



AGENDA REPORT

Meeting Date: February 16, 2010
Item Number: F-9
To: Honorable Mayor & City Council
From: Alan Schneider, Director of Project Administration
Subject: APPROVAL OF AN AGREEMENT BETWEEN THE CITY OF BEVERLY HILLS AND MOBILE MODULAR MANAGEMENT CORPORATION FOR PURCHASE AND INSTALLATION OF A MODULAR OFFICE BUILDING AT GREYSTONE PARK; AND

APPROVAL OF A PURCHASE ORDER IN THE AMOUNT OF \$82,390.28 TO MOBILE MODULAR CORPORATION FOR THE PURCHASE AND INSTALLATION

Attachments: 1. Agreement

RECOMMENDATION

Staff recommends that the City Council move to approve an agreement with Mobile Modular Management Corporation (Mobile Modular) for the purchase and installation of a modular office building at Greystone Park, in the amount of \$77,390.28; approve a contingency of \$5,000; and approve a Purchase Order in the amount of \$82,390.28.

INTRODUCTION

In 1997, the City purchased a modular building to accommodate park services maintenance staff at Greystone Park. That building was located adjacent to the Estate greenhouse and stables at the southern portion of the site. Over the past 13 years the building has served its purpose and has now reached the end of its life cycle. Furthermore, the unit must be relocated to support the reconstruction of the parking lot as part of the phase 3 site improvements, and would not likely endure the disassembly and reconnection. This agreement is to purchase and install a new modular building for the park maintenance staff.

DISCUSSION

The fiscal year 2009-10 Capital Improvement Program (CIP) includes a project to replace the modular office building at Greystone Park. The modular building will provide

one office, one room with two workstations, counter areas, a locker/shower room and restrooms for staff and public access from the exterior. Plans were prepared by RTK Architects for a 12' x 47' modular building including site access by stairs and a disabled access ramp, and utility connections for plumbing, electrical and data services.

A request for proposal was issued to seven vendors of modular buildings. On November 3, 2009, proposals were received from five firms as follows:

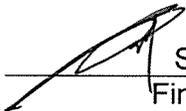
Mobile Modular	\$77,390.28
Brandall Modular Corporation	\$81,044.00
West Coast Modular	\$95,346.31
Commercial Mobile Systems	\$96,061.84
Design Space Modular Buildings	\$170,253.35

Staff recommends approval of the cost proposal submitted by Mobile Modular in the amount of \$77,390.28. A contingency of \$5,000 is recommended for changes due to unforeseen conditions to complete the installation.

FISCAL IMPACT

Funding for this purchase and installation is available in the FY 09-10 Capital Improvement Program (CIP) budget in two projects as follows:

- \$75,000.00 from the Greystone Office Trailer Project #0904
- \$7,390.28 from the Greystone Park Improvements Project \$0442



Scott G. Miller
Finance Approval



David D. Gustavson *Amr*
Approved By

AGREEMENT BETWEEN THE CITY OF BEVERLY HILLS AND
MOBILE MODULAR MANAGEMENT CORPORATION FOR
PURCHASE AND INSTALLATION OF MODULAR OFFICE
BUILDING AT GREYSTONE PARK

NAME OF CONTRACTOR: Mobile Modular Management Corporation

RESPONSIBLE PRINCIPAL OF CONTRACTOR: Richard Brown, Vice President

CONTRACTOR'S ADDRESS: 11450 Mission Boulevard
Mira Loma, CA 91752

CITY'S ADDRESS: City of Beverly Hills
455 N. Rexford Drive
Beverly Hills, CA 90210
Attention: Alan Schneider
Director of Project Administration

COMMENCEMENT DATE: Upon receipt of Notice to Proceed

TERMINATION DATE: 60 Days from Notice to Proceed

CONSIDERATION: Total Sales Price \$77,390.28 (includes all applicable sales tax);
Contingency for additional work not to exceed \$5,000;
Total not to exceed \$82,390.28 (includes all applicable sales tax); and more particularly described in Exhibit B-1

AGREEMENT BETWEEN THE CITY OF BEVERLY HILLS AND
MOBILE MODULAR MANAGEMENT CORPORATION FOR
PURCHASE AND INSTALLATION OF MODULAR OFFICE
BUILDING AT GREYSTONE PARK

THIS AGREEMENT is made by and between the City of Beverly Hills (hereinafter called "CITY"), and Mobile Modular Management Corporation (hereinafter called "CONTRACTOR").

RECITALS

A. CITY desires to have certain services provided ("the services") as set forth in Exhibit A, attached hereto and incorporated herein.

B. CONTRACTOR represents that it is qualified and able to perform the services.

NOW, THEREFORE, the parties agree as follows:

Section 1. CONTRACTOR Services. CONTRACTOR shall perform the services as described in Exhibit A to the full satisfaction of CITY.

Section 2. Time of Performance. CONTRACTOR shall perform the services on or by the Termination Date set forth above, unless extended in writing by the City Manager or his designee pursuant to the same terms and conditions of the Agreement.

