

**LEASE AGREEMENT**

by and between the

**CITY OF COSTA MESA**

and

**DIAMOND ENVIRONMENTAL SERVICES, LP  
807 E. Mission Road, San Marcos, CA 92069**

## LEASE AGREEMENT

THIS LEASE AGREEMENT (the "Lease"), dated as of March 1, 2019, is made by and between the CITY OF COSTA MESA, a municipal corporation ("Lessee"), and DIAMOND ENVIRONMENTAL SERVICES, LP, a California limited partnership ("Lessor").

### 1. SUBJECT OF LEASE

1.1 **Purpose.** The purpose of this Lease is to set forth the terms and conditions of the lease of the hereinafter defined Property by the Lessor to Lessee for use as restroom facilities in connection with Lessee's temporary bridge shelter, located at 1885 Anaheim Avenue, Costa Mesa, California.

1.2 **The Property.** The "Property" is that certain property known as one (1) 24' JAG Premier Shower Suite unit and associated items as further described in Exhibit "A," attached hereto and incorporated herein by reference, one (1) 24' Americans with Disabilities Act (ADA) Certified Shower Suite unit and associated items as further described in Exhibit "B," attached hereto and incorporated herein by reference, and four (4) Solar Elite Flushable Restroom units and associated items as further described in Exhibit "C," attached hereto and incorporated herein by reference.

#### 1.3 Parties to the Lease.

1.3.1 **Lessee.** Lessee is the City of Costa Mesa, a public body, corporate and politic, exercising governmental functions and powers and organized and existing under California law. The principal office of Lessee is located at 77 Fair Drive, Costa Mesa, CA 92626, attention JustIn Martin.

1.3.2 **Lessor.** Lessor is Diamond Environmental Services, LP, a California limited partnership. The principal office of Lessor for purposes of this Lease is 807 E. Mission Road, San Marcos, CA 92069, attention Roberth Martinez.

### 2. LEASE OF THE PROPERTY

2.1 **Lease.** For and in consideration of the rents, conditions, covenants and agreements set forth herein, Lessor hereby leases the Property to Lessee and Lessee does hereby take and lease the Property from Lessor.

2.2 **Term of the Lease.** The term of this Lease shall commence on March 1, 2019, or the date of the complete installation of the Property, whichever is later (the "Commencement Date") and continue until terminated as set forth herein.

#### 2.3 Installation and Removal of Property.

2.3.1 **Delivery and Installation.** Lessor shall cause the Property to be delivered and installed in accordance with Lessee's specifications and requirements and in accordance with the attached exhibits. Such installation shall occur no later than twenty-one (21) days from the date of this Lease.

2.3.2 **Removal.** Upon the termination of this Lease, Lessor shall cause the Property to be removed in accordance with Lessee's specifications and requirements and in accordance with the attached exhibits.

### 3. RENT; INSTALLATION AND REMOVAL CHARGES

3.1 **Initial Rent.** Lessee shall pay to Lessor for the first week of rent for the Property the sum of Six Thousand Three Hundred Ninety-Five Dollars (\$6,395.00) ("Initial Rent"). This rental amount includes Three Thousand Four Hundred Twenty Dollars (\$3,420.00) for the JAG Premier Shower Suite unit and Two Thousand Nine Hundred Seventy-Five Dollars (\$2,975.00) for the ADA Certified Shower Suite unit, as further described in Exhibits "A" and "B."

3.2 **Base Rent.** Following payment of the Initial Rent, Lessee shall pay to Lessor as rent for the Property the sum of One Thousand Eight Hundred Forty-Eight Dollars and Fifty-Nine Cents (\$1,848.59) per week ("Base Rent"). The rental amount includes Seven Hundred Ninety-Six Dollars (\$796.00) for the JAG Premier Shower Suite unit, as further described in Exhibit "A," Six Hundred Ninety Dollars (\$690.00) for the ADA Certified Shower Suite unit, as further described in Exhibit "B," and Three Hundred Sixty-Two Dollars and Fifty-Nine Cents (\$362.59) for the Solar Elite Flushable Restroom units, as further described in Exhibit "C". The Base Rent amount shall be pro-rated based on the installation and removal dates of each of these items.

