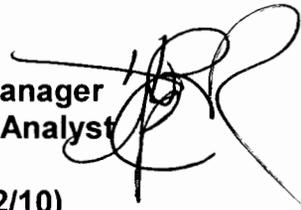


**MOORPARK CITY COUNCIL
AGENDA REPORT**

TO: Honorable City Council

FROM: Hugh R. Riley, Assistant City Manager

BY: Jessica Sandifer, Management Analyst



DATE: May 18, 2010 (CC Meeting of 6/2/10)

SUBJECT: Consider Purchase of Modular Office Buildings Being Used as Temporary City Hall and Resolution Amending the Fiscal Year 2009/10 Budget to Fund the Purchase

DISCUSSION

On July 19, 2006, the City Council authorized lease of approximately 6,500 square feet of temporary office space in two, modular building units that would be located on the north end of the existing Civic Center site. The additional office space currently houses the Community Development, Public Works, Parks and Recreation Departments, the Assistant City Manager office, Building Safety and Engineering contract staff. The original intent was to lease the buildings for forty-two (42) months, while planning and designing the new Civic Center complex, however, various delays and changes in the financial situation of the City have increased the time needed to plan for the new Civic Center complex. The lease term expired at the end of April.

There are two options available to the City at this time: 1) renew the lease for a 48 month term; or 2) purchase the units. Since the timing of the new Civic Center complex is uncertain, staff proposes purchasing the units at this time so that the units can be owned by the City and used as needed while the Civic Center is being designed and constructed.

FISCAL IMPACT

Renewing the lease term for 48 months, would cost the City \$113,760 for the Development Services Building and \$54,960 for the Break Room/File Room/Restroom Building for a total expense of \$168,720. Although, it costs approximately \$3,200 more, staff believes that purchasing the units is the most cost effective option for the City at this time since a 48 month rental term essentially equals the purchase price. The benefit is that the Units will be owned by the City from this point forward for as long as we need them.

The cost to purchase the two buildings, including fees breaks down as follows:

Development Services Building	72x60	\$107,642.21
Break Room/File Room/Restrooms	36x60	\$51,563.86
Taxes (both buildings)		<u>\$12,751.94</u>
	TOTAL:	\$171,958.01

Staff proposes a budget amendment from the General Fund reserve in the amount of the purchase price, plus a 5% contingency for unexpected transaction fees or license costs for a total amendment amount of \$180,000.

STAFF RECOMMENDATION (ROLL CALL VOTE REQUIRED)

1. Authorize purchase of modular office buildings from Mobile Modular Management Corporation; and
2. Adopt Resolution 2010-__ amending the FY 2009/10 Budget; and
3. Authorize the City Manager and City Clerk to execute all documents necessary to this transaction.

Attachment 1 – Mobile Modular Purchase Agreement
Attachment 2 – Resolution 2010-_____



Mobile Modular Management Corporation
 5700 Las Positas Road
 Livermore, CA 94551
 Phone: (925) 606-9000 Fax: (925) 453-3201
 www.MobileModularRents.com

Agreement

Contract: 210002414.1
 Date Printed: 04/22/2010

Customer & Site Information		Mobile Modular Contact
Customer Information: City of Moorpark 799 Moorpark Ave Moorpark, CA 93021-1136 Laura 805 517-6200	Site Information: City of Moorpark 799 Moorpark Avenue City Hall Moorpark, CA 93021 Jessica Sandifer 805-517-6225	Questions? Please Contact: Open - Livermore Direct Phone: 925-606-9000 All other inquiries: (925) 606-9000
Customer PO/Reference: Exp: // By:		

Product Information				
	Qty	Purchase Price	Extended Purchase Price	Taxable
Office, 36x60 HCD (NonStd) <i>Non-Standard Configuration. Size excludes 3' towbar. BID 45328</i>	1	\$50,062.00	\$50,062.00	Y
Office, 72x60 HCD (NonStd) <i>Non-Standard Configuration. Size excludes 3' towbar. BID 31329</i>	1	\$104,507.00	\$104,507.00	Y

	Qty	Charge Each	Total One Time	Taxable
Charges Upon Delivery:				
Office, 36x60 HCD (NonStd) Fee, License or Registration for Sale	1	\$1,501.86	\$1,501.86	N
Office, 72x60 HCD (NonStd) Fee, License or Registration for Sale	1	\$3,135.21	\$3,135.21	N
Tax:			\$12,751.94	
Total Sales Price Including Tax:			\$171,958.01	

Special Notes

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. 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.