Section 3. Compensation. CITY agrees to compensate VENDOR/ CONTRACTOR, and CONTRACTOR agrees to accept in full satisfaction for the services required by this Agreement the Consideration set forth above and more particularly described in Exhibit B-1, attached hereto and incorporated herein. Said Consideration shall constitute reimbursement of CONTRACTOR's fee for the services as well as the actual cost of any equipment, materials, and supplies necessary to provide the services (including all labor, materials, delivery, tax, assembly, and installation, as applicable). CITY shall pay CONTRACTOR said Consideration in accordance with the schedule of payment set forth in Exhibit B-2, attached hereto and incorporated herein.

Section 4. Independent Contractor. CONTRACTOR is and shall at all times remain, as to CITY, a wholly independent CONTRACTOR. Neither CITY nor any of its agents shall have control over the conduct of CONTRACTOR or any of CONTRACTOR's employees, except as herein set forth. CONTRACTOR shall not, at any time, or in any manner, represent that it or any of its agents or employees are in any manner agents or employees of CITY.

Section 5. Assignment. CONTRACTOR shall not assign or attempt to assign any portion of this Agreement without the prior written approval of CITY.

Section 6. Responsible Principal(s).

(a) CONTRACTOR's Responsible Principal shall be principally responsible for CONTRACTOR's obligations under this Agreement and shall serve as principal liaison between CITY and CONTRACTOR. Designation of another Responsible Principal by CONTRACTOR shall not be made without the prior written consent of CITY.

(b) CITY's Responsible Principal shall be the City Manager or his designee set forth above who shall administer the terms of the Agreement on behalf of CITY.

Section 7. Personnel. CONTRACTOR represents that it has, or shall secure at its own expense, all personnel required to perform CONTRACTOR's services under this Agreement.

Section 8. Changes to the Scope of Services. CITY may by written notice initiate any change to the scope of services. A corresponding equitable change in the Consideration of this Agreement will be made for each change ordered as mutually agreed upon by the parties in writing..

Section 9. Interests of CONTRACTOR. CONTRACTOR affirms that it presently has no interest and shall not have any interest, direct or indirect, which would conflict in any manner with the performance of the services contemplated by this Agreement. No person having any such interest shall be employed by or be associated with CONTRACTOR.

Section 10. Insurance.

(a) CONTRACTOR shall at all times during the term of this Agreement carry, maintain, and keep in full force and effect, a policy or policies of Comprehensive General Liability Insurance, with minimum limits of Two Million Dollars (\$2,000,000) for each occurrence, combined single limit, against any personal injury, death, loss or damage resulting from the wrongful or negligent acts by CONTRACTOR.

(b) CONTRACTOR shall at all times during the term of this Agreement carry, maintain, and keep in full force and effect, a policy or policies of Comprehensive Vehicle Liability Insurance covering personal injury and property damage, with minimum limits of One Million Dollars (\$1,000,000) per occurrence combined single limit, covering any vehicle utilized by CONTRACTOR in performing the services required by this Agreement.

(c) CONTRACTOR agrees to maintain in force at all times during the performance of work under this Agreement workers' compensation insurance as required by law.

(d) CONTRACTOR shall require each of its sub-consultants or sub-contractors to maintain insurance coverage which meets all of the requirements of this Agreement.

(e) The policy or policies required by this Agreement shall be issued by an insurer admitted in the State of California and with a rating of at least a B+,VII in the latest edition of Best's Insurance Guide.

(f) CONTRACTOR agrees that if it does not keep the aforesaid insurance in full force and effect CITY may either immediately terminate this Agreement or, if insurance is available at a reasonable cost, CITY may take out the necessary insurance and pay, at CONTRACTOR's expense, the premium thereon.

(g) At all times during the term of this Agreement, CONTRACTOR shall maintain on file with the City Clerk a certificate or certificates of insurance on the form set forth in Exhibit C, attached hereto and incorporated herein, showing that the aforesaid policies are in effect in the required amounts. CONTRACTOR shall, prior to commencement of work under this Agreement, file with the City Clerk such certificate or certificates. The policies of insurance required by this Agreement shall contain an endorsement naming the CITY as an additional insured. All of the policies required under this Agreement shall contain an endorsement providing that the policies cannot be canceled or reduced except on thirty (30) days prior written notice to CITY, and specifically stating that the coverage contained in the policies affords insurance pursuant to the terms and conditions as set forth in this Agreement.

(h) The insurance provided by CONTRACTOR shall be primary to any coverage available to CITY. The policies of insurance required by this Agreement shall include provisions for waiver of subrogation.

(i) Any deductibles or self-insured retentions must be declared to and approved by CITY. At the option of CITY, CONTRACTOR shall either reduce or eliminate the deductibles or self-insured retentions with respect to CITY, or CONTRACTOR shall procure a bond guaranteeing payment of losses and expenses.

Section 11. Indemnification. CONTRACTOR agrees to indemnify, hold harmless and defend CITY, City Council and each member thereof, and every officer, employee and agent of CITY from any claim, liability or financial loss (including, without limitation, attorneys fees and costs) arising from any intentional, reckless, negligent, or otherwise wrongful acts, errors or omissions of CONTRACTOR or any person employed by CONTRACTOR in the performance of this Agreement.

Section 12. Termination.

(a) CITY may cancel this Agreement at any time upon five (5) days written notice to CONTRACTOR. CONTRACTOR agrees to cease all work under this Agreement on or before the effective date of such notice.

