



COUNTY OF HUMBOLDT

AGENDA ITEM NO.

C-9

For the meeting of: September 1, 2015

Date: July 20, 2015
To: Board of Supervisors
From: Phillip R. Crandall, Director *PRC*
Department of Health and Human Services-Mental Health
Subject: Second Option to Extend the Lease for 2933 H Street Modular Building

RECOMMENDATION(S):

That the Board of Supervisors:

1. Approves exercising the second option to extend the Lease with Performance Modular, Inc. for the modular building located at 2933 H Street, Eureka, through November 30, 2016;
2. Authorizes the Public Works-Real Property Division to send a notice to Lessor that the County is exercising the second option to extend the Lease; and
3. Directs the Clerk of the Board to return one executed agenda item to the Public Works-Real Property Division.

SOURCE OF FUNDING:

Mental Health Fund

DISCUSSION:

The county, through its Department of Health and Human Services (DHHS), has leased the modular building located at 2933 H Street, Eureka since 1993. Originally the Lease was with Johnson's Mobile Solutions, who sold the modular building to Performance Modular, Inc. The new Lease (Attachment 1) with Performance Modular, Inc. was entered into on November 18, 2008 (item B-1) with an expiration date

Prepared by Michelle Tucker, Administrative Services Officer CAO Approval *Cheryl Dillingham*

REVIEW:

Auditor *MBM*

County Counsel

Personnel

Risk Manager

Other

TYPE OF ITEM:

☒ Consent
☐ Departmental
☐ Public Hearing
☐ Other

PREVIOUS ACTION/REFERRAL:

Board Order No. B-1; C-2; C-16

Meeting of: 11/18/08; 10/18/11; 8/19/14

BOARD OF SUPERVISORS, COUNTY OF HUMBOLDT

Upon motion of Supervisor *Sundberg* Seconded by Supervisor *Lavelace*

Ayes *Sundberg, Lavelace, Fennell, Bohn, Bass*

Nays

Abstain

Absent

and carried by those members present, the Board hereby approves the recommended action contained in this Board report.

Dated: *September 1, 2015*

By: *Kathy Hayes*

Kathy Hayes, Clerk of the Board

of November 30, 2011. On October 18, 2011 (item C-2), the Board approved the First Amendment to Lease to extend the term of the Lease through November 30, 2014. The First Amendment to Lease (Attachment 2) provides two (2) one (1) year options to extend the Lease, under the same terms and conditions, upon 60 days written notice of the County's intent to extend the Lease. The county is responsible for all utilities and janitorial service, and Performance Modular, Inc. is responsible for all costs of tear down and return, with the exception of disconnecting utilities, skirting and tie-downs. On August 19, 2014 (item C-16), the Board approved DHHS-Mental Health's request to exercise the first option to extend the Lease through November 30, 2015. DHHS-Mental continues to require the use of the modular building and requests the Board to approve exercising the second option to extend the Lease through November 30, 2016.

This modular building currently houses the Hope Center, a successful, peer-run center offering wellness and recovery activities for people with a mental health diagnosis, and is closely situated to other DHHS-Mental Health services at 720 Wood Street.

Therefore, DHHS-Mental Health recommends that the Board approves exercising the second option to extend the Lease with Performance Modular, Inc. for the modular building located at 2933 H Street, Eureka, through November 30, 2016.

FINANCIAL IMPACT:

The cost of the monthly rent for the modular is \$2407.26, plus sales tax at 8.75%, for a total cost of \$2,617.90 per month; approximately \$1.20 per square foot. Lease expenditures for this modular building have been included in the approved FY 2015-16 budget for DHHS-Mental Health, Mental Health Services Act budget unit 1170-477. There is no impact on the County General Fund.

Approving the second option to extend the Lease supports the Board's Strategic Framework by creating opportunities for improved safety and health and helping to protect vulnerable populations.