Mobile Modular Management Corporation
 5700 Las Positas Road
 Livermore, CA 94551
 Phone: (925) 606-9000 Fax: (925) 453-3201
 www.MobileModularRents.com

Agreement

Contract: 210002414.1
 Date Printed: 04/22/2010

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.

<p>SELLER: Mobile Modular Management Corporation</p> <p>By: _____ Name: _____ Title: _____ Date: _____</p>	<p>BUYER: City of Moorpark</p> <p>By: _____ Name: _____ Title: _____ Date: _____</p>
--	--

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



Mobile Modular Management Corporation
5700 Las Positas Road
Livermore, CA 94551
Phone: (925) 606-9000 Fax: (925) 453-3201
www.MobileModularRents.com

Agreement

Contract: 210002414.1
Date Printed: 04/22/2010

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
5700 Las Positas Road
Livermore, CA 94551
Phone: (925) 606-9000 Fax: (925) 453-3201
www.MobileModularRents.com

Agreement

Contract: 210002414.1
Date Printed: 04/22/2010

(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

(iii) **TEMPORARY/PORTABLE HOLDING TANKS.** Seller shall have no liability for loss or damage as a result of holding tanks that fill up faster than expected, or that overflow. For Buyer's comfort and convenience, Seller strongly recommends that the Equipment be connected directly to sanitary sewer lines. If Buyer obtains temporary holding tanks as a means of waste disposal, Buyer should be aware that this approach presents additional risks, as holding tank capacity is directly affected by water usage, leaky faucets, etc.

(iv) **CONNECTION TESTING AND VERIFICATION.** Testing of water for chlorination or other items/issues is the responsibility of the Buyer.

(a) **SEISMIC/WIND.** Any Equipment consisting of seismic/wind restraint systems consist of either friction based supports or earth anchors. Such systems are based on the existing Site and soil conditions meeting a 85 M.P.H. exposure C wind load and a minimum **SOIL BEARING PRESSURE OF 1500 P.S.F.** **SELLER RECOMMENDS THAT THE BUYER VERIFY WITH THE LOCAL GOVERNING** authority that these conditions are appropriate. In some cases additional costs may be incurred by the Buyer for custom foundation engineering and additional foundation work. Since the aforementioned seismic/wind restraint systems are different, the impact to the Buyer varies. Therefore, please review the following information carefully.

(i) **FRICTION BASED SYSTEM.** The price quoted is for the purchase and installation of the system only. The system can be provided with wet stamped engineered for an additional cost. The foundation design is based on certain assumptions that can vary from site to site. Should the Buyer or local jurisdiction require design changes or information that requires contact with the designing engineer, additional charges may result. As with the earth anchor system described below, Seller does not warrant that the Buyer's site conditions will be adequate for the seismic/wind support system. Any testing required by any agency of the soil or the product, is the responsibility of the Buyer.

(ii) **EARTH ANCHORS.** Any earth anchors and strapping to be used are designed to meet specific pullout capabilities when suitable soil conditions are provided. The Buyer is responsible for providing soil conditions that will allow for achievement of a pullout capacity of 4750# for each earth anchor. If applicable, Seller will install a specific number of earth anchors and strapping, based upon the above pullout capacities. Seller recommends, and local governing authorities may require, that the Buyer have a pullout test performed to insure that the soil is adequate to achieve the required pullout capacities mentioned above. All costs associated with such testing and its results are the responsibility of the Buyer. These costs include, but are not limited to: testing, an increase in the number of earth anchors to be provided to meet the required loads, any re-testing and engineering time. Seller will not warrant that the number of earth anchors installed will meet the required pullout capacities, unless the Buyer provides pullout test results and verification that the completion of any resulting corrective action has taken place.

(iii) **DAMAGE AND ADDITIONAL COSTS.** At the time of installation of the earth anchors, should ground penetration be hindered by elements such as large rocks, lime, cement, utility lines, etc., the Buyer will be responsible for all additional costs, including replacement of broken earth anchors incurred while properly completing the installation. Further, should damage to any underground utility lines occur, the cost of repair will be borne entirely by the Buyer. In any case, should the number or size of earth anchors increase or pullout testing or any other additional work be necessary to meet the requirements of the foundation plan due to soil conditions, the Buyer will be responsible for such costs.

