

ORIGINAL

**Rental Agreement  
for  
Temporary Office Space  
Agreement #271-O1611**

**THIS AGREEMENT**, made and entered into by and between the County of El Dorado, a political subdivision of the State of California (hereinafter referred to as "County"), and Modular Space Corporation, a Delaware Corporation duly qualified to conduct business in the State of California, whose principal place of business is 1200 Swedesford Road, Berwyn, Pennsylvania, 13912 and whose local address is 2910 Ramco Street, West Sacramento, California 95691 (hereinafter referred to as "Lessor").

**RECITALS**

**WHEREAS**, County has determined that it is necessary to rent mobile and/or modular equipment for use as temporary professional office space ("Equipment") during the remodeling of County facilities; and

**WHEREAS**, it is the intent of the parties hereto that such transactions be in conformity with all applicable federal, state and local laws.

**NOW, THEREFORE**, County and Lessor mutually agree as follows:

**ARTICLE I**

**Nature of this Agreement:** This transaction is a lease as defined by the Uniform Commercial Code and not a sale. This Agreement is solely for the purpose of establishing terms and conditions for Equipment rental. Lessor acknowledges that this Agreement is not exclusive and Equipment rental transactions shall be initiated by County in its sole and absolute discretion. County does not acquire through this Agreement or by payment of rent under this Agreement any right, title or interest in or to the Equipment (individually, a "Unit"), except the right to possess and use the Equipment so long as County is not in default under this Agreement. County acknowledges that the Equipment is personal property and shall not at any time constitute real property, an improvement thereon or a fixture.

County represents that the Equipment is to be used solely and exclusively for County purposes, as temporary professional office space. Lessor warrants and represents that the Equipment is owned by Lessor and that Lessor has complete authority and right to

rent the Equipment to County. Neither County, nor any County employee's or County agents are agents of Lessor.

## ARTICLE II

**Provision of Equipment and Related Services:** Lessor shall furnish all personnel, material, supplies, and labor to provide one (1) Conex Storage Box, one (1) Bathroom Building and three (3) Temporary Office Building enclosing approximately 60' x 48' or 2,880 gross square feet each (8640 GSF total) (collectively "Equipment"). Equipment and services shall include but not be limited to the following:

1. Each Temporary Office Building shall meet all applicable building codes, local, state and federal laws and regulations and include the following spaces:
  - A. One (1) Open Office Space including:
    - Two (2) glass entry/exit door.
    - Windows, four (4) or more at 4'x4' minimum.
    - Quad power outlets, quantity twenty (20).
    - Data outlets, quantity five (5).
    - Flooring will be carpet with a rubber base.
  - B. Two (2) 8'x10' private offices, each which will include at a minimum:
    - One (1) 36" wide locking door.
    - One (1) overhead fluorescent or LED light fixture.
    - Two (2) power outlets.
    - One (1) data outlet.
    - One (1) HVAC supply & return grills.
    - Flooring will be carpet with a rubber base.
  - C. One (1) 8'x14' conference room which will include at a minimum:
    - One (1) 36" wide locking door.
    - One (1) overhead fluorescent or LED light fixture.
    - Two (2) power outlets.
    - One (1) data outlet.
    - One (1) HVAC supply & return grills.
    - Flooring will be carpet with a rubber base.
  - D. One (1) 8'x10' breakroom, which will include at a minimum:
    - One (1) overhead fluorescent or LED light fixture.