OTHER AGENCY INVOLVEMENT:

Public Works-Real Property Division

ALTERNATIVES TO STAFF RECOMMENDATIONS:

The Board could choose not to approve exercising the second option to extend the Lease through November 30, 2016; however, DHHS-Mental Health does not recommend this alternative because the Hope Center would need to find a new location that is closely situated to other DHHS-Mental Health services at 720 Wood Street.

ATTACHMENTS:

Attachment 1: Lease Agreement with Performance Modular, Inc for 2933 H Street modular building.
Attachment 2: First Amendment to Lease with Performance Modular, Inc. for 2933 H Street modular building

ORIGINAL

Attachment 1

**Performance Modular, Inc.
9090 Union Park Way, Suite 104
Elk Grove, CA 95624**

Modular Building Lease Agreement (Lease Number:1189)

This Agreement, Schedule A and attached Addendum To Agreement is entered into this 18th day of November, 2008, by and between Performance Modular, Inc., a California corporation, as Lessor, and County of Humboldt, a political subdivision of the State of California, as Lessee, covering the mobile and/or modular equipment fully described in Schedule A and attachments.

TERM. The term of the Agreement shall be thirty-six months beginning December 01, 2008 and ending November 30, 2011.

RENTS. The monthly rent of Two Thousand Four Hundred Seven Dollars and Twenty Six Cents (\$2,407.26) plus a monthly sales tax of One Hundred Seventy Four Dollars and Fifty Three Cents (\$174.53), will be due in advance on the first day of each month starting on the commencement date and will continue to be due for the remainder of the term on the same day for each successive month.

SECURITY DEPOSIT. If a security is required, the amount stipulated on Schedule A, it shall be paid in advance of the commencement date and held by Lessor without obligation to pay interest. In the event of Lessee's default, the Lessor may use the security deposit to pay costs and expenses in enforcing the terms of the Agreement and to indemnify the Lessor against damages sustained by Lessor.

TAXES. Lessee shall pay any personal property tax imposed by any taxing authority.

SET-UP AND DELIVERY. As indicated in Schedule A, Lessee will be responsible for all costs associated with the delivery and set-up of the building. For any reason the Lessee is not prepared to accept the delivery and installation of the equipment within 30 days from the date the equipment is ready for delivery, the Lease shall commence on such 30th day. Unless specified differently in Schedule A or other attachment to the Lease, the Lessee is responsible for all utility connections and associated permits.

MAINTENANCE. Lessor shall be responsible for all maintenance and repairs to the premises including but not limited to the following:

- A. Any structural problems; including roofing, foundation, walls, windows and floors
- B. Major Plumbing
- C. HVAC systems
- D. Electrical system

Lessee shall be responsible for the following:

- A. Light bulbs and ballasts
- B. Minor plumbing, such as repairing of faucets, toilets, and unstopping of toilets and sinks
- C. Any repairs caused by vandalism
- D. Any repairs to phone system, computers, security system or any of Lessee's equipment or installation thereof

TEARDOWN AND RETURN. LESSOR will be responsible for all costs and performance associated with the teardown and return of the modular building. COUNTY will be responsible for all costs and performance of removal of existing decks, ramps and steps, and the disconnecting of electrical, phone and data lines, water, sewer and all other utilities to the modular building.

LOCATION OF PROPERTY. The equipment will be located at the address shown on Schedule A and shall not be moved by the Lessee without the written consent of the Lessor.

ALTERATIONS. Lessee shall make no alterations, additions, or improvements to the equipment without written approval from the Lessor. Lessor, at its option, may require the Lessee to remove any alterations or improvements at the sole expense of the Lessee. The storage, transportation, or use of hazardous substances in the equipment is expressly prohibited.

LESSEE'S INTEREST. The equipment shall remain the sole property of the Lessor and the Lessee shall keep the equipment free of all liens or other encumbrances throughout the course of the Lease. The equipment shall remain personal property throughout the course of the Lease regardless of the manner the equipment is attached, affixed, or embedded in real property.