(iv) **WARRANTY.** The warranty set forth in Section 1 does not apply to any seismic/wind restraints in the event that the Buyer has elected not to contract for a wet stamped engineered foundation plan. Seller will not inspect the installation of the foundation system.

(v) **APPROVAL.** The Buyer is responsible for obtaining site inspection and approval of the foundation system by the appropriate local jurisdiction.

(d) **MISCELLANEOUS.** The Equipment is not pre-wired for features such as telephones, data lines, fire alarms, intercoms, lightning suppression; it is the Buyer's responsibility to wire these items for individual

preference and usage. Buyer shall also have the sole responsibility for any utility or other connections to the Equipment.

(e) **SITE INSTALLATION REQUIREMENTS FOR DSA CLASSROOM BUILDINGS.** With respect to any Equipment located in the State of California, the Buyer is responsible for the site being cleared (free of grass, shrubs, trees, etc.) and graded to within 4 1/2" of level grade for each building. If the site exceeds the 4 1/2" requirement additional costs may be charged to Buyer. Under no circumstances should the site be greater than 9" from level grade or have less than a 1000 psf minimum soil bearing pressure. PRIOR TO DELIVERY, the Buyer shall mark the four corners of the building on the site, including the door location. Should special handling be required to either place, install or remove the classroom on the Buyer's site due to site obstructions such as fencing, landscaping, other classrooms, etc., additional costs will be charged to Buyer.

(f) **CABINETY.** The Equipment may include cabinetry that is fabricated with particleboard. Particleboard is known to emit certain levels of formaldehyde. Buyer acknowledges that it has been made aware that lower emission and formaldehyde free options are available.

(g) **CARPET.** The Equipment may include new carpeting. Most of the carpeting products provided by Seller meet the Carpet and Rug Institute's Green Label testing standards for indoor air quality. Nonetheless, it is recommended that new carpeting receive a minimum of 72 hours airing-out time, under well-ventilated conditions, prior to occupancy.

3. FINANCING STATEMENT. At the request of Seller, Buyer will file financing statements pursuant to the applicable Commercial Code and execute and file such other instruments or assurances as Seller deems necessary to protect Seller's interest in the Equipment. Buyer authorizes Seller and Seller's assignee or transferee and each subsequent assignee or transferee to file financing statements in any jurisdiction.

ADDITIONAL CHARGE & CARE ADVISORY INFORMATION FOR LESSEE OR BUYER

The provisions below (the **'Incorporated Provisions'**) shall be incorporated by reference into all Lease Agreements (each a **'Agreement'**) entered into on or after October 1st, 2008, between Mobile Modular Management Corporation, a California Corporation, as Lessor/Seller (**'Lessor/Seller'** or **'Lessor'**) and any customer of Lessor/Seller, as Lessee/Buyer (**'Lessee/Buyer'** or **'Lessee'**). These provisions are subject to change in Lessor/Seller's sole discretion. Capitalized terms not otherwise defined herein shall have the meanings given to such terms in the Agreement and related Master Lease Agreement.

In an effort to offer "no surprises" to Lessee/Buyers, Lessor/Seller has compiled the following list of occurrences that will result in **ADDITIONAL CHARGES** to fees already quoted for delivery, drop-off, pick-up, return and relocation of Equipment. Additionally, listed below is information regarding common practices and procedures that may be relevant during the Lease Term.

A. DELIVERY, RELOCATION, OR RETURN DELIVERY TIMES: Due to unforeseen delays related to weather, traffic or a prior haul, Lessor/Seller cannot guarantee specific times on deliveries. However, Lessor/Seller will do its utmost to accommodate Lessee/Buyer's scheduling needs. Saturday and Sunday deliveries are available at a premium rate.

B. DRY RUN: Lessor/Seller will notify the Lessee/Buyer in advance of arrival for pick-up or delivery to help prevent a dry run and additional cost to the Lessee/Buyer.

C. EQUIPMENT PLACEMENT: For an additional fee, Lessor/Seller will assess the site specified on the applicable Agreement and make recommendations on placement. For certain types of Equipment, such as some multi-wide modulars, the setup crew that follows the driver may not have the ability to move the Equipment more than a few feet. Avoid placing the Equipment in low lying areas in case of flooding or on surfaces with inadequate drainage. Lessor/Seller recommends the use of blocks of wood or concrete to elevate any Equipment consisting of containers, as Lessee/Buyer deems appropriate to avoid flooded areas. In the case of Equipment located in the State of Florida, do not place the Equipment closer than two-feet to another structure without advance written approval from the Lessor/Seller.