- Three (3) power outlets.
  - One (1) HVAC supply & return grills.
  - Include base cabinets, counter and a sink in the breakroom along the shorter wall.
  - Flooring will be sheet vinyl or vinyl tile with a cove or rubber base.
2. The temporary Bathroom Building shall meet all applicable building codes and include at a minimum the following spaces:
- A. A separate men's and women's bathroom facility. Each separate facility must:
- Be compliant with all ADA standards and minimum quantities.
  - HVAC supply and exhaust fans.
  - Appropriate overhead fluorescent or LED lighting.
  - Toilet and urinal partitions with locking doors.
  - The building and/or entry door to the bathrooms must be lockable.
  - Flooring will be sheet vinyl or vinyl tile with a cove or rubber base.
- B. The men's bathroom facility will include:
- A minimum of two (2) toilet stalls.
  - A minimum of two (2) urinals.
  - A minimum of two (2) sinks, two (2) hand dryers/towel dispensers, two (2) soap dispensers and two (2) mirrors.
- C. The women's bathroom facility will include:
- A minimum of three (3) toilet stalls.
  - A minimum of two (2) sinks, two (2) hand dryers/ towel dispensers, two (2) soap dispensers and two (2) mirrors.
3. Delivery and Setup will include the following:
- A. All costs associated with delivery to the County site, including, but not limited to fuel, vehicles, hoisting equipment (if necessary), labor, transportation, etc.
- B. All setup costs including all labor & materials, including, but not limited to, siding, skirting, foundations, foundation anchoring, building anchoring, tools, fastening hardware and any required engineered drawings.
- C. All utilities will be brought within ten feet (10') of the temporary facilities by the County and connected by Lessor.

- D. All ramps, balconies and walkways will be provided by the Lessor.
4. Removal and Return Delivery will include the following:
- A. All utilities will be disconnected by Lessor.
  - B. All ramps, balconies and walkways will be removed by Lessor.
  - C. All teardown and removal costs including all labor & materials, including, but not limited to, removal of siding, skirting, foundations, foundation anchoring, building anchoring, tools and fastening hardware.
  - D.
  - E. All transportation costs associated with return delivery from the County site to Lessor's facility, including, but not limited to, fuel, vehicles, hoisting equipment (if necessary), labor, transportation, etc. Lessor shall remove the Equipment from the County site within 60 days' after notice from the County, or as may be extended at the discretion of the County. County shall not incur any further charges or liability for failure by Lessor to remove the Equipment within the time period set forth herein.

Lessor shall not commence any work until receiving a written Work Order from Contract Administrator. No payment will be made for any Equipment, build-out, delivery, rental, or mobilization charges prior to issuance of the written Work Order from County Contract Administrator.

### **ARTICLE III**

**Condition of Equipment:** Lessor will provide all permits necessary for the delivery and return of the Equipment to and from the site. The County shall obtain and be responsible for all permits pertaining to the building, installation, site work and occupancy. County will provide free and clear access for delivery and removal of the equipment by standard mobile transport vehicles. The County will be solely responsible for preparation of the site on which the equipment is to be used, including any required structural or grade alterations. County will provide firm and level ground on no more than a six-inch (6") slope from one end to the other for safe and unobstructed installation for the equipment. LESSOR ASSUMES NO LIABILITY NOR OFFERS ANY WARRANTY FOR THE FITNESS OR ADEQUACY OF THE UTILITIES AVAILABLE AT THE SITE. Unless otherwise agreed to in writing by Lessor, for site services including, but not limited to, equipment anchoring, utility runs, footings and foundations, the County will verify and demonstrate to Lessor the presence or absence of any underground utilities in the designated building location via "mark-out" or other accepted means prior to Lessor's installation of the building. Should this physical verification and identification not be completed prior to delivery of the equipment, Lessor may choose to perform this verification at County's cost or reschedule its operation, as appropriate, at County's cost.

Lessor warrants the Equipment, upon delivery to County, to be in good functional and merchantable condition. Equipment shall be free of smells and defects and will function as professional office space. County's acceptance or use of the Equipment constitutes County's acknowledgment that the Equipment is in apparently good functional condition at that time. If the Lessor has concerns about the County's willingness to accept the space, the County will make itself available to perform one pre-inspection of Equipment prior to shipment if the units are within a 50 mile radius of the County Government Center. If Lessor fails to schedule a pre-inspection prior to shipment, Lessor shall bear full responsibility of all costs associated with equipment rejection. Pre-inspection by the County does not relieve Lessor's responsibility to provide functioning Equipment as outlined in this agreement. If the Equipment is found by County not to be in good mechanical condition, as a result of conditions not the responsibility of County, nor caused by the fault or negligence of County or County's employees or agents, County will promptly notify Lessor, whereupon Lessor will suitably replace or repair the Equipment as soon as is reasonably possible, but no longer than five (5) business days, and at Lessor's sole cost and expense. If Lessor fails to replace or repair Equipment within five (5) business days, the County may make needed repairs and back charge Lessor for all parts and labor plus 10% for processing. County's obligation to pay rent or other charges shall be tolled for the period the Equipment is "down and not functioning in accordance with this Agreement." County agrees to provide reasonable access to the Equipment to Lessor's representatives so as to enable Lessor to meet its responsibilities hereunder.