3.3 **Base Rent Increase.** The Base Rent shall not be increased for twelve (12) months. Thereafter, Lessor may, on an annual basis, increase the Base Rent based upon the percentage increase in the Consumer Price Index for All Urban Consumers (CPI-U) for the Los Angeles-Long Beach-Anaheim area published by the Department of Labor, or such other mutually agreed upon index should the Consumer Price Index data published by the Department of Labor be unavailable. The percentage increase shall be based upon the most currently available CPI-U figure, in comparison with the CPI-U figure for the same calendar month 12 months previously. Notwithstanding the foregoing, no increase to the Base Rent shall exceed five percent (5%).

3.4 **Method of Making Required Payments.** Rent shall be paid in accordance with Lessor's 28-day billing cycle. Lessee shall pay invoices received from Lessor within forty-five (45) days of receipt of the invoice. Rent due Lessor shall be paid at Lessor's address for notices under this Lease, or as Lessor may otherwise designate in writing to Lessee.

3.5 **Delivery, Installation, and Return Charges.** Lessee agrees to pay Lessor the delivery, set up, and removal charges set forth in the attached exhibits. Upon receipt of an invoice from Lessor for such charges, Lessee agrees to pay such invoice within forty-five (45) days.

### 4. OWNERSHIP OF AND RESPONSIBILITY FOR IMPROVEMENTS

4.1 **Ownership During Term and at Termination.** All improvements to the Property made by Lessee shall, at the expiration or sooner termination of this Lease, be and remain the property of Lessee. Lessee shall have the right to remove any of the improvements made during the term of this Lease. The Property shall be returned to Lessor in the same condition as delivered to Lessee, reasonable ordinary wear and tear excepted. Lessee is responsible for any damages due to the addition or removal of any fixtures or structures to the Property.

4.2 **Ownership of Fixtures and Furnishings at Termination.** At the expiration or sooner termination of his Lease, Lessee may, at Lessee's election, retain from the Property, at Lessee's sole cost and expense, all fixtures, structures and furnishings, or of certain fixtures and/or furnishings that were not provided by Lessor.

Any fixtures, structures and/or furnishings not specified by Lessee to be removed, and any so specified fixtures and/or furnishings not removed by Lessee within thirty (30) days of written

notice to Lessee from Lessor to remove fixtures and/or furnishings, shall be deemed to be abandoned by Lessee and shall, without compensation to Lessee, then become Lessor's property, free and clear of all claims to or against them by Lessee or any third person. The thirty (30) day notice provided for herein shall not be given by Lessor until termination of the Lease is effective.

#### **4.3 Maintenance and Repair of Improvements.**

**4.3.1 Lessee's Responsibilities.** Lessee agrees that except as set forth in this Agreement, Lessee shall, at its own cost, maintain and repair the Property and all fixtures and furnishings thereon and keep the same in a decent, safe and sanitary condition and in compliance with all applicable laws. All maintenance and repairs required to be performed by Lessee by this Lease shall be performed in a good and workmanlike manner, and, to the extent reasonably achievable, at least equivalent in quality to the original work.

**4.3.2 Lessor's Responsibilities.** Lessor warrants throughout the term of this Agreement that it will repair structural or mechanical defects in the Property (excluding HVAC filters, fire extinguishers, fuses/breakers and light bulbs), provided that Lessee notifies Lessor in writing of leaks within two (2) days and any other defects or malfunctions within five (5) business days of the occurrence thereof. Lessor shall have no liability for the repair of any defect or condition resulting from Lessee's relocation of the Property, utilities connection, alteration of the Property, use of the Property for a purpose for which it was not intended, vandalism, misuse of the Property, for excessive wear and tear or for which timely notice is not provided to Lessor. The repair of the Property by Lessor, due to a defect or condition resulting from any of the preceding causes shall result in additional charges to Lessee. Lessor shall have no liability whatsoever for any consequential, incidental or punitive damages, costs or expenses. Except as specifically provided herein, Lessor disclaims any and all warranties, express or implied, related to the Property and any maintenance or repair work performed by Lessor including any warranties of merchantability, suitability, or fitness for a particular purpose.

**4.4 Waste.** Lessee shall not commit or suffer to be committed any waste or impairment of the Property or any part thereof. Lessee agrees to keep the Property clean and clear of refuse and obstructions, and to dispose of all garbage, trash and rubbish.