(b) In the event of termination or cancellation of this Agreement by CITY, due to no fault or failure of performance by CONTRACTOR, CONTRACTOR shall be paid full compensation for all services performed by CONTRACTOR, in an amount to be determined as follows: For work done in accordance with all of the terms and provisions of this Agreement, CONTRACTOR shall be paid an amount equal to the amount of services performed prior to the effective date of termination or cancellation; provided, in no event shall the amount

of money paid under the foregoing provisions of this paragraph exceed the amount which would be paid CONTRACTOR for the full performance of the services required by this Agreement.

Section 13. Notice. Any notice required to be given to CONTRACTOR shall be deemed duly and properly given upon delivery, if sent to CONTRACTOR postage prepaid to the CONTRACTOR's address set forth above or personally delivered to CONTRACTOR at such address or other address specified to CITY in writing by CONTRACTOR.

Any notice required to be given to CITY shall be deemed duly and properly given upon delivery, if sent to CITY postage prepaid to CITY's address set forth above or personally delivered to CITY at such address or other address specified to CONTRACTOR in writing by CITY.

Section 14. Prevailing Wages. In accordance with the provisions of Sections 1770 et seq., of the Labor Code, the Director of the Industrial Relations of the State of California has determined the general prevailing rate of wages applicable to the work to be done. CONTRACTOR will be required to pay to all persons employed on the project by the CONTRACTOR sums not less than the sums set forth in the documents entitled "General Prevailing Wage Determination made by the Director of Industrial Relations pursuant to California Labor Code, part 7, Chapter 1, Article 2, Sections 1770, 1773, 1773.1." These documents can be reviewed in the office of the City Clerk or may be obtained from the State of California.

Section 15. Affirmative Action in Contracting Policy. CITY is an equal opportunity employer. Qualified firms owned by women, minorities and disabled persons are encouraged to submit bids or proposals. CONTRACTOR expressly agrees to comply with the CITY's ordinances and regulations concerning Equal Opportunity Employment and Affirmative Action principles. CONTRACTOR and every supplier of materials and services shall be an "Equal Opportunity Employer" as defined by Section 2000(E) of Chapter 21 of Title 42 of the United States Code and Federal Executive Order #11375, and as such shall not discriminate against any person by reason of race, creed, color, religion, age, sex or physical handicap with respect to the application for employment, hiring, tenure, or terms or conditions of employment of any person.

Section 16. Standard Specifications. In connection with contracts to which it may apply, and except as otherwise provided below, all public works construction Work shall be done in accordance with the provisions of the most current edition of "Standard Specifications for Public Works Construction" (commonly known as "the Green Book") including Supplements, prepared and promulgated by the Southern California Chapter of the American Public Works Association and the Associated General Contractors of California, which specifications are hereinafter referred to as the "Standard Specifications." The provisions of these General Specifications shall apply and/or shall supersede, as the case may be, provisions of the above referenced Standard Specifications.

Section 17. Compliance with Labor Laws. CONTRACTOR shall comply with and adhere to all applicable labor laws, such as, but not limited to, alien labor, prevailing wages, etc. CONTRACTOR shall comply with the provisions of Sections 1770-1777.5 of the California

Labor Code, and Section 7-2 of the Standard Specifications, entitled "Labor." The California Department of Industrial Relations has ascertained the general prevailing rate of wages in the county in which the Work is to be done. A copy of the general prevailing rate of wages is on file with the City Clerk of CITY and is available for inspection and reference during regular business hours.

Section 18. Materials and Workmanship. CITY shall have the right to inspect any material used. Material furnished may be new, complete, ready-for-use and of the latest model, may not have been used in demonstration or other services and may have all the usual equipment as shown by its manufacturer's current specifications and catalogs, unless otherwise specified. Equipment, supplies or services that fail to comply with the Agreement requirements regarding design, material or workmanship may be rejected at the option of CITY. Any materials rejected shall be removed from CITY premises at the CONTRACTOR's sole expense.

Section 19. Licenses and Permits. Except as provided herein below, CONTRACTOR shall obtain and pay for all permits and licenses required by federal, state or local law, rule or regulation. Costs for obtaining CITY permits required under this Agreement will be waived. All requirements for obtaining permits (including CITY permits) remain in effect and are not waived; only the costs of CITY permits are waived.

Section 20. Assignment of Unfair Business Practices. In entering into a public works contract or subcontract to supply goods, services, or materials pursuant to a public works contract, CONTRACTOR or its subcontractor offers and agrees to assign to the awarding body all rights, title, and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 U.S.C. Sec. 15) or under the Cartwright Act (Chapter 2 (commencing with Section 16700) of Part 2 of Division 7 of the Business and Professions Code), arises from purchases of goods, services, or materials pursuant to the public works contract or the subcontract. This assignment shall be made and become effective at the time the awarding body tenders final payment to CONTRACTOR, without further acknowledgment by the parties.