County may not perform major service or repair or alter the Equipment without Lessor's prior written approval except for emergencies, which threaten life, property or production.

#### **ARTICLE IV**

**Term:** This Agreement shall become effective upon final execution by both parties hereto and shall expire two (2) years from the date thereof. If necessary, County shall have the right for all temporary structures to remain at County on a month-to-month basis, for a maximum of twelve (12) months after the two (2) year expiration date of this contract, at the base monthly rent in accordance with Article V. This holdover tenancy shall be terminable by County upon thirty (30) days' advanced written notice.

#### **ARTICLE V**

**Compensation for Services:** For purposes of this Agreement, County agrees to pay Lessor in arrears. Payment shall be made within thirty (30) days following County receipt and approval of itemized invoice(s). Compensation shall be as follows:

Build-out Costs	\$ 71,054
To be invoiced after completion of build-out, prior to delivery.	

Delivery Costs \$ 11,720  
To be invoiced after County's acceptance of Equipment.

Setup/Installation \$118,523  
To be invoiced after County's acceptance of fully installed Equipment.

Monthly Rental (\$6,237/month for 18 months) \$112,266  
Payment monthly in arrears, no invoice necessary. Payment commences upon County's acceptance of the fully installed Equipment. If acceptance occurs on a day other than the first day of a month, rent shall be prorated on the basis of a 30-day month.

Final Removal and Return Delivery Costs \$ 51,250  
To be invoiced after Lessor's removal of Equipment

The total amount of this Agreement shall not exceed \$364,813, inclusive of all costs and expenses.

Itemized invoices shall follow the format specified by County and shall reference this Agreement number on their faces and on any enclosures or backup documentation. Copies of documentation attached to invoices shall reflect Lessor's charges for the specific services billed on the invoice. Invoices shall be mailed to County at the following address:

County of El Dorado  
Chief Administrative Office  
Facilities Division  
3000 Fairlane Court, Suite One  
Placerville, California 95667

or to such other location as County directs.

In the event that Lessor fails to deliver the documents or other deliverables required by the individual Work Orders issued pursuant to this Agreement, County at its sole option may delay the monthly payment for the period of time of the delay, cease all payments until such time as the deliverables are received, or proceed as set forth herein below in **Article X – Default, Termination, and Cancellation.**

#### **ARTICLE VI**

**Changes to Agreement:** This Agreement may be amended by mutual consent of the parties hereto. Said amendments shall become effective only when in writing and fully executed by duly authorized officers of the parties hereto.

## **ARTICLE VII**

**Assignment and Delegation:** Lessor is engaged by County for its unique qualifications and skills as well as those of its personnel. Lessor shall not subcontract, delegate or assign services to be provided, in whole or in part, to any other person or entity without prior written consent of County.

## **ARTICLE VIII**

**Fiscal Considerations:** The parties to this Agreement recognize and acknowledge that County is a political subdivision of the State of California. As such, County is subject to the provisions of Article XVI, Section 18 of the California Constitution and other similar fiscal and procurement laws and regulations and may not expend funds for products, equipment, or services not budgeted in a given year. It is further understood that in the normal course of County business, County will adopt a proposed budget prior to a given fiscal year, but that the final adoption of a budget does not occur until after the beginning of the fiscal year.

Notwithstanding any other provision of this Agreement to the contrary, County shall give notice of cancellation of this Agreement in the event of adoption of a proposed budget that does not provide for funds for the services, products or equipment subject herein. Such notice shall become effective upon the adoption of a final budget, which does not provide funding for this Agreement. Upon the effective date of such notice, this Agreement shall be automatically terminated and County released from any further liability hereunder.

In addition to the above, should the Board of Supervisors during the course of a given year for financial reasons reduce or order a reduction in the budget for any County department for which services were contracted to be performed or for which products or equipment were to be supplied, pursuant to this Article in the sole discretion of County, this Agreement may be deemed to be canceled in its entirety subject to payment for Equipment rented prior to such cancellation.

