



## COUNTY OF HUMBOLDT

AGENDA ITEM NO.

C-12

For the meeting of: April 4, 2017

Date: March 8, 2017

To: Board of Supervisors

From:  Thomas K. Mattson, Public Works Director

Subject: Lease with Performance Modular, Inc. for modular located at 1106 Second Street, Eureka, California

### RECOMMENDATION(S):

That the Board of Supervisors:

1. Approve the lease agreement with Performance Modular, Inc., for the modular unit located at 1106 Second Street, Eureka, CA.; and
2. Authorize the Chairperson to execute two originals of the lease; and
3. Direct the Clerk of the Board to return one executed original of the lease to Real Property for transmittal to the Lessor.

SOURCE OF FUNDING: Road Funds

DISCUSSION: Since 1995 the Natural Resources Division of the Public Works Department has been housed in a modular unit at 1106 Second Street, Eureka. The original lease with Johnson's Mobile Solutions is due to expire on June 30, 2017 and the new owner of the modular, Performance Modular, Inc., has approved continuing to lease the modular to the county for the same monthly fee that we are currently

Prepared by Ronda Keime

CAO Approval Karen Clower

REVIEW:

Auditor WBM

County Counsel JS

Personnel DF

Risk Manager DF

Other \_\_\_\_\_

TYPE OF ITEM:

☒ Consent  
☐ Departmental  
☐ Public Hearing  
☐ Other \_\_\_\_\_

PREVIOUS ACTION/REFERRAL:

Board Order No. \_\_\_\_\_

Meeting of: \_\_\_\_\_

**BOARD OF SUPERVISORS, COUNTY OF HUMBOLDT**  
Upon motion of Supervisor Wilson Seconded by Supervisor Fennell

Ayes Sundberg, Fennell, Bass, Wilson  
Nays \_\_\_\_\_  
Abstain \_\_\_\_\_  
Absent Bohn

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

Dated: April 4, 2017

By: Kathy Hayes  
Kathy Hayes, Clerk of the Board

paying. The new lease will expire on June 30, 2020.

Due to space limitations in the county owned building at 1106 Second Street, the continuance of this lease is recommended. The proximity of this location to other Public Works Departments is beneficial for staff and clients.

Continuance of this lease supports the Board's strategic plan by providing for and maintaining infrastructure.

FINANCIAL IMPACT: Funding for this lease of \$435.00 monthly is contained in Roads-Natural Resources Budget (1200-331-2121). There is no impact to the General Fund

OTHER AGENCY INVOLVEMENT: None

ALTERNATIVES TO STAFF RECOMMENDATIONS: The Board could not approve the lease. This is not recommended as Public Works would then have to locate a new facility for Natural Resources.

ATTACHMENTS:

Original Lease

# ORIGINAL

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

Modular Building Lease Agreement (Lease Number:1838)

This Agreement, Schedule A and attached Addendum to Agreement is entered into this 1st day of April, 2017, 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 begin July 1, 2017 .

**RENTS.** The monthly rent of Four Hundred and Thirty-Five Dollars (\$435.00) plus a monthly sales tax of Thirty-Six Dollars and Ninety-Eight Cents (\$36.98), and 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, and 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 30<sup>th</sup> 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 toilet 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 use, 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 activities hereunder of Lessor, its agents, employees or sublessors:

A. Comprehensive 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 of 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 Lessee, 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, 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 and 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 provisions 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.

**LESSEE'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 of 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  
Public Works  
1106 Second Street  
Eureka, CA 95501  
707-268-2668  
707-445-7409 FAX

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

**Schedule A**  
To Lease Agreement (Lease Number 1838)  
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:	\$15,660.00
Commencement:	July 1, 2017

**MONTHLY RENT PAYMENT: \$435.00**

**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:	12' x 60' Mobile Office Serial Number: JMS 126000127; Asset #243
Location:	Public Works 1106 Second Street Eureka, CA 95501

**\*INSURANCE VALUATION:** \$38,900.00

**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 Park Way, Suite 104  
                                    Elk Grove, CA 95624



LESSEE: County of Humboldt  
Department 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 *Ann Hurlbut*

COUNTY OF HUMBOLDT

BY *Vingon Ben*  
Chairperson, Board of Supervisors  
County of Humboldt  
State of California

REVIEWED & APPROVED:  
COUNTY COUNSEL

BY *N/A*  
DEPUTY

INSURANCE CERTIFICATE  
REVIEWED AND APPROVED:

By *Daniel G. Kelly*  
RISK MANAGER

LESSOR:  
Performance Modular, Inc.

BY *Daniel G. Kelly*

TITLE *PRESIDENT*

BY *Jim Brown*

TITLE *Secretary*