Section 21. Safety and Protection of Workers. Pursuant to Public Contract Code Section 7104, if any work under this Contract involves digging trenches or other excavations that extend deeper than four feet below the surface:

(a) CONTRACTOR shall promptly, and before the following conditions are disturbed, notify CITY, in writing, of any:

(i) Material that CONTRACTOR believes may be material that is hazardous waste, as defined in Section 25117 of the Health and Safety Code, that is required to be removed to a Class I, II, or Class III disposal site in accordance with provisions of existing law.

(ii) Subsurface or latent physical conditions at the site differing from those indicated.

(iii) Unknown physical conditions at the site of any unusual nature, different materially from those ordinarily encountered and generally recognized as inherent in the work of the character provided for in the Agreement.

(b) CITY shall promptly investigate the conditions, and if it finds that the conditions do materially so differ, or do involve hazardous waste, and cause a decrease or increase in the CONTRACTOR's cost of, or the time required for, performance of any part of the work shall be in the form of a written amendment to the Agreement.

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

Section 22. Special Conditions.

(a) Hours of Work. All construction activity shall be performed only between the hours of 8:00 a.m. and 6:00 p.m., Monday through Friday. For any construction activity to be performed after these hours or on weekends, CONTRACTOR shall obtain the written approval of the CITY's representative.

(b) Conduct of the Work. Workmen shall behave, at all times, in a courteous, professional manner. While on site, or entering or exiting the site, there shall be no loud noise, shouting or other extraneous activity that might cause disruption to City Hall staff or patrons. The operations of City Hall will remain open throughout the construction period.

(c) Storage will be limited to the Project area.

(d) CONTRACTOR shall have a competent representative on the Project site at all times Work is in progress. Communication given to the representative shall be binding as if given to the CONTRACTOR. CONTRACTOR shall immediately replace any individual who ceases to perform his duties satisfactorily, in the opinion of the CITY's representative, with a qualified, competent replacement acceptable to the CITY's representative.

(e) CONTRACTOR shall submit schedule information to the CITY's representative for integration into the overall Project schedule. Activity information shall be of sufficient detail to ensure adequate coordination, planning and execution of the work within the Time of Performance required by the Agreement.

(f) Rubbish, debris, waste, dust or surplus materials, shall not be allowed to accumulate and shall be removed continuously and disposed of by the CONTRACTOR as the work progresses. The CITY may elect if required, upon written notice to the CONTRACTOR, to perform cleanup, the cost for which will be deducted from the Agreement amount.

Section 23. Attorney's Fees. In the event of litigation between the parties arising out of or connected with this Agreement, the prevailing party in such litigation shall be entitled to recover, in addition to any other amounts, reasonable attorney's fees and costs of such litigation.

Section 24. Entire Agreement. This Agreement represents the entire integrated agreement between CITY and CONTRACTOR, and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by a written instrument signed by both CITY and CONTRACTOR.

Section 25. Governing Law. The interpretation and implementation of this Agreement shall be governed by the domestic law of the State of California.

Section 26. Severability. Invalidation of any provision contained herein or the application thereof to any person or entity by judgment or court order shall in no way affect any of the other covenants, conditions, restrictions, or provisions hereof, or the application thereof to any other person or entity, and the same shall remain in full force and effect.

EXECUTED the _____ day of _____, 20 ____, at
Beverly Hills, California.

CITY OF BEVERLY HILLS
A Municipal Corporation

NANCY KRASNE
Mayor of the City of
Beverly Hills, California

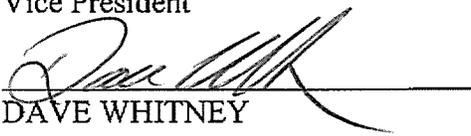
ATTEST:

BYRON POPE
City Clerk

CONTRACTOR:
MOBILE MODULAR MANAGEMENT
CORPORATION



RICHARD BROWN
Vice President



DAVE WHITNEY
Controller

[Signatures continue]

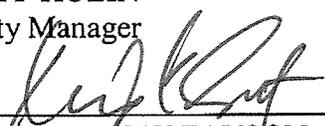
APPROVED AS TO FORM



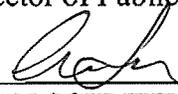
LAURENCE S. WIENER
City Attorney

APPROVED AS TO CONTENT:

JEFF KOLIN
City Manager



DAVID D. GUSTAVSON
Director of Public Works & Transportation



ALAN SCHNEIDER
Director of Project Administration



KARL KIRKMAN
Risk Manager

EXHIBIT A

SCOPE OF SERVICES

CITY is seeking to purchase a modular building to house a portion of the Community Services Department, Parks Maintenance staff at the Greystone Park for CITY.

CITY has determined that its needs can be met with one (1) modular building, 12 feet by 47 feet with partitions and restroom/shower facilities, and exterior platform stairs and ramp, as shown on drawings (including the plans) prepared by RTK Architects, dated October 5, 2009 attached hereto as Attachment I.

The modular building is to be located at 501 Doheny Road, Beverly Hills. The site is at the Greystone Park at the Stables and Garage facility per Attachment I to Exhibit A. The site is new concrete paving installed as part of a site improvement project. It is the modular building vendor's responsibility to inspect the site, determine any deficiencies that may exist to a complete and proper installation, and bring to the attention of CITY any deficiencies that may exist.

The modular building plan (sheet A1.2) indicates one ramp (ADA accessible), two stairs and raised platform with railings, which shall be included in the work.