COMPLIANCE WITH REGULATIONS. Lessee, at its own cost and expense, shall comply with all regulations, rules, ordinances, and requirements of any governing authority in all matters affecting the placement, zoning, or permitting of the equipment. The cost of any changes to the equipment required to meet the requirements of any governing authority shall be born by the Lessee.

INSPECTION AND ACCEPTANCE. Within 48 hours of delivery and set-up, the Lessee shall inspect the building and provide Lessor with written notice of defects. Upon substantial completion, the Lessee shall acknowledge acceptance and the commencement of the Lease on Schedule A.

LESSOR'S INSURANCE. Lessor shall take out and maintain, throughout the period of this Lease, the following policies of insurance placed with insurers with a current A.M. Bests rating of no less than A:VII or its equivalent against injury/death to persons or damage to property which may arise from or in connection with the activities hereunder of Lessor, its agents, employees or sublessors:

A. Comprehensive or Commercial General Liability Insurance at least as broad as Insurance Services Office Commercial General Liability coverage (occurrence form CG 0001), in an amount of \$1,000,000 per occurrence. If work involves explosive, or collapse risks, XCU must be included. If a general aggregate limit is used, either the general aggregate limit shall apply separately to this project or the general aggregate shall be twice the required occurrence limit. Said policy shall contain, or be endorsed with, the following provisions:

- (1) Lessee, its officers, employees and agents, are covered as additional insured for liability arising out of the operations performed by or on behalf of Lessor. The coverage shall contain no special limitations on the scope of protection afforded to Lessee, its officers, agents, and employees.
- (2) The policy shall not be canceled or materially reduced in coverage without thirty (30) days prior written notice (10 days for non-payment of the premium) to Lessee by certified mail.
- (3) The inclusion of more than one insured shall not operate to impair the rights of one insured against another insured, and the coverage afforded shall apply as though separate policies had been issued to each insured, but the inclusion of more than one insured shall not operate to increase the limits of the insurer's liability.
- (4) For claims related to this project, Lessor's insurance is primary coverage to Lessee, and any insurance or self-insurance programs maintained by Lessee are excess to Lessor's insurance and will not be called upon to contribute with it.
- (5) Any failure to comply with reporting or other provisions of the parties, including breach of warranties, shall not affect coverage provided to Less, its officers, employees, and agents.

B. Workers' Compensation insurance meeting statutory limits of the California Labor Code

which policy shall contain or be endorsed to contain a waiver of subrogation against Lessee, its officers, agents, and employees and provide for thirty (30) days prior written notice in the event of cancellation.

C. Lessee reserves the right to obtain complete copies of the original insurance policies, if the Lessee's Risk Manager desires to do so.

D. If Lessor does not keep the above mentioned insurance in full force and effect during the life of this Lease, Lessee, at Lessor's expense, may elect to purchase the necessary insurance, and Lessor agrees to pay the cost of said insurance or, in the alternative, Lessee may elect to treat the failure to maintain requisite insurance as a breach of contract and terminate the Lease as provided herein.

LESSEE'S INSURANCE. Lessee shall procure, and keep in full force and effect, insurance and provide Lessor with a Certificate of Insurance as evidence thereof. The limit for casualty coverage shall be equal to its replacement value and shall be afforded under an All Risk form. Lessee shall obtain a Comprehensive General Liability Policy with limits not less than \$1,000,000 for bodily injury and property damage combined. Performance Modular, Inc. and LLC Capital, LLC shall be named as additional insured for liability coverage and loss payee with respect to physical damage coverage. A 30-day notice of cancellation will be provided to the Lessor.

LOSS AND DAMAGE. Lessee assumes all risk of loss or damage to the equipment and agrees to indemnify and hold Lessor harmless for any loss resulting from theft, destruction or damage to the equipment caused by Lessee, its officers, agents, employees or clients. If damage should occur that is repairable, the Agreement will not terminate, but at Lessee's cost and expense the equipment shall be repaired to the condition of the equipment before the damage. If the equipment is stolen, destroyed, or damaged beyond repair, Lessee shall pay the Lessor within 30 days an amount equal to the replacement value of the equipment. Lessee shall immediately notify Lessor of any damage or destruction.