D. ADDITIONAL ON-SITE LABOR: Additional charge(s) will result due to site access (i.e., muddy or inaccessible site) or preparation problems that hinder Lessor/Seller's representative or cause them to wait. Additional labor and equipment may be required to remove Equipment from a muddy, damp, or otherwise inhibited location.

E. ADDITIONAL SET-UP TIME due to unlevel site conditions may result in extra charges. Lessor/Seller defines a level site for Equipment as follows: Length – no greater that a 4" drop in 40'; Width – not greater that a 1" drop in 8'. **TO HELP AVOID THIS CHARGE, PLEASE MAKE LESSOR/SELLER AWARE OF SITE CONDITIONS AHEAD OF TIME SO THE CORRECT MATERIALS MAY BE SUPPLIED.** Should there be an additional charge for the installation of the Equipment due to the unlevel site, a similar charge will be assessed for the removal of the Equipment.

F. RE-LEVELING THE EQUIPMENT due to adverse site or weather conditions (wetness, settling, unstable ground, etc.), or adjustment due to personal property (such as furniture, files or equipment) inside the Equipment, will result in an additional charge. For containers, once the container is on the ground, inspect the four corners of the unit. If any corner is not touching the ground, Lessee/Buyer must shim those corners to provide a solid foundation. The doors may not open if this is not done properly.

G. HEATING/AIR CONDITIONING:

(i) Section G. does not apply to Sale Agreements, however recommended care protocols and sizes apply.

(ii) in all cases, Lessee shall change the heating/air conditioning filter(s) every three (3) months or sooner, and

(iii) For Equipment not located in the State of Florida Section G.(iii) does not apply. In the case of Equipment located in the State of Florida, Lessee shall flush and clean the HVAC

condenser coil as required annually. Additional charges may be assessed for Equipment that is returned with dirty diffusers and air ducts. Failure to change the interior and exterior filter on the unit on a regular basis may result in severe damage to the Equipment.

- i. Filter size for HYBRID "Campus Maker" is 16x30x1
- ii. Filter size for other buildings is 16x30x1
- iii. Filter size for 12x40 commercial office buildings, 12x30 restroom buildings and 12x42 restroom buildings are 16x25x1.

(iv) **WALL CARE:** Lessee/Buyer should use pushpins for hanging pictures, etc., on Equipment. As long as excessive amounts are not used, in the case of a Lease Agreement no repair charges will be incurred. Lessee/Buyer should not use tape as it can remove the wall finish, which will result in damage charges.

(v) **REPAIR OF LEAKS:** It is not uncommon for leaks to occur on a modular when recently delivered or relocated. In order to seal leaks properly, a dry surface is required. Lessor/Seller will do its utmost to seal any leaks in a timely manner once the weather permits. Lessee/Buyer is responsible to report leaks to Lessor/Seller in a timely manner to ensure appropriate resolution of the issue as further damage may be caused by delayed repair. In the case of Sale Agreements the terms of repair will be governed by the warranty presented in the Sale Agreement.

(vi) **ROOF RUMBLES.** Lessor/Seller offers no warranty or guarantee against roof rumbles.

(vii) **RETURN DELIVERY PROCEDURE:** Not applicable to Sale Agreements. Lessee should provide the Lease number and Equipment identification (Building ID) when notifying Lessor that Lessee wishes to schedule return delivery. Lessor will do its utmost to expedite a return delivery request.