The modular building improvements included in the purchase shall include office partitions, doors, windows, paint, air conditioning, heat and ventilation, with thermostatic controls, fluorescent lighting per lighting layout that provides a uniform lighting level of 40 foot candles at desk height, and durable commercial carpet. Also included are duplex outlets, full height partitions, complete and functioning restroom and shower room as shown.

CONTRACTOR shall provide a newly refurbished modular building, as further described in the Sale Agreement, Attachment II to Exhibit A.

ATTACHMENT I TO EXHIBIT A
DRAWINGS/SITE PLAN

ATTACHMENT II TO EXHIBIT A
SALE AGREEMENT



Mobile Modular Management Corporation
 11450 Mission Blvd.
 MIRA LOMA, CA 91752
 Phone: (951) 360-6600 Fax: (951) 360-6622
 www.MobileModularRents.com

Sale Agreement

Contract: 220001364.1
 Date Printed: 11/20/2009

Customer & Site Information		Mobile Modular Contact
Customer Information: City of Beverly Hills 345 Foothill Rd. Beverly Hills, CA 90210 Alan Schneider aschneider@beverlyhills.org (310) 285-1188 (310) 858-5965	Site Information: City of Beverly Hills Doheny Rd Greystone Park Beverly Hills, CA 90210 Alan Schneider aschneider@beverlyhills.org (310) 285-1188	Questions? Please Contact: John Bolt John.Bolt@MobileModularRents.com Direct Phone: (951) 360-6600 All other inquiries: (951) 360-6600
Customer PO/Reference: Exp: // By:		

Product Information				
	Qty	Purchase Price	Extended Purchase Price	Taxable
Office, 12x47 HCD (NonStd) <i>Non-Standard Configuration Size excludes 3' towbar.</i>	1	\$42,989.00	\$42,989.00	Y
Ramp, Custom Plan	1	\$11,500.00	\$11,500.00	Y

	Qty	Charge Each	Total One Time	Taxable
Charges Upon Delivery:				
Office, 12x47 HCD (NonStd)				
Block and Level Building (A3)	1	\$125.00	\$125.00	N
Craning & Rigging	1	\$11,210.00	\$11,210.00	N
Delivery Haulage 12 wide	1	\$669.00	\$669.00	N
Drawings, Wet Stamp, 3 sets - 12' wide <i>Wet Stamped Engineered TMP Acumen</i>	1	\$450.00	\$450.00	N
Drawings, Wet Stamp, 3 Sets - ADA Ramp <i>Wet Stamped Engineered TMP Acumen</i>	1	\$450.00	\$450.00	N
Fee, License or Registration for Sale	1	\$125.00	\$125.00	N
Installation, Ramp Custom Plan	1	\$1,750.00	\$1,750.00	N
Installation, Skirting, Wood (PW) <i>Prevailing Wage Cert. Payroll</i>	118	\$9.49	\$1,120.00	Y
Install Foundation, Tiedown (Blvl) (PW) <i>Prevailing Wage Cert. Payroll</i>	20	\$72.00	\$1,440.00	Y
			\$17,339.00	
			Tax:	\$5,562.28
			Total Sales Price Including Tax:	\$77,390.28

Special Notes

Sale of a newly refurbished modular building. Project is quoted at Prevailing Wage. Building will be set with 85c state approved wind/seismic tiedowns. Installation does not include water, sewage, and power hookup to the trailer. Cost for craning is included as required. Site must be dry, compacted, level and accessible by normal truck delivery or additional costs may be incurred. Concrete surface requires the use of epoxied earth anchors. Craning may be required and would be performed by Bragg Crane, subject to approval by the City of Beverly Hills city council, and is quoted at the weekday rate. Weekend crane rates are: Saturday: \$12,999; Sunday: \$14,790. summary does not include difficult site conditions not otherwise noted in bid documents or found during 30 Oct 09 site visit. Above pricing includes applicable sales tax. If the project is subject to sales/use tax, the rental rates for buildings and ramps, modifications, tie downs, and skirting will be taxable. Delivery costs include pilot or permit fees which may be required and will be included on the initial and final bill. Sold unit is under warranty for 1-year following date of delivery.

Special Terms & Important Contractual Information

- Prices will be adjusted for unknown circumstances, e.g. driver waiting time, pilot car requirements, special transport permits, difficult site, increase in fuel price, etc. Customer's site must be dry, compacted, level and accessible by normal truck delivery.



Mobile Modular Management Corporation
11450 Mission Blvd.
MIRA LOMA, CA 91752
Phone: (951) 360-6600 Fax: (951) 360-6622
www.MobileModularRents.com

Sale Agreement

Contract: 220001364.1
Date Printed: 11/20/2009

Unless noted, prices do not include permits, ramps, stairs, seismic foundation systems, temporary power, skirting, engineering, taxes or utilities or related installation of same.

- This transaction is subject to credit approval. Security deposit or payment in advance may be required. Security deposit will be applied against account balance at the end of the contract.
- Contract subject to terms & conditions attached and made a part of this agreement by reference herein. Customer acknowledges that he/she has received and read and affirms that he/she is duly authorized to execute and commit to this agreement for the above named customer.