## **ARTICLE IX**

**Audit by California State Auditor:** Lessor acknowledges that if total compensation under this agreement is greater than \$10,000.00, this Agreement is subject to examination and audit by the California State Auditor for a period of three (3) years, or for any longer period required by law, after final payment under this Agreement, pursuant to California Government Code §8546.7. In order to facilitate these potential examinations and audits, Lessor shall maintain, for a period of at least three (3) years, or for any longer period required by law, after final payment under the contract, all books, records and documentation necessary to demonstrate performance under the Agreement.

## ARTICLE X

### Default, Termination, and Cancellation:

- A. Default: Upon the occurrence of any default of the provisions of this Agreement, a party shall give written notice of said default to the party in default (notice). If the party in default does not cure the default within ten (10) days of the date of notice (Time to Cure), then such party shall be in default. The Time to Cure may be extended at the discretion of the party giving notice. Any extension of Time to Cure must be in writing, prepared by the party in default for signature by the party giving notice, and must specify the reason(s) for the extension and the date in which the extension of Time to Cure expires.

Notice given under this section shall specify the alleged default and the applicable Agreement provision and shall demand that the party in default perform the provisions of this Agreement within the applicable period of time. No such notice shall be deemed a termination of this Agreement unless the party giving notice so elects in this notice, or the party giving notice so elects in a subsequent written notice after the Time to Cure has expired.

- B. Bankruptcy: This Agreement, at the option of County, shall be terminable in the case of bankruptcy, voluntary or involuntary, or insolvency of Lessor.
- C. Ceasing Performance: County may terminate this Agreement in the event Lessor ceases to operate as a business, or otherwise becomes unable to substantially perform any term or condition of this Agreement.
- D. Termination or Cancellation without Cause: County may terminate this Agreement in whole or in part as allowed in Article VIII in this agreement and upon thirty (30) calendar days' written notice by County for any reason. If such prior termination is effected, County will pay for satisfactory charges as set forth in this agreement under Article V, and for such other products or services which County may agree to in writing as necessary for this Agreement. In no event, however, shall County be obligated to pay more than the total amount of the Agreement. Upon receipt of a Notice of Termination, Lessor shall promptly discontinue all services affected, as of the effective date of termination set forth in such Notice of Termination, unless the Notice directs otherwise. If termination of the Agreement occurs after a written Work Order has been issued by Contract Administrator but before the delivery of Equipment to the County site, County shall be obligated to pay Lessor for satisfactory work completed prior to the effective date of termination but in no event shall the amount payable be more than the total Build-out Costs of \$71,054..



**ARTICLE XI**

**Notice to Parties:** All notices to be given by the parties hereto shall be in writing and served by depositing same in the United States Post Office, postage prepaid and return receipt requested. Notices to County shall be in duplicate and addressed as follows:

County of El Dorado  
Chief Administrative Office  
3000 Fairlane Court, Suite One  
Placerville, California 95667  
Attn: Russell Fackrell  
Facilities Manager  
Chief Administrative Office

or to such other location as County directs.

Notices to Lessor shall be addressed as follows:

Modular Space Corporation  
2910 Ramco Street  
West Sacramento, California 95691  
Attn: David Hendrickson

or to such other location as Lessor directs.

**ARTICLE XII**

**Change of Address:** In the event of a change in address for Lessor's principal place of business, Lessor's Agent for Service of Process, or Notices to Lessor, Lessor shall notify County in writing pursuant to the provisions contained in this Agreement under the Article titled "Notice to Parties". Said notice shall become part of this Agreement upon acknowledgment in writing by the County Contract Administrator, and no further amendment of the Agreement shall be necessary provided that such change of address does not conflict with any other provisions of this Agreement.

**ARTICLE XIII**

**County's Responsibilities:** County must return the Equipment to Lessor in the same good and clean condition it was in when County received it, ordinary wear and tear excepted. Equipment will be used only in accordance with the manufacturer's instructions within its rated capacity, such instructions and capacity to be provided by Lessor. County will promptly notify Lessor of any accident, damage or failure involving the Equipment and will reasonably cooperate with Lessor in gathering information in connection therewith. During the term of the Agreement, the County shall be responsible for routine maintenance including, but not limited to, the replacement of light bulbs, janitorial services, snow removal and minor repairs. If there is damage to the

Equipment that results in the Equipment being faulty or defective (i.e., roof leak, window or door break, etc.), Lessor shall be responsible for the repairs at no cost to County.