LESSEE'S DEFAULT. Except where another time limit is specifically provided, Lessee shall be in default of the Lease if it fails or refuses to perform any material provision of this Lease that it is obligated to perform if the failure to perform is not cured within ten (10) days after written notice of the default has been given by Lessor to Lessee. Lessee shall not be in default of this Lease if Lessee commences to cure the default within the ten (10) day period and diligently and in good faith continues to cure the default. Upon Lessee's default, the Lessor may terminate the Lease and demand the equipment be returned by the Lessee or take possession of the equipment by giving written notice to the Lessee. The equipment shall be surrendered to the Lessor. Repossession of the equipment does not relieve the Lessee from its obligation to pay rentals and other charges, including damage charges, as provided for herein. If the Lessee defaults, in addition to rentals, damages, repossession expenses, and other applicable charges, the Lessor shall be entitled to recover from Lessee all legal fees and court costs incurred as a result of the Lessee's default.

LESSOR'S DEFAULT. Except where another time limit is specifically provided, Lessor shall be in default of this Lease if it fails or refuses to perform any material provision of this Lease that it is obligated to perform if the failure to perform is not cured within ten (10) days after written notice of the default has been given by Lessee to Lessor. If the default cannot reasonably be cured within ten (10) days, Lessor shall not be in default of this Lease if Lessor commences to cure the default within the ten (10) day period and diligently and in good faith continues to cure the default.

LATE PAYMENTS. Payments of monthly rental and other charges that are not made within twenty (20) days of the due date are subject to finance charges of eighteen (18)% per annum from the date due until paid in full.

LESSEE'S ASSIGNMENT. Lessee shall not assign, transfer, or pledge this Agreement or equipment without the written consent of the Lessor. Lessee shall not sublet or rent the equipment or permit the equipment to be used by anyone other than the Lessee without the consent of the Lessor.

LESSOR'S ASSIGNMENT. Lessor may assign this Agreement and all rights of Lessor hereunder shall be succeeded to by any Assignee.

TERMINATION & HOLDOVER. This Agreement may be terminated by either party after the expiration of the initial term by giving sixty (60) days written notice. With consent of the Lessor, any holdover after the expiration of the initial term shall be deemed to be a Lease on a sixty (60) day basis at the monthly rate then in effect with the same terms and conditions provided herein unless otherwise provided in Schedule A.

WARRANTIES. UPON THE ACCEPTANCE OF THE EQUIPMENT AS PROVIDED FOR IN SCHEDULE A, LESSEE HEREBY WAIVES AND RELEASES ALL WARRANTIES, OBLIGATIONS AND LIABILITIES OF LESSOR AND ANY RIGHTS, CLAIMS AND REMEDIES OF LESSEE AGAINST LESSOR, ITS OWNERS, OFFICERS, OR EMPLOYEES, EXPRESSED OR IMPLIED, ARISING BY LAW OR OTHERWISE, WITH RESPECT TO ANY AND ALL EQUIPMENT OR OTHER TANGIBLE OR INTANGIBLE ITEMS OR SERVICES PROVIDED UNDER THIS AGREEMENT INCLUDING, BUT NOT LIMITED TO: (I) ANY IMPLIED WARRANTY OR MERCHANTABILITY OR FITNESS FOR A SPECIFIC PURPOSE; (II) ANY IMPLIED WARRANTY ARISING FROM COURSE OF PERFORMANCE, COURSE OF DEALING OR USAGE OF TRADE, AND (III) ANY OBLIGATION, LIABILITY, RIGHT, CLAIM, OR REMEDY, WHETHER IN TORT, CONTRACT OR OTHERWISE, AND WHETHER FOR INCIDENTAL, INDIRECT, SPECIAL OR CONSEQUENTIAL DAMAGES (INCLUDING, BUT NOT LIMITED TO, LOSS OF USE, REVENUE, PROFIT OR DATA).