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Incorporation by Reference

The Supplemental Sale Terms and Conditions and Additional Advisory Information provisions are hereby incorporated by reference in their entirety, as updated from time to time by Seller, in its sole discretion, and can be reviewed in the e-Customer Services section of the Seller's web site at [<http://www.MobileModularRents.com/ContractTerms>]. The Buyer hereby confirms that he/she has read in its entirety and understands the Supplemental Sale Terms and Conditions and Additional Advisory Information.

Please sign below, and fax or email this document to the fax number shown above or the email address you received the document from.

• The parties hereto, MOBILE MODULAR MANAGEMENT CORPORATION, a California corporation, as seller (the "Seller") and buyer ("Buyer", as described above in the section titled "Customer Information") hereby agree to this Sale Agreement and the terms and conditions set forth in the Sale Agreement Terms and Conditions, attached hereto as **Attachment A**, which are hereby incorporated by reference. The individual signing this Sale Agreement affirms that he/she is duly authorized to execute and commit to this Sale Agreement for the above named Buyer.

SELLER: Mobile Modular Management Corporation	BUYER: City of Beverly Hills
By: _____ Name: _____ Title: _____ Date: _____	By: _____ Name: _____ Title: _____ Date: _____

ATTACHMENT A

SALE AGREEMENT TERMS AND CONDITIONS

1. SALE. Seller sells to Buyer, and Buyer purchases from Seller, the equipment listed on each Sale Agreement hereto ("Equipment") on the terms and conditions set forth herein. Each such Sale Agreement, and the sale provisions on the Seller's website at [<http://www.MobileModularRents.com/ContractTerms>] (the "Incorporated Provisions"), to the extent incorporated by reference into such Sale Agreement, together with these Sale Agreement Terms and Conditions, to the extent incorporated by reference into such Sale Agreement, shall constitute a separate and independent sale agreement (a "Sale Agreement") of the Equipment listed in such Agreement under "Product Information".

2. TIME PAYMENT; TITLE RETENTION.

(a) **PURCHASE PRICE.** The aggregate amount of the purchase price (the "Purchase Price") is set forth on the Sale Agreement. Buyer agrees to pay Seller twenty five percent (25%) of the Purchase Price on the date hereof; sixty five percent (65%) two days before the Equipment is scheduled to be delivered to the Site; and the remaining ten percent (10%) within thirty (30) days of substantial completion (substantial completion does not include punch list items). In addition to the Purchase Price, buyer shall pay such charges as are attributable to circumstances related to the delivery, drop-off and relocation of Equipment. If any payment under the Sale Agreement is not made on the date when due and payable (including without limitation pursuant to this Section or as indicated on the Sale Agreement), Buyer shall pay Seller interest, at the rate of eighteen percent (18%) per annum (or at the maximum rate permitted by applicable law), on the amount of such overdue payment, until received.

(b) **TITLE/RETENTION.** Title to the Equipment shall not pass to Buyer before the entire Purchase Price has been paid to Seller. Upon Seller's receipt of payment in full of the Purchase Price, title to the Equipment shall transfer to Buyer, free and clear of all encumbrances arising by or through Seller. All payments due from Buyer pursuant to the terms of the Sale Agreement shall be made without any abatement or set off of any kind, arising from any cause.

3. TIME AND PLACE OF DELIVERY. Seller agrees to deliver the Equipment to the site location listed on the Sale Agreement (the "Site"). Tires used to deliver the Equipment will be removed and returned to Seller. Buyer warrants that the Site will have: safe access free from encumbrances, a level pad with no more than 3 inches of variance in 30 feet, and adequate soil bearing pressure of not less than 1500 psf. Following delivery, Seller will remove all Seller-owned equipment such as plywood, tools, etc. prior to or at the time of building acceptance. Buyer is responsible for all necessary permits, utility hookups, pilot cars, and Site preparation.

4. INSPECTION AND ACCEPTANCE. Following delivery and setup of the Equipment, Buyer shall inspect the Equipment within forty eight (48) hours of substantial completion and provide immediate written notice to Seller specifying defects, if any, which Buyer observes. If Buyer fails to provide such notice within four (4) days following substantial completion of the project, it shall be conclusively presumed between



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Contract: 220001364.1
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Buyer and Seller that Buyer has inspected the Equipment and that all Equipment is in conformance with the Sale Agreement and has been accepted by Buyer.

5. BUYER AGREEMENTS. Buyer agrees that Seller may insert in the Sale Agreement the serial number and other identification data relating to the Equipment when ascertained by Seller.

6. INSURANCE. Buyer shall provide, maintain, and pay all premiums for insurance covering the loss, theft, destruction, or damage to the Equipment in an amount not less than the full replacement value. This coverage will extend to all property of Seller located at the delivery site during the installation. Further, until title to the Equipment has transferred to Buyer pursuant to Section 2(b), Buyer will name Seller as loss payee of the proceeds. Upon receipt of the proceeds of any insurance, Seller will refund to Buyer any amounts in excess of the balance due Seller by the Buyer in fulfilling the obligations specified herein. Notwithstanding the above, Buyer shall also provide, maintain, and pay all premiums for public liability insurance in the amount of \$1,000,000.00 (one million dollars) and name Seller as an additional insured. All insurance shall be in a form and with a company satisfactory to Seller and insurance carrier is licensed to do business in the state where the Equipment is being sold, and shall not be subject to cancellation without thirty (30) days prior written notice to Seller. Buyer shall deliver to Seller insurance policies, or evidence of insurance proving the existence of policies meeting the above requirements, upon execution of the Sale Agreement. Buyer's obligation to provide said insurance will cease once title to the Equipment has transferred to Buyer pursuant to Section 4.