#### **ARTICLE XIV**

**Risk of Loss:** All loss of or damage to the Equipment, unless such loss or damage results from a latent defect(s) or fault or negligence on the part of Lessor, while on rental and in County's care, custody or control as evidenced by County's acceptance of the fully installed Equipment, including, but not limited to, fire, flood, theft, comprehensive losses, collision and rollover, will be the responsibility of County. Such responsibility is limited to: (1) reasonable repair cost or (2) the fair market value of the Equipment at the time it is lost or damaged, less its salvage value. The cost of labor for such repairs will be either Lessor's then prevailing reasonable hourly rate for labor, posted at the Lessor branch where the Equipment is to be repaired, or the repairer's reasonable hourly rate for labor charged to Lessor for such repairs, as the case may be. Parts will be charged at Lessor's cost therefor as reasonably charged to Lessor by the supplier or repairer, as the case may be. County hereby assume all risk of loss or damage and waive all claims against Lessor by reason of any personal property left, or stored, by County or any other person in or upon the Equipment.

#### **ARTICLE XV**

##### **County Insurance:**

- A. Public Liability and Property Damage Liability Insurance (Third Party):  
County will, at its expense, at all times during the term of this Agreement, maintain in force Commercial General Liability and Property Damage Liability Insurance or self-insurance with a limit for bodily injury, including death, of \$500,000 for each person in each accident, and with a limit of liability of \$1,000,000 for all persons in each accident, and with a limit of liability for property damage of \$250,000 for each accident, on a primary and not excess or contributory basis, for County's liability for damages sustained by any person or persons, including, but not limited to, agents or employees of County, as a result of County's maintenance, use, operation, possession and storage of the Equipment. County will, on demand, furnish Lessor a Certificate of Insurance, or letter of self-insurance, evidencing such coverage.
  
- B. Property Insurance (Lessor Equipment):  
County will, at its own expense and at all times during the term of this Agreement, maintain in force Property Insurance or self-insurance in an amount adequate to cover any damage to, or loss of, the Equipment being rented under this Agreement. County's policy must expressly cover non-owned Equipment while in County's care, custody and control. County will, on demand, furnish Lessor a Certificate of Insurance evidencing such insurance and endorsed to provide that such insurance may not be canceled or materially modified except

on thirty (30) days prior written notice to Lessor at the renting Lessor branch. County agrees to abide by all of the terms and conditions of such insurance.

#### **ARTICLE XVI**

**Lessor Insurance:** Lessor shall provide proof of a policy of insurance satisfactory to County's Risk Management Division and documentation evidencing that Lessor maintains insurance that meets the following requirements:

- A. Full Workers' Compensation and Employers' Liability Insurance covering all employees of Lessor as required by law in the State of California.
- B. Commercial General Liability Insurance of not less than \$1,000,000 combined single limit per occurrence for bodily injury and property damage, including but not limited to endorsements for the following coverage: premises, personal injury, operations, products and completed operations, blanket contractual, and independent contractors' liability and a \$2,000,000 aggregate limit.
- C. Automobile Liability Insurance of not less than \$2,000,000.
- D. Lessor shall furnish a certificate of insurance satisfactory to County's Risk Management Division as evidence that the insurance required above is being maintained.
- E. The insurance will be issued by an insurance company acceptable to County's Risk Management Division, or be provided through partial or total self-insurance likewise acceptable to the Risk Management Division.
- F. Lessor agrees that the insurance required herein shall be in effect at all times during the term of this Agreement, inclusive of the guarantee/warranty period specified herein below. In the event said insurance coverage expires at any time or times during the term of this contract, Lessor shall immediately provide a new certificate of insurance as evidence of the required insurance coverage. In the event Lessor fails to keep in effect at all times insurance coverage as herein provided, County may, in addition to any other remedies it may have, terminate this contract upon the occurrence of such event. New certificates of insurance are subject to the approval of County's Risk Management Division, and Lessor agrees that no work or services shall be performed prior to the giving of such approval.
- H. The certificate of insurance must include the following provisions stating that:
  - 1. The insurer will not cancel the insured's coverage without 30-day prior written notice to County; and
  - 2. The County of El Dorado, its officers, officials, employees and volunteers are included as additional insured, on an additional insured endorsement,

but only insofar as the operations under this Agreement are concerned. This provision shall apply to all general and excess liability insurance policies. A copy of the additional insured endorsement shall be provided to the County.