- **CONDITION OF EQUIPMENT:** Upon scheduling the return delivery, it is the Lessee's responsibility to advise Lessor if wheels, tires, axles, towbar or other items have been removed from the Equipment and, if so, of their location. Additionally, Lessee is to advise Lessor whether skirting, earth anchors or other items have been attached to the Equipment and require removal.
- **SKIRTING, SEISMIC RESTRAINTS, OR AWNINGS:** Removal of skirting, seismic restraints or awnings is/are the responsibility of the Lessee unless the skirting was installed by Lessor. At the Lessee's request, Lessor will perform this work at an additional cost. When installed by Lessor, removal of these items or items of a similar nature will be performed by Lessor at additional cost to Lessee.
- **SITE CONDITIONS AND UTILITY CONNECTIONS:** The Lessee must inform Lessor or any adverse site conditions or access problems that might exist prior to return delivery. Lessee is responsible for the disconnection of utilities prior to return of the Equipment.
- **INSPECTION:** Lessor strongly suggests that the Lessee have personnel at the site upon pick-up to sign for the Equipment. For an additional charge, an inspection can be performed at your site (rather than at Lessor's inventory center) prior to the scheduled return.
- **CLEANING/KEYS:** Unless otherwise noted in the Lease Agreement, Lessor charges a \$125 cleaning fee per each piece of Equipment (except for containers, for which such charge is \$50). This deposit is refundable only if the Equipment is returned in a cleanliness condition equal to or better than when it was originally shipped. If keys are not returned with the Equipment, the Lessee will be assessed a re-keying charge. If locksets are altered and not returned to their original condition, charges may be assessed.
- **PRORATION:** Lessor prorates rent in one-half (1/2) month increments only. Any Equipment on rent beyond the 14th day of a billing cycle will be responsible for the full month's rental payment. Under no circumstances will any rental be for less than four (4) months.

(viii)
Florida:

EQUIPMENT LOCATED IN FLORIDA: In the case of Equipment located in the State of

- (i) **RAMPS AND STEPS:** Any Equipment consisting of ramps or steps will be tailored for a typical 28" to 30" threshold height on a Type IIB (non-hybrid) or 34" to 36" on a type 5 commercial building. Special products can be ordered due to site conditions or local codes, but are not accounted for in the list of charges included in the Agreement.
- (ii) **FIREWALL:** Hybrid Campus Maker and Type IIB Side Stackable classrooms have a one-hour firewall rating on the long side walls. Penetration of these walls may cause the Equipment to lose its one-hour fire rating and the Equipment will not be code compliant.
- (iii) **WALL PENETRATION:** Lessor allows for 2 penetrations in the top right rear wall above the ceiling grid. Access to the panel box is already provided. Existing utility holes must be used first. More than 2 penetrations will result in major repairs to the Equipment, and this cost will be passed on to the Lessee.
- (iv) **GENERAL EQUIPMENT CARE:** Please keep the carpets clean and free of stains. Please do not penetrate or damage the exterior high rib aluminum panels or exterior trim. Excessive damage will result in additional charges at the time of return. When backfilling soil and concrete in the front of the Hybrid use a waterproof protective barrier to protect the Equipment. Attaching steps and ramps directly to the doorjamb will result in an inoperable door. If these items need to be attached, attach these items to the frame of the Equipment.

Lessor/Seller sincerely hopes that by making you aware of the above procedures, you can minimize or eliminate additional charges. At the same time, Lessor/Seller does not want Lessee/Buyer to be surprised if Lessee/Buyer is assessed these charges. We value your business and hope you find this information helpful.

SUPPLEMENTAL SALE TERMS AND CONDITIONS

The provisions below (the "Incorporated Provisions") shall be incorporated by reference into each Sale Agreement (each a "Sale Agreement") entered into on or after October 1st, 2008, between Mobile Modular Management Corporation, a California Corporation, as seller ("Seller") and any customer of Seller, as buyer ("Buyer"). These provisions are subject to change in Seller's sole discretion. Capitalized terms not otherwise defined herein shall have the meanings given to such terms in the Sale Agreement.

WITNESSETH

1. WARRANTY.

(a) **PREVIOUSLY-LEASED (USED) EQUIPMENT.** Buyer acknowledges that certain Equipment (including without limitation any container purchased hereunder) is previously-leased, used equipment. Such Equipment is not subject to the warranty set forth in subsection (b) below, and will have normal wear and tear conditions consistent with other used equipment of similar or like age and circumstances with regard to areas including but not limited to wall panel surfaces, ceiling tiles, windows, general appearance, etc. Seller sells such used Equipment "AS-IS", and warrants only that used Equipment corresponds to the description thereof set forth in the Sale Agreement. Otherwise, SELLER MAKES NO WARRANTIES OR REPRESENTATIONS, EITHER EXPRESS OR IMPLIED, RELATING TO THE USED EQUIPMENT, INCLUDING WITHOUT LIMITATION, THE CONDITION THEREOF, ITS MERCHANTABILITY OR ITS FITNESS FOR ANY PARTICULAR PURPOSE, ANY WARRANTY AGAINST INFRINGEMENT OR AS TO TITLE OR OTHERWISE.