ENTIRE AGREEMENT. The foregoing constitutes the entire Agreement between the parties, and all other oral or written agreements in relation to the subject matter of this agreement are hereby rescinded. This Lease shall be interpreted under the laws of the State of California. Any dispute arising hereunder or relating to this Lease shall be litigated in the State of California and venue shall lie in the County of Humboldt unless transferred by court order pursuant to Code of Civil Procedure §§ 394 and 395.

Customer Billing Details:

County of Humboldt
Department of Social Services
929 Koster Street
Eureka, CA 95501
707-443-6600
707-445-7409 FAX

Performance Modular Contact for Service: Don Shoop- 916-714-3501

Schedule A

To Lease Agreement (Lease Number 1189)
Between Performance Modular, Inc. and County of Humboldt

LEASE TERM:

Number of Payments Per Year:	Twelve (12)
Total Number of Payments (Lease Term):	Thirty Six (36 months)
Total Lease Payments, excluding taxes & License Fees:	\$86,661.36
Commencement:	December 01, 2008

MONTHLY RENT PAYMENT: \$2,407.26

Delivery: \$ N/A
Setup of Mobile Office: \$ N/A (Includes setup of mobile office) Tie downs are not included unless specifically requested by the customer.

***Return Delivery:** LESSOR responsibility
***Tear Down of Mobile Office:** LESSOR responsibility (COUNTY must remove utilities, skirting and tie downs)

EQUIPMENT:

Description:	36' x 60' Mobile Office Serial Number: MSWP367055, MSWP367056, MSWP367057
Location:	Dept. of Mental Health Hope Center 2933 H Street Eureka, CA

***INSURANCE VALUATION:** Eighty Four Thousand Nine Hundred Twenty Dollars
(\$84,920.00)

SECURITY DEPOSIT: None

REMITTANCE ADDRESS: Performance Modular, Inc
9090 Union Park Way, Suite 104
Elk Grove, CA 95624
916-714-3501; 916-714-3503 Fax

Addendum to Agreement with Performance Modular, Inc.**A. INDEMNIFICATION**

LESSOR shall indemnify, defend and hold harmless LESSEE and its officers, officials, employees, and volunteers, from any and all claims, demands, losses, damages, and liabilities of any kind or nature, including attorney's fees, which are caused by any negligent or willful acts of misconduct or omissions (either directly or through or by its officers, agents or employees) in connection with LESSOR'S duties and obligations under this Agreement and any amendments hereto, except such loss or damage which was caused by the sole negligence or willful misconduct of the LESSEE.

LESSEE shall indemnify, defend and hold harmless LESSOR and its officers, officials, employees, and volunteers, from any and all claims, demands, losses, damages, and liabilities of any kind or nature, including attorney's fees, which are caused by any negligent or willful acts of misconduct or omissions (either directly or through or by its officers, agents or employees) in connection with LESSEE'S duties and obligations under this Agreement and any amendments hereto, except such loss or damage which was caused by the sole negligence or willful misconduct of the LESSOR.

Acceptance of insurance, if required by this Agreement, does not relieve LESSOR from liability under this indemnification clause. This indemnification clause shall apply to all damages or claims for damages suffered by LESSOR'S operations regardless if any insurance is applicable or not.

B. NUCLEAR FREE

LESSOR certifies by its signature below that LESSOR is not a nuclear weapons contractor, in that LESSOR is not knowingly or intentionally engaged in the research, development, production, or testing of nuclear warheads, nuclear weapons systems, or nuclear weapons components as defined by the Nuclear Free Humboldt County Ordinance. LESSOR agrees to notify LESSEE immediately if it becomes a nuclear weapons contractor, as defined above. LESSEE may immediately terminate this Lease if it determines that the foregoing certification is false or if LESSOR becomes a nuclear weapons contractor.