- I. Until the County accepts the installation and takes possession of the fully-installed Equipment Lessor's insurance coverage shall be primary insurance as respects County, its officers, officials, employees and volunteers. Any insurance or self-insurance maintained by County, its officers, officials, employees, or volunteers shall be in excess of Lessor's insurance and shall not contribute with it.
- J. Any deductibles or self-insured retentions must be declared to, and approved, by County. At the option of County, either: The insurer shall reduce or eliminate such deductibles or self-insured retentions as respects County, its officers, officials, employees, and volunteers; or Lessor shall procure a bond guaranteeing payment of losses and related investigations, claim administration, and defense expenses.
- K. Any failure to comply with the reporting provisions of the policies shall not affect coverage provided to County, its officers, officials, employees or volunteers.
- L. The insurance companies shall have no recourse against the County of El Dorado, its officers and employees or any of them for payment of any premiums or assessments under any policy issued by any insurance company.
- M. Lessor's obligations shall not be limited by the foregoing insurance requirements and shall survive the expiration of this Agreement.
- N. In the event Lessor cannot provide an occurrence policy, Lessor shall provide insurance covering claims made as a result of performance of this Agreement for not less than three (3) years following completion of performance of this Agreement.
- O. The certificate of insurance shall meet such additional standards as may be determined by the contracting County department, either independently or in consultation with County's Risk Management Division as essential for protection of County.

## **ARTICLE XVII**

**Indemnity:** Lessor shall defend, indemnify, and hold County and its officers, agents and employees harmless against and from any and all claims, suits, losses, damages, and liability for damages of every name, kind, and description, including attorneys' fees and costs incurred, brought for, or on account of, injuries to, or death of, any person, including but not limited to workers, County employees, and the public, or damage to

property, which are claimed to, or in any way arise out of, or are connected with Lessor's services, equipment, latent defects in the equipment, operations or performance hereunder, regardless of the existence or degree of fault or negligence on the part of County, Lessor, subcontractor(s) and employee(s) of any of these, except for the sole, or active negligence of County, its officers and employees, or as expressly provided by statute. This duty of Lessor to indemnify and save County harmless includes the duties to defend set forth in California Civil Code Section 2778. Neither Party will be responsible to the other for or accept any claims and demands for loss of profits or other incidental, consequential, liquidated and/or punitive damages arising out of or in connection with this Agreement.

#### **ARTICLE XVIII**

**Environmental and Toxic Warranty:** Lessor warrants that its operations concerning the services and materials provided under this Agreement are not and will not be in violation of any applicable environmental federal, state, or local statute, law, or regulation dealing with hazardous materials substances or toxic substances.

#### **ARTICLE XIX**

**County's Compliance with Law:** County will, at its expense, comply with all federal, state and local laws and regulations affecting the Equipment and its use, and will defend, indemnify and hold Lessor harmless from all loss, liability or expense resulting from County's actual or alleged violations of any such laws, regulations or requirements.

#### **ARTICLE XX**

**Lessor's Compliance with Law:** Lessor will, at its expense, comply with all federal, state and local laws and regulations affecting the Equipment and its use, operation, erection, design and transportation, including, without limitation, licensing, OSHA and ANSI requirements and will defend, indemnify and hold County harmless from all loss, liability or expense resulting from Lessor's actual or alleged violations of any such laws, regulations or requirements. The pricing provided herein is based upon the use of non-union set-up labor at prevailing wage. In addition, Lessor cannot guarantee any MBE/WBE participation

#### **ARTICLE XXI**

**Notice Of Loss Or Accident:** In the event of the loss or theft of or damage to the Equipment, County agrees to notify Lessor by telephone, and thereafter to report in writing to Lessor and the public authorities (where required by law) all reasonable information deemed relevant thereto by Lessor. County will cause its agents and employees to give Lessor and the public authorities' proper and full information and reasonable assistance in the investigation and prosecution of any matter resulting from said loss theft or damage.