(b) **NEW EQUIPMENT** - With respect to new Equipment manufactured by Seller, Seller warrants that, for twelve (12) months from the date of manufacture, the Equipment shall be free from defects in materials and workmanship in normal use and operations and shall comply with all drawings and specifications attached hereto as Exhibit A. Equipment and accessory items not manufactured by Seller shall not be subject to the foregoing warranty, but shall carry the applicable warranty of the manufacturer, which Seller hereby assigns to Buyer to the extent transferable.

(i) Seller's liability under this warranty shall be limited to the replacement or repair (during Seller's normal working hours), at Seller's option, of any new Equipment; provided, however, that Buyer shall provide written notice of any failure or defect to Seller within four (4) days after discovery and failure to provide such notice in a timely manner may result in a limitation of this warranty at Seller's option. If Seller determines that repairs to the Equipment are needed, Buyer shall grant clear unobstructed access to the Equipment for said repairs. If Buyer does not grant access for such repairs between 8:00 a.m. and 5:00 p.m., Monday through Friday, Buyer shall bear the cost of repair rates for labor at the applicable overtime rates.

(ii) This warranty does not extend to any Equipment subjected to improper application, damaged by accident or abuse, or repaired or altered outside of Seller's facilities without prior written authorization from Seller.

(iii) The expressed warranties contained in this Agreement are in lieu of all other warranties, guarantees, promises, affirmation or representations, expressed or implied, which may be deemed applicable to the Equipment.

(c) NO EXPRESS OR IMPLIED WARRANTIES, WHETHER OF MERCHANTABILITY, FITNESS, SUITABILITY FOR ANY PARTICULAR PURPOSES OR USE, AGAINST INFRINGEMENT, OR OTHERWISE (EXCEPT AS TO TITLE) OTHER THAN THOSE EXPRESSLY SET FORTH HEREIN SHALL APPLY.

2. PARTICULAR TYPES OF EQUIPMENT. Some of the terms and conditions herein may not be applicable to the particular Equipment. The following terms relate to Equipment of the following types:

(a) **STAIRS.** Any modification to, or failure of Buyer to properly maintain, any Equipment consisting of stairs, may result in a failure to comply with applicable code. **(1)** In the case of Equipment located in the State of Florida, if any Equipment includes stairs (which shall be prefabricated metal stairs with landings), Lessor shall install such stairs following delivery thereof. Stairs shall not be altered in any form from the

delivered state. (2) With respect to any Equipment located in the State of Texas, Seller's sole responsibility with respect to any Equipment that includes stairs is to ship the stairs inside the applicable modular building. Buyer shall be responsible for unloading the stairs upon delivery and installing the handrails (as well as dis-assembling the handrails and loading the stairs for return). If Seller performs this service, there is a charge to unload (and to load). (3) With respect to any Equipment located in any other State, Seller's sole responsibility with respect to any Equipment consisting of stairs is to deliver the stairs to the Site and place them next to the exit ways specified by Buyer with handrails in place. Any modification to, or failure of Buyer to properly maintain, any Equipment consisting of stairs, may result in failure to comply with applicable code.

(i) **SECURING.** Securing the stairs to the other Equipment, adjusting the stairs to the threshold of the doorway, adjustment of the treads, landing, or handrails to meet local, state or federal requirements, maintenance of the stairs or any other item not specifically indicated above is solely the responsibility of the Buyer.

(ii) **CODE AND EGRESS REQUIREMENTS.** Seller hereby advises the Buyer of the need to meet applicable code requirements, adjust and secure the stairs to the exit way upon completion of the installation of the Equipment and to maintain the stairs such that the safety of all users is ensured. It is the Buyer's responsibility to ensure that steps or a ramp are provided for each building egress.

(iii) **SITE CONDITIONS.** Buyer should be aware that certain site conditions may impact the use of Equipment consisting of stairs. Specifically, sloping sites may require higher stairs. Adjacent buildings or other obstacles may render the prefabricated stairs unusable. Buyer is responsible for the provision of level landing sufficient per any applicable code. Buyer must make the transition from wherever the stairs end to the existing grade. This transition may require grading, paving or other work by the Buyer in order that the finished stairs comply with all applicable codes.