**4.5 Alteration of Property.** Lessee shall not make or permit to be made any alteration of, addition to or change to the Property, other than routine maintenance, repairs, interior decoration and minor interior alterations, nor demolish all or any part of the Property, without the prior written consent of Lessor. In requesting such consent, Lessee may be requested to submit to Lessor detailed plans and specifications of the proposed work and an explanation of the need and reasons thereof.

**4.6 Damage or Destruction.** Lessee agrees to give notice to Lessor of any fire or other damage that may occur on or to the Property within ten (10) days of such fire or damage. If the Property shall be damaged or destroyed by any cause to such an extent as to make the repair thereof uneconomical (in Lessor's sole opinion) and which puts the Property into an uninhabitable condition, this Lease shall automatically terminate and be of no further force and effect.

#### **5. ASSIGNMENT, SUBLETTING, TRANSFER**

Except as expressly permitted in this Lease, Lessee shall not assign or attempt to assign this Lease or any right herein, nor make any total or partial conveyance, assignment, sublease or transfer in any other mode or form of the whole or any part of the Property, without the prior written approval

of Lessor. Any unpermitted assignment or transfer shall be void and in violation of this Agreement and shall cause the automatic termination of this Lease.

## 6. INSURANCE

**Required Insurance.** During the term of this Lease (and for any period of holding over), Lessee shall insure at its cost such insurance showing Lessor as loss payee, against the following perils:

**6.1** Loss or damage to the Property, resulting from fire, lightning, vandalism, malicious mischief, riot and civil commotion, and, in addition, those other perils that are ordinarily included in extended coverage fire insurance policies. Such insurance shall name Lessor as an additional insured and shall be maintained in an amount not less than one hundred percent (100%) of the replacement cost of the improvements located on the Property. All proceeds of such insurance shall constitute a trust fund to be used to repair, rebuild or replace the Property to its previous condition, or as agreed by Lessor and Lessee.

**6.2** Loss from liability imposed for damages on account of property damage or loss and/or personal injury, including death therefrom, suffered or alleged to be suffered by any person or persons whomsoever in connection with the Property in the amount of at least One Million Dollars (\$1,000,000.00) combined single limit. Such property damage and personal injury insurance shall also provide for and protect Lessor and Lessee against incurring any legal cost in defending claims for alleged loss.

## 7. INDEMNIFICATION

As a material part of the consideration to Lessor, to the extent due to the negligence of Lessee, Lessee shall indemnify, defend (with counsel acceptable to Lessor) and hold Lessor harmless from any loss, damage, injury, death, accident, casualty, liability, claim, cost or expense (including, but not limited to, reasonable attorneys' fees) of any kind or character to any person or property (collectively, "Claims") arising from or related to Lessee's use of the Property before, during, and after the Term, the conduct of Lessee's business and/or any act or omission of Lessee, its employees, agents, contractors, tenants or invitees. To the extent due to the negligence of Lessor, Lessor shall indemnify, defend (with counsel acceptable to Lessee) and hold Lessee harmless from any loss, damage, injury, death, accident, casualty, liability, claim, cost or expense (including, but not limited to, reasonable attorneys' fees) of any kind or character to any person or property (collectively, "Claims") arising from or related to Lessor's performance under this Agreement, including claims arising from the condition of the Property before, during, and after the Term. Lessee shall not be liable for such Claims to the extent and in the proportion that the same is ultimately determined to be attributable to the negligence or intentional misconduct of Lessor. All indemnity obligations under this Section shall survive the expiration or termination of this Lease. Lessor shall not be liable for any loss or theft of any property on the Property.

## 8. DEFAULTS, REMEDIES AND TERMINATION

**8.1 Defaults – General.** Failure or delay by either party to perform any term or provision of this Lease constitutes a default under this Lease. The party who fails or delays must immediately commence to cure, correct, or remedy such failure or delay and shall complete such cure, correction or remedy with reasonable diligence, and during any period of curing shall not be in default.

The injured party shall give written notice of default to the party in default, specifying the default complained of by the injured party. Failure or delay in giving such notice shall not constitute

a waiver of any default, nor shall it change the time of default. Except as otherwise expressly provided in this Lease, any failures or delays by either party in asserting any of its rights and remedies as to any default shall not operate as a waiver of any default or of any such rights or remedies. Delays by either party in asserting any of its rights and remedies shall not deprive either party of its right to institute and maintain any actions or proceedings which it may deem necessary to protect, assert or enforce any such rights or remedies.