7. WAIVER AND INDEMNIFICATION.

(a) Buyer hereby waives and releases all claims against Seller for (i) loss of or damage to all property, goods, wares and merchandise in, upon or about the Equipment and (ii) injuries to Buyer, Buyer's agents and third persons. Seller shall not be liable for any consequential, incidental, or special damages of any kind (including, but not limited to damages for loss of use or of profit by Buyer or any other party; or for any collateral damages), whether or not caused or continued by Seller's negligence or delay, which may result from or arise in connection with the manufacture, delivery, installation, checkout or use of the Equipment or in connection with the services rendered by Seller hereunder.
(b) Buyer shall indemnify and hold Seller (and its agents and employees) harmless from and against any and all claims, actions or proceedings and any and all damages, liabilities, losses, costs and expenses (including attorney fees) arising out of or in connection with the Sale Agreement, including all damages, liabilities, losses, costs and expenses arising from Seller's negligence. If the foregoing obligation is not enforceable against Buyer under applicable law, Buyer agrees to indemnify and hold Seller harmless from damages, liabilities, losses, costs and expenses to the maximum extent permitted by applicable law.

8. TERMINATION FOLLOWING BREACH. In the event (a) of bankruptcy or insolvency of Buyer, or in the event any proceeding is brought by or against Buyer voluntarily or involuntarily, under the provisions of the Bankruptcy Code of the United States, for the appointment of a receiver or trustee or any assignment for the benefit of creditors of Buyer, or (b) that Buyer fails to make timely payments, or perform any of its other obligations, under the Sale Agreement, and such failure or default is not cured within ten (10) days after written notice of such failure or default is provided by Seller, the Sale Agreement automatically shall be terminated in the case of any event described in clause (a) above and may be terminated by Seller in the case of any event described in clause (b) above and, upon such termination, full payment pursuant to the terms of the Sale Agreement shall become immediately due and payable from Buyer. In the event of any such breach or termination, Seller shall have all rights provided by law and under the terms and conditions of the Sale Agreement, including but not limited to: repossession and disposal of the Equipment (and, if any personal property shall remain located in the Equipment at such time, Buyer consents to Seller's possession and disposal or destruction of such personal property without notice or accounting to Buyer) and recovery of attorney's fees and other reasonable costs and expenses associated with any breach or termination (including any such disposal or destruction), shall be reimbursed by Buyer on demand of Seller.

9. GOVERNING LAW. Buyer and Seller agree that the Sale Agreement shall be governed in all respects by, and interpreted in accordance with the laws of, the State of California, without regard to its conflicts of laws provisions.

10. JURISDICTION.

(a) If the law of the State of Maryland or Virginia shall apply to the Sale Agreement, it is agreed that the venue for a legal action relating to the Sale Agreement shall be proper if brought in Alameda County, State of California. Subject to Section 7, the prevailing party shall be entitled to recover reasonable attorneys' fees and court costs, whether or not the action proceeds to judgment.

(b) If the law of any State other than Maryland shall apply to the Sale Agreement, the Federal District Courts located within the State of California shall have non-exclusive jurisdiction over any lawsuit brought by Buyer or Seller as a result of any dispute regarding matters arising in connection with the Sale Agreement. Further, it is agreed that the venue for a legal action relating to the Sale Agreement shall be proper if brought in Alameda County, State of California. Subject to Section 7, the prevailing party shall be entitled to recover reasonable attorneys' fees and court costs, whether or not the action proceeds to judgment.

11. SELLER'S EXPENSES Buyer shall pay Seller all costs and expenses, including attorney fees, incurred by Seller in exercising any of the terms, conditions or provisions of the Sale Agreement.

12. LICENSE AND TRANSFER FEE(S). If so listed on the Sale Agreement, the Purchase Price includes license and/or transfer fees. Buyer will be billed directly by the State for future annual license fees.

13. MISCELLANEOUS.

(a) **BUYER SOLVENCY.** Buyer hereby represents and warrants that the fair value of the assets of Buyer exceed its liabilities; Buyer is able to pay its debts and liabilities as they become due; and Buyer does not have an unreasonably small amount of capital with which to conduct the business in which it is engaged, as such business is now conducted and is proposed to be conducted.