C. BUILDING STANDARDS AND COMPLIANCE WITH LAWS

LESSOR covenants and warrants that the premises have been constructed and any remodeling done in accordance with all local, state and federal laws and regulations, including but not limited to the Americans with Disabilities Act. LESSOR further agrees to comply with any federal, state or local licensing standards, and applicable accrediting standards, and any other applicable standards or criteria established locally or by the state or federal governments.

LESSEE shall have the right to terminate this Agreement upon ten (10) days written notice if any of the above mentioned applicable laws, standards, or criteria are not complied with.

D. NOTICE

Any notice, demand, request, consent, approval, or communication that either party desires or is required to give to the other party or any other person shall be in writing and either served personally or sent by certified mail, return receipt requested, to the respective addresses set forth below. Notice shall be effective upon actual receipt or refusal as shown on the receipt obtained pursuant to the foregoing.

LESSOR: Performance Modular, Inc.
9090 Union Parkway, Suite 104
Elk Grove, CA 95624

LESSEE: County of Humboldt
Dept. of Public Works
1106 Second Street
Eureka, CA 95503

All insurance notices shall also be sent to:

County of Humboldt
Attn: Risk Management
825 Fifth Street, Room 131
Eureka, CA 95501

IN WITNESS HEREOF, the parties hereto have caused this Agreement, Addendum to Agreement, and Schedule A to be duly executed on the date set forth above by their authorized representatives.

(SEAL)
ATTEST:
CLERK OF THE BOARD

BY

Y. Nikki Turner

APPROVED AS TO FORM:
COUNTY COUNSEL

BY

R. Zuber
DEPUTY

LESSOR:
Performance Modular, Inc.

BY

Donald Sharp

TITLE PRESIDENT

BY

Janet Borden

TITLE SECRETARY

COUNTY OF HUMBOLDT

BY

[Signature]
Chairperson, Board of Supervisors
County of Humboldt
State of California

INSURANCE CERTIFICATE
REVIEWED AND APPROVED:

BY

[Signature]
RISK MANAGER

COPY ORIGINAL

Attachment 2

FIRST AMENDMENT TO LEASE

This Amendment to the Lease entered into on November 18, 2008, by and between the COUNTY OF HUMBOLDT, a political subdivision of the State of California, hereinafter called LESSEE and PERFORMANCE MODULAR, INC., hereinafter called LESSOR, is entered into this 18 day of October, 2011.

WHEREAS, the parties entered into a Lease for the use of the premises at 2933 H Street, Modular Serial Numbers MSWP367055; MSWP367056; MSWP367057, for the purpose of office space; and

WHEREAS, LESSEE and LESSOR desire to extend the initial term of the Lease and to amend the Lease as specified.

NOW, THEREFORE, it is mutually agreed as follows:

1. TERM of the Lease is amended to read as follows:

The term of this Lease shall be extended beginning December 1, 2011 and terminating November 30, 2014.

LESSEE has the option to extend this Lease, upon the same terms and conditions, for two (2) one (1) year terms. Each option may be exercised by LESSEE giving LESSOR notice of its intent to extend the Lease. The notice shall be in writing and shall be given to LESSOR sixty (60) days prior to the end of the initial term or any one (1) year term extension.

2. In all other respects the Lease between the parties entered into on November 18, 2008 shall remain in full force and effect.

IN WITNESS WHEREOF, the parties hereto have executed this First Amendment to the Lease dated November 18, 2008, on the date indicated above.

(SEAL)

ATTEST:

CLERK OF THE BOARD

COUNTY OF HUMBOLDT

By Nikki Turner

By Viggoe Bass-Vicechair
Chair, Board of Supervisors
County of Humboldt
State of California

LESSOR:

Performance Modular, Inc.

By Donald Shuf

By Jane Phoebe

Title PRESIDENT

Title Secretary