(b) **RAMPS.** Any modification of Equipment consisting of ramps may result in failure to comply with applicable code.

(i) **SITE CONDITIONS.** Buyer should be aware that certain site conditions may impact the use of a prefabricated ramp. Specifically, sloping sites may require longer ramps. After installation of the Equipment, the landing for any ramp will be set up such that it is in conformance with door threshold requirements (provided that Buyer's site will allow such). The ramp will then be affixed to the landing. It will be the responsibility of the Buyer to make the transition from wherever the ramp ends to the existing grade. This transition may require grading, paving or other work by the Buyer in order that the finished ramp complies with all applicable codes. Adjacent buildings may require additional ramping or render the standard prefabricated ramp unusable.

(ii) **PRE-FABRICATED RAMPS ACCOMPANYING BUILDINGS APPROVED BY THE DIVISION OF THE STATE ARCHITECT ("DSA").** With respect to any Equipment located in the State of California, In the case of California Department of the State Architect ("DSA") building ramps, Seller recommends that Buyer or Buyer's architect look closely at all conditions of impact. Any Equipment consisting of a ramp and landing have been DSA approved.

(c) **RESTROOM/PLUMBING.** If any Equipment consists of restrooms or plumbing, the Buyer is responsible for making both waste and water connections to the building stub outs. Please note that a "no-hub fitting" has been provided for Buyer's waste line connection. Additionally, "no-hub fittings" have been provided for connection of the plumbing tree (if applicable) to the permanent lines.

(i) **PLUMBING CONNECTIONS.** Where applicable, the Buyer will need to install the plumbing tree, which is shipped unattached. Seller makes no guarantees that the stub out locations or set height of the building will coincide with existing stub outs, holding tanks or other connection relation items.

(ii) **MALFUNCTIONS.** The Buyer is responsible for any malfunction of lines, valves, piping, etc., that is related to foreign matter, improper connection of waste/water lines or misuse.

ATTACHMENT 2

RESOLUTION NO. 2010 - _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MOORPARK, CALIFORNIA, APPROVING ACQUISITION OF CITY HALL MODULAR OFFICE BUILDINGS AND AMENDING THE FISCAL YEAR 2009/2010 BUDGET BY APPROPRIATING \$180,000.00 FROM THE GENERAL FUND (1000)

WHEREAS, on July 19, 2006, the City Council authorized the lease of modular office buildings to expand City Hall, for a 48 month term; and

WHEREAS, the 42 month term for the lease of the modular office buildings has expired; and

WHEREAS, the City of Moorpark desires to purchase the modular office buildings, rather than renew the lease for another 48 month term; and

WHEREAS, on July 1, 2009, the City Council adopted the Operating and Capital Improvement budget for Fiscal Year 2009/10; and

WHEREAS, a staff report has been presented to the City Council requesting a budget adjustment in the aggregate amount of \$180,000.00 from the General Fund (1000); and

WHEREAS, Exhibit "A", attached hereto and made a part hereof, describes said budget amendment and the resultant impact to the budget line item.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF MOORPARK DOES HEREBY RESOLVE AS FOLLOWS:

SECTION 1. A budget amendment in the amount of \$180,000.00 from the General Fund (1000), as more particularly described in Exhibit "A", attached hereto, is hereby approved.

SECTION 2. The City Clerk shall certify to the adoption of this resolution and shall cause a certified resolution to be filed in the book of original Resolutions.

PASSED AND ADOPTED this 2nd day of June, 2010.

Janice S. Parvin, Mayor

ATTEST:

Deborah S. Traffenstedt, City Clerk

Exhibit A – Budget Amendment

EXHIBIT A

**BUDGET AMENDMENT FOR
GENERAL FUND
FOR PURCHASE OF MODULAR OFFICE BUILDINGS**

FUND ALLOCATION FROM:

Fund	Account Number	Amount
General Fund	1000-5500	\$ 180,000.00
Total		\$ 180,000.00

DISTRIBUTION OF APPROPRIATION TO EXPENSE ACCOUNTS:

Account Number	Current Budget	Revision	Amended Budget
1000.2100.2012.9612	\$ -	\$ 180,000.00	\$ 180,000.00
			\$ -
Total	\$ -	\$ 180,000.00	\$ 180,000.00

Approved as to Form: *Dyl*