncured for a period of ten (10) consecutive days following written notice given by it under this Section 17, the other party may thereafter terminate this Agreement upon ten (10) days' written notice.

13. Assignment. Customer shall not assign any of its rights or delegate any of its obligations under this Agreement without the prior written consent of Service Provider. Any purported assignment or delegation in violation of this Section is null and void. No assignment or delegation relieves Customer of any of its obligations under this Agreement.

14. Relationship of the Parties. The relationship between the parties is that of independent contractors. Nothing contained in this Agreement shall be construed as creating any agency, partnership, joint venture or other form of joint enterprise, employment, or fiduciary relationship between the parties, and neither party shall have authority to contract for or bind the other party in any manner whatsoever.

15. Governing Law. All matters arising out of or relating to this Agreement are governed by and construed in accordance with the internal laws of the State of California without giving effect to any choice or conflict of law provision or rule (whether of the State of California or any other jurisdiction) that would cause the application of the laws of any jurisdiction other than those of the State of California.

16. Notices. All notices, requests, consents, claims, demands, waivers, and other communications hereunder (each, a "Notice") shall be in writing and addressed to the parties at the addresses set forth in the Order Confirmation or to such other address that may be designated by the receiving party in writing. All Notices shall be delivered by personal delivery, nationally recognized overnight courier (with all fees pre-paid), facsimile (with confirmation of transmission) [or email] or certified or registered mail (in each case, return receipt requested, postage prepaid). Except as otherwise provided in this Agreement, a Notice is effective only (a) upon receipt of the receiving party, and (b) if the party giving the Notice has complied with the requirements of this Section.

17. Severability. If any term or provision of this Agreement is invalid, illegal, or unenforceable in any jurisdiction, such invalidity, illegality, or unenforceability shall not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction.

18. Survival. Provisions of these Terms, which by their nature should apply beyond their terms, will remain in force after any termination or expiration of this Agreement including, but not limited to, the following provisions: Governing Law and Survival.

19. Amendment and Modification. This Agreement may only be amended or modified in a writing which specifically states that it amends this Agreement and is signed by an authorized representative of each party.