## **8.2 Legal Actions.**

**8.2.1 Institution of Legal Actions.** In addition to any other rights or remedies, either party may institute legal action to cure, correct, or remedy any default, to recover damages for any default, or to obtain any other remedy consistent with the purpose of this Lease. Such legal actions must be instituted in the Superior Court of the County of Orange, State of California, in any other appropriate court in that county, or in the United States District Court, Central District of California.

**8.2.2 Applicable Law.** The laws of the State of California shall govern the interpretation and enforcement of this Lease.

**8.2.3 Acceptance of Service of Process.** In the event that any legal action is commenced by Lessee against Lessor, service of process on Lessor shall be made as provided by law. In the event that any legal action is commenced by Lessor against Lessee, service of process on Lessee shall be made by personal service upon the City Clerk of Lessee and shall be valid whether made within or without the State of California, or in such manner as may be provided by law.

**8.2.4 Attorneys' Fees and Court Costs.** If either Lessor or Lessee brings or commences an action to enforce the terms and conditions of this Lease or to obtain damages against the other party arising from any default under or violation of this Lease, the prevailing party shall be entitled to and shall be paid reasonable attorneys' fees and costs therefor.

**8.3 Rights and Remedies are Cumulative.** All remedies hereunder shall be cumulative and the nondefaulting party may pursue any or all of such rights and remedies at the same time or otherwise.

**8.4 Damages.** If either party defaults with regard to any of the provisions of this Lease, the nondefaulting party shall serve written notice of such default upon the defaulting party. If the default is not commenced to be cured within fifteen (15) days after service of the notice of default and is not cured promptly in a continuous and diligent manner within a reasonable period of time after commencement, the defaulting party shall be liable to the nondefaulting party for any direct damages caused by such default, and the nondefaulting party may thereafter (but not before) commence an action for damages against the defaulting party with respect to such default.

Lessee's costs in curing or correcting any default under this Lease and any expenses and/or other costs related thereto shall be repaid by Lessor within fifteen (15) days after Lessee has dispatched notice of such costs to Lessor pursuant to Section 9.1 hereof regarding notices.

**8.5 Lessee's Rights of Termination.** In addition to Lessee's rights and remedies contained in this Agreement, in the Event of Default by Lessor, Lessee may terminate this Lease, effective upon written notice to Lessor by Lessee. For purposes of this Lease, an "Event of Default by Lessor" means failure by Lessor to cure or remedy within fifteen (15) days after the date Lessor

has received notice from Lessee. Notwithstanding the foregoing, Lessee may terminate this Lease by providing seven (7) days' written notice to Lessor.

The right of termination provided by this Section 8.5 is not exclusive and shall be cumulative to all other rights and remedies possessed by Lessee, and nothing contained herein shall be construed so as to defeat any other rights or remedies to which Lessee may be entitled.

## 9. GENERAL PROVISIONS

9.1 **Notices, Demands and Communications Between the Parties.** Formal notices, demands and communications between Lessor and Lessee shall be in writing and shall be delivered by personal service, or by certified or registered mail, postage prepaid, return receipt requested, to the principal offices of the Lessor and of the Lessee as designated in Section 1.3.1 and Section 1.3.2, respectively, hereof. Any written notice to any of the parties hereunder shall be deemed to have been duly given on the date of service if served personally or seventy-two (72) hours after the date of mailing. Rejection or other refusal to accept or the inability to deliver because of changed address of which no notice was given as provided hereunder shall be deemed to be receipt of the notice, demand or request sent. Notices, demands and requests to the parties shall be sent in the same manner to such other addresses as either party may from time to time designate by mail sent seven (7) days prior to the effectiveness of such change, as provided in this Section.

9.2 **Conflict of Interests.** No member, official or employee of Lessee shall have any personal interest, direct or indirect, in this Lease, nor shall any such member, official or employee participate in any decision relating to the Lease which affects his personal interests or the interests of any corporation, partnership or association in which he is directly or indirectly interested.

9.3 **Nonliability of Lessee's Officials and Employees.** No member, official or employee of Lessee shall be personally liable to Lessor, or any successor in interest, in the event of any default or breach by Lessee or any of its agents for any amount which may become due to Lessor's successor or on any obligations under the terms of this Lease.