Mobile Modular Management Corporation
11450 Mission Blvd.
MIRA LOMA, CA 91752
Phone: (951) 360-6600 Fax: (951) 360-6622
www.MobileModularRents.com

Sale Agreement

Contract: 220001364.1
Date Printed: 11/20/2009

(b) **MODIFICATIONS AND AMENDMENTS.** Representations and warranties made by any person, including agents and representatives of Seller, which are inconsistent or conflict with the terms of the warranty contained in Section 1 of the Incorporated Provisions on the website (including but not limited to the liability of Seller as set forth above) shall not be binding upon Seller unless reduced to writing and approved by an officer of Seller. No amendment, supplement or modification to the terms of the Sale Agreement shall be valid unless made in a writing signed by both parties hereto, and no waiver of any provision of the Sale Agreement shall be valid unless made in a writing signed by the waiving party. Notwithstanding the foregoing, from time to time, Buyer or Seller may request modifications to the scope of work hereunder, which at the sole option of the Seller may be accepted and thus alter the final price stipulated herein. These changes in scope will be deemed approved by Buyer when evidence of work performance is presented by Seller.

(c) **NO WAIVER.** Failure of Seller to enforce any term or condition of the Sale Agreement shall not constitute waiver of any rights stipulated herein, nor shall it in any manner affect the rights of Seller to enforce any of the provisions stated herein. Waiver by Seller of any provision of the Sale Agreement shall be valid only as provided in subsection (b) above and only with respect to the specific matter to which such waiver relates.

(d) If the law of the State of North Carolina shall apply to the Sale Agreement, the Sale Agreement does not constitute a "construction contract" or otherwise relate to the improvement of real estate or the design, planning, construction, alteration, repair or maintenance of a building, structure or appurtenance.

14. **ENTIRE AGREEMENT.** The Sale Agreement constitutes the entire agreement between Seller and Buyer regarding the subject matter hereof. If any part of the Sale Agreement is found to be invalid or illegal, Buyer and Seller agree that only the invalid or illegal portion of the Sale Agreement will be eliminated.

Sale Terms and Conditions, Rev. 10/1/08

EXHIBIT B-1

SCHEDULE OF PAYMENTS

CITY shall compensate CONTRACTOR for the satisfactory performance of the work described in this Agreement in the amount of Seventy-seven Thousand Three Hundred Ninety Dollars and Twenty-eight Cents (\$77,390.28).

The Contingency in the amount not to exceed Five Thousand Dollars (\$5,000.00), is for additional, unforeseen and unanticipated work outside the scope of services described in Exhibit A, and shall not be undertaken without the express direction by the City in writing.

Compensation for said additional work shall be mutually agreed upon by the parties in writing.

The Fee and the Contingency together shall not exceed Eighty-Two Thousand Three Hundred Ninety Dollars and Twenty-Eight Cents (\$82,390.28).

EXHIBIT B-2

Schedule of Payment

CONTRACTOR shall submit an itemized statement to CITY on a CITY approved form for its services performed, which shall include documentation setting forth in detail a description of the services rendered, and the hours of service, if appropriate. CITY shall pay CONTRACTOR the amount of such billing within thirty (30) days of receipt of same.



CERTIFICATE OF INSURANCE

This is to certify that the following endorsement is part of the policy(ies) described below:

NAMED INSURED

COMPANIES AFFORDING COVERAGE

- A.
- B.
- C.

ADDRESS

COMPANY (A. B. C.)	COVERAGE	POLICY NUMBER	EXPIRATION DATE	LIMITS		
				B.I.	P.D.	AGGREGATE
	<input type="checkbox"/> AUTOMOBILE LIABILITY <input type="checkbox"/> GENERAL LIABILITY <input type="checkbox"/> PRODUCTS/COMPLETED OPERATIONS <input type="checkbox"/> BLANKET CONTRACTUAL <input type="checkbox"/> CONTRACTOR'S PROTECTIVE <input type="checkbox"/> PERSONAL INJURY <input type="checkbox"/> EXCESS LIABILITY <input type="checkbox"/> WORKERS' COMPENSATION <input type="checkbox"/>					

It is hereby understood and agreed that the **City of Beverly Hills**, its City Council and each member thereof and every officer and employee of the City shall be named as joint and several assureds with respect to claims arising out of the following project or agreement:

It is further agreed that the following indemnity agreement between the **City of Beverly Hills** and the named insured is covered under the policy: Contractor agrees to indemnify, hold harmless and defend City, its City Council and each member thereof and every officer and employee of City from any and all liability or financial loss resulting from any suits, claims, losses or actions brought against and from all costs and expenses of litigation brought against City, its City Council and each member thereof and any officer or employee of City which results directly or indirectly from the wrongful or negligent actions of contractor's officers, employees, agents or others employed by Contractor while engaged by Contractor in the (performance of this agreement) construction of this project.

It is further agreed that the inclusion of more than one assured shall not operate to increase the limit of the company's liability and that insurer waives any right of contribution with insurance which may be available to the **City of Beverly Hills**.

In the event of cancellation or material change in the above coverage, the company will give **30 days** written notice of cancellation or material change to the certificate holder.

Except to certify that the policy(ies) described above have the above endorsement attached, this certificate or verification of insurance is not an insurance policy and does not amend, extend or alter the coverage afforded by the policies listed herein. Notwithstanding any requirement, term, or condition of any contract or other document with respect to which this certificate or verification of insurance may be issued or may pertain, the insurance afforded by the policies described herein is subject to all the terms, **exclusions and conditions** of such policies.

DATE: _____

BY: _____
Authorized Insurance Representative

AGENCY: _____

TITLE: _____
ADDRESS _____
: _____

RM02.DOC REVISED 10/14/96.

EXHIBIT C