## **ARTICLE XXII**

**Force Majeure/Infringement:** Any failure of performance by County or Lessor due to causes beyond County or Lessor's reasonable control, including but not limited to acts of civil or military authority, Acts of God, labor difficulties, failure of transportation, and delays of suppliers, will not be deemed to be a default by County or Lessor.

## **ARTICLE XXIII**

**Interest of Public Official:** No official or employee of County who exercises any functions or responsibilities in review or approval of services, products or equipment to be provided by Lessor under this Agreement shall participate in or attempt to influence any decision relating to this Agreement which affects personal interest or interest of any corporation, partnership, or association in which he/she is directly or indirectly interested; nor shall any such official or employee of County have any interest, direct or indirect, in this Agreement or the proceeds thereof.

## **ARTICLE XXIV**

**California Forum and Law:** Any dispute resolution action arising out of this Agreement, including, but not limited to, litigation, mediation, or arbitration, shall be brought in El Dorado County, California, and shall be resolved in accordance with the laws of the State of California.

## **ARTICLE XXV**

**Attorneys' Fees:** In the event of any action to enforce this Agreement or to seek a declaration of rights or responsibilities hereunder, the prevailing party will be entitled to reasonable attorney's fees in addition to all other costs and expenses allowed by law.

## **ARTICLE XXVI**

**Prevailing Wage:** County requires Contractor's services on public works project(s) involving local and/or state funds to which prevailing wage requirements may apply. As a consequence, Contractor shall comply with all applicable state and federal prevailing wage rates, statutes, rules and regulations then in effect. Contractor shall use the general prevailing wage rates determined by the Director of Industrial Relations for the county in which the work is to be done, which are available at the principal office of the Chief Administrative Office, Facilities Division. Changes, if any, to the general prevailing wage rates will be available at the same location.

Future effective general prevailing wage rates which have been predetermined and are on file with the California Department of Industrial Relations are referenced but not printed in the general prevailing wage rates.

Contractor shall comply with all applicable wage requirements, as set forth in Labor Code Sections 1770 et seq., 1773.2, 1775, 1776, 1810 and 1813. In accordance with

the provisions of Labor Code Section 1810, eight (8) hours of labor shall constitute a legal day's work upon all work done hereunder, and Contractor and any subcontractor authorized under this Contract shall also conform to and be bound by the provisions of Labor Code Sections 1810 through 1815.

#### **ARTICLE XXVII**

**Apprentices:** Attention is directed to Sections 1777.5, 1777.6 and 1777.7 of the California Labor Code and Title 8, California Code of Regulations Section 200 et seq. To ensure compliance and complete understanding of the law regarding apprentices, and specifically the required ratio thereunder, each Contractor or subcontractor should, where some question exists, contact the Division of Apprenticeship Standards, 455 Golden Gate Avenue, San Francisco, CA 94102, or one of its branch offices prior to commencement of work on this contract. Responsibility for compliance with this Article lies with Contractor.

It is County policy to encourage the employment and training of apprentices on public works contracts as may be permitted under local apprenticeship standards.

#### **ARTICLE XXVIII**

**Certified Payroll:** As required under the provisions of Labor Code Section 1776, Contractor and any subcontractors shall keep accurate payroll records as follows:

1. The payroll records shall show the name, address, social security number, work classification, straight time and overtime hours worked each day and week, and the actual per diem wages paid to each journeyman, apprentice, worker, or other employee employed by Contractor or subcontractors in connection with the services provided under this Agreement.
2. A certified copy of all payroll records enumerated above shall be available for inspection at all reasonable hours at the principal office of Contractor as follows:
  - a. Make available or furnish to the employee or his or her authorized representative on request.
  - b. Make available for inspection or furnished upon request to a representative of County, the State Division of Labor Standards Enforcement, and the Division of Apprenticeship Standards of the State Department of Industrial Relations.
  - c. Make available upon request by the public for inspection or copies thereof made; provided, however, that a request by the public shall be made through either County, the State

Division of Labor Standards Enforcement, or the State Division of Apprenticeship Standards. The requesting party shall, prior to being provided the records, reimburse the costs of preparation by Contractor, subcontractor, and the entity through which the request was made. The public shall not be given access to the records at the principal office of Contractor.