9.4 **No Partnership.** Neither anything in this Lease contained, nor any acts of Lessor or Lessee shall be deemed or construed by any person to create the relationship of principal and agent, or of partnership, or of joint venture, or of any association between Lessor and Lessee.

9.5 **No Merger.** The surrender of this Lease by Lessee, or the mutual cancellation of it, shall not work a merger and shall, at the option of Lessor, terminate all or any existing subleases or sub-tenancies, or operate as an assignment to Lessor of all subleases or sub-tenancies.

9.6 **Severability.** If any provision of this Lease shall be adjudged invalid or unenforceable by a court of competent jurisdiction, the remaining provisions of this Lease shall not be affected thereby and shall be valid and enforceable to the fullest extent permitted by law.

9.7 **Binding Effect.** This Lease, and the terms, provisions, promises, covenants and conditions hereof, shall be binding upon and shall inure to the benefit of the parties hereto and their respective heirs, legal representatives, successors and assigns. This Lease shall not be effective and binding until each party has executed this document (or by means of counterparts, all parties have executed this Lease).

9.8 **Interpretation.** This Lease shall be construed as a whole and in accordance with its fair meaning and as though both of the parties participated equally in its drafting. The captions

contained in this Lease are merely for reference and are not to be used to construe or limit the text.

9.9 **Time of the Essence.** Time is of the essence in the performance of this Lease.

9.10 **Warranty Against Payment of Consideration.** Lessor warrants that it has not paid or given, and will not pay or give, any third party any money or other consideration for entering into this Lease.

9.11 **Corporate Authority.** Each individual executing this Lease on behalf of a corporation or other entity or organization, represents and warrants that he/she is duly authorized to execute and deliver this Lease on behalf of such corporation, entity or organization.

9.12 **Governing Law.** This Agreement shall be governed by and construed under the laws of the State of California without giving effect to that body of laws pertaining to conflict of laws. In the event of any legal action to enforce or interpret this Agreement, the parties hereto agree that the sole and exclusive venue shall be a court of competent jurisdiction located in Orange County, California.

9.13 **Counterparts.** This Lease may be executed in counterparts which, taken together, shall constitute the whole of the Agreement as between the parties.

9.14 **Waivers.** The delay or failure of either party at any time to require performance or compliance by the other of any of its obligations or agreements shall in no way be deemed a waiver of those rights to require such performance or compliance. No waiver of any provision of this Lease shall be effective unless in writing and signed by a duly authorized representative of the party against whom enforcement of a waiver is sought. The waiver of any right or remedy in respect to any occurrence or event shall not be deemed a waiver of any right or remedy in respect to any other occurrence or event, nor shall any waiver constitute a continuing waiver.

9.15 **Amendments.** Only a writing executed by the parties hereto or their respective successors and assigns may amend this Lease.

9.16 **Entire Agreement.** This Lease constitutes the entire agreement between the parties and supersedes all agreements, documents, representations, warranties, statements, promises and/or understandings, whether oral or written, with respect to the subject matter hereof, and no party shall be bound by any such representation, warranty, statement, promise, or understanding not specifically set forth in this Lease. Should any exhibit attached hereto conflict with the terms of this Lease, the terms of this Lease shall control.

[Signatures appear on following page.]

IN WITNESS WHEREOF, the parties hereto have executed this Lease on the day and year first above written.

LESSEE:

CITY OF COSTA MESA,  
A municipal corporation

Tamara J Letourneau

Date: 3/21/19

Tamara Letourneau  
Acting City Manager

LESSOR:

DIAMOND ENVIRONMENTAL SERVICES, LP  
A California limited partnership

[Signature]

Date: 3/19/2019

Signature

[Signature]  
Name and Title

[Signature]  
Social Security or Taxpayer ID Number

[Signature]  
Signature

Date: \_\_\_\_\_

\_\_\_\_\_  
Name and Title

ATTEST:

Brenda Green 3/22/19  
Brenda Green  
City Clerk



APPROVED AS TO FORM:

Kimberly Hall Barlow  
Kimberly Hall Barlow  
City Attorney

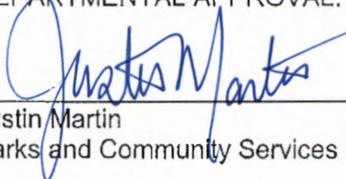
Date: 3/19/19

APPROVED AS TO INSURANCE:

  
\_\_\_\_\_  
Ruth Wang  
Risk Management

Date: 3/19/19

DEPARTMENTAL APPROVAL:

  
\_\_\_\_\_  
Justin Martin  
Parks and Community Services Director

Date: 3/15/19

APPROVED AS TO PURCHASING:

  
\_\_\_\_\_  
Kelly Telford  
Finance Director

Date: 3/15/19

EXHIBIT A

JAG PREMIER SHOWER SUITE



**EXHIBIT B**

**ADA CERTIFIED SHOWER SUITE**



# Diamond Suite Trailer Agreement

Visit us @ [www.diamondprovides.com](http://www.diamondprovides.com)

**(888) 744-7191**

Date: February 28, 2019

To: **Costa Mesa City Hall**  
 77 Fair Dr Costa Mesa Ca.92627  
 Adam Eliason  
 909-706-7193  
[adam@civicstone.com](mailto:adam@civicstone.com)

From: **Rovert Martinez**  
 Office: (760) 744-7191  
 Fax: (760) 290-3336  
[Rovertm@diamondprovides.com](mailto:Rovertm@diamondprovides.com)

<b>Project Contact</b>	<b>Project Name &amp; Location</b>	<b>Pricing expires in 30 days</b>
Adam Eliason 909-706-7193	1885 Anaheim Ave Costa Mesa Ca, 92627	

Qty	Description	Unit Price	Line Total
1	Delivery / Set Up / Removal	\$675.00	\$675.00
1	<b>24' Shower Suite CA Certified ADA</b>	\$2,975.00	\$2,975.00
	1 ADA shower, 1 ADA toilet and 1 ADA sink		
	1 Shower, 1 Toilet and 1 sink		
51	<b>Weeks of service for shower (1 x per week Service)</b>	\$140.00	\$7,140.00
51	Weeks of rental from April 1, 2019 - April 1, 2020	\$550.00	\$28,050.00
	<b>For 52 Weeks/ 1 Year</b>		
	<b>Customer to provide:</b>		
	1-110V Power Cords & 1-dedicated 30 AMP Circuits		
	Water Access, Hose & Propane refill for Water Heater if needed.		
	<b>Sewer Hook Up</b>		
	Damage Walver (per week)	\$250.00	
<b>READ</b>	<b>Damage Walver - Waives damages &amp; graffiti up to \$5,000. Theft &amp; Total</b>	→	
	<b>Loss is excluded. \$250 per Week Walver fee will be added to Total</b>	→	
	<b>If you opt In and Initial. Cannot opt In/out during or after service is finished.</b>	→	
	<b>Total *</b>		<b>\$38,840.00</b>

FED TAX ID # \_\_\_\_\_ OR \_\_\_\_\_ CA DRIVERS LICENSE # and DOB \_\_\_\_\_

PRINT NAME \_\_\_\_\_ TITLE \_\_\_\_\_

Prevailing Wage  
 Yes  No

SIGNATURE FOR WORK AUTHORIZATION \_\_\_\_\_ DATE \_\_\_\_\_

**\*28 Day Billing Cycle. \*Agency & Energy fee will be added to all Invoices. Customer's Indemnity:** Customer will indemnify Diamond Environmental Services, it's employees and agents against any claim, liability, or costs arising from this agreement or the use of the equipment, including property damage and personal injuries, except to the extent that such claims, liabilities or costs are due to Diamond Environmental Services sole negligence. Customer is responsible for damage caused by Acts of God, fire, theft, negligence, abuse, or vandalism, and agrees to pay all costs and expenses necessary to restore or replace said equipment. Failure to sign Diamond agreement and/or replacement of Diamond agreement with a P.O. or contract does not waive or alter Diamond language. Customer representative must be present at time of installation of Diamond equipment. Damaged or missing equipment or material will be charged to Lessee. Damage caused to after installation or delivery shall be the responsibility of Lessee. Rates quoted do not include Prevailing Wages unless specified. Diamond cannot comply with any PSA's & PLA's requirements. Prices subject to change due to desired actual material installed, ground conditions and/or accessibility. Lessee responsible for utility marking.



**EXHIBIT C**

**SOLAR ELITE FLUSHABLE RESTROOMS**