#### **ARTICLE XXIX**

**Contractor Registration:** In accordance with California Labor Code Section 1771.1, a contractor or subcontractor shall not be qualified to bid on, be listed in a bid proposal, subject to the requirements of Section 4104 of the Public Contract Code, or engage in the performance of any contract for public work, as defined in this chapter, unless currently registered and qualified to perform public work pursuant to Section 1725.5. It is not a violation of this section for an unregistered contractor to submit a bid that is authorized by Section 7029.1 of the Business and Professions Code or by Section 10164 or 20103.5 of the Public Contract Code, provided the contractor is registered to perform public work pursuant to Section 1725.5 at the time the contract is awarded.

The contractor must post job site notices as prescribed by regulation 8 California Code of Regulations Section 16451. All contractors and subcontractors must furnish electronic certified payroll records directly to the Department of Industrial Relations (DIR). The work is subject to compliance monitoring and enforcement by the DIR.

#### **ARTICLE XXX**

**Licenses:** Lessor warrants and represents that it holds a valid California license pursuant to the Contractors' State License Law (Business and Professions Code Sections 7000, et seq.), that its license is in good standing and that it possesses a Class B General Building Contractor License as required by the categories and types of work to be performed under this Agreement. Copies of Contractor's State Contractors' license(s) must be provided with this Agreement.

Lessor hereby represents and warrants that Lessor and any of its subcontractors employed under this Agreement has all the applicable licenses, permits, and certifications that are legally required for Lessor and its subcontractors to practice its profession or provide the services or work contemplated under this Agreement in the State of California. Lessor and its subcontractors shall obtain or maintain said applicable licenses, permits, or certificates in good standing throughout the term of this Agreement.

#### **ARTICLE XXXI**

**Business License:** County's Business License Ordinance provides that it is unlawful for any person to furnish supplies or services, or transact any kind of business in the unincorporated territory of El Dorado County without possessing a County business



license unless exempt under County Ordinance Code Section 5.08.070. Lessor warrants and represents that it shall comply with all of the requirements of County's Business License Ordinance prior to renting any equipment under this Agreement and at all times during the term of this Agreement.

**ARTICLE XXXII**

**Contract Administrator:** The County Officer or employee with responsibility for administering this Agreement is Russell Fackrell, Facilities Manager, Chief Administrative Office, or successor.

**ARTICLE XXXIII**

**Authorized Signatures:** The parties to this Agreement represent that the undersigned individuals executing this Agreement on their respective behalf are fully authorized to do so by law or other appropriate instrument and to bind upon said parties the obligations set forth herein.


**ARTICLE XXXIV**

**Partial Invalidity:** If any provision or any part of any provision of this Agreement or the application thereof is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remaining provisions or parts of said provisions shall not be affected thereby and will continue in full force and effect without being impaired or invalidated in any way.

**ARTICLE XXXV**

**Entire Agreement:** This document and the documents referred to herein are the entire Agreement between the parties, and they incorporate or supersede all prior written or oral agreements or understandings.

**Contract Administrator Concurrence:**

By:  Dated: 1/29/16  
Russell Fackrell  
Facilities Manager  
Chief Administrative Office

**Requesting Head Department Concurrence:**

By:  Dated: 2/4/16  
Larry T. Combs  
Chief Administrative Officer


**IN WITNESS WHEREOF**, the parties have executed this Agreement on the dates indicated below, the latest of which shall be deemed to be the effective date of this Agreement.

**-- COUNTY OF EL DORADO --**

By:  Dated: 2/4/16  
Purchasing Agent  
Chief Administrative Office  
"County"

**- - LESSOR - -**

**MODULAR SPACE CORPORATION  
A DELAWARE CORPORATION**

By:  Dated: 1/26/16  
John Friend  
Sr. Vice President

By:  Dated: 1/26/2016  
James Sheets  
Secretary