

Please Note  
This meeting is recorded.  
Aviso:  
Esta junta se grabará en cinta.

**LOS BANOS UNIFIED SCHOOL DISTRICT  
GOVERNING BOARD OF EDUCATION  
SPECIAL MEETING  
Los Banos Unified School District Boardroom  
1717 S. 11<sup>th</sup> Street, Los Banos, CA 93635  
Thursday, February 28, 2019  
5:00 P.M. Closed Session  
6:00 P.M. Regular Meeting**

**AGENDA**

The District welcomes Spanish speakers to Board meetings. Anyone planning to attend and needing an interpreter should call 826-3801, 48 hours in advance of the meeting, so arrangements can be made for an interpreter.  
*El Distrito da la bienvenida a las personas de habla hispana a las juntas de la Mesa Directiva. Si planea asistir y necesita interpretación llame al 826-3801, 48 horas antes de la junta, para poder hacer arreglos de interpretación.*

**I. OPENING BUSINESS**

**A. Call Public Session to Order**

**B. Roll Call of Board Members Present**

Margaret Benton      Anthony Parreira  
Megan Goin            Anahi Rodriguez  
Ray Martinez         Marlene Smith  
Gary Munoz

**C. Closed Session (5:00 P.M.)**

- 1. Public Employees: Discipline/Dismissal/Release/Reassignment (Section 54957) (No Action)
- 2. Public Employees: Discipline/Dismissal/Release/Reassignment (Section 54957) (Action)
- 3. Conference with Labor Negotiator (Section 54957.6) Agency Negotiators: Tammie Calzadillas, Paul Enos, Don Laursen, Mark Marshall and Paula Mastrangelo; Employee Organization: LBTA (No Action).

**II. OPEN REGULAR MEETING (6:00 P.M.)**

**III. PLEDGE OF ALLEGIANCE**

**IV. APPROVAL OF AGENDA**

Motion by \_\_\_\_\_ Seconded by \_\_\_\_\_  
**Proposed Action:** Approve Agenda

V. **PUBLIC HEARING**

**Public Presentations:**

Members of the public may request an item be placed on the agenda of a regular meeting by submitting a request in writing, with all supporting documents, if any, to the Superintendent at least two weeks before the scheduled meeting date. [BB 9322(a)]

**General Public Comment:**

Individuals wishing to address the Board on items not on the agenda may do so by approaching the podium. Once recognized, individuals shall identify themselves and make their statement. Speakers are limited to three (3) minutes, with the total time for public input at twenty (20) minutes per non-agenda item. [BB 9323]

**Public Comment on Agenda Items:**

Members of the community may address specific items on the agenda as they are taken up by the Board in open session or prior to the Board going into closed session. The Board President will recognize individuals who wish to speak. Speakers are limited to three (3) minutes, with the total time for public input at twenty (20) minutes per agenda item. Once public comment on the agenda item is concluded and the Board begins deliberations or recesses to closed session, no further public comment shall be permitted on the agenda item. [BB 9323]

VI. **NEW BUSINESS**

2018-19 Low-Performing Student Block Grant (Pg 4)

**5 Min.**

It is recommended the Board approve the proposed spending plan of the 2018-19 Low Performing Student Block Grant for the Los Banos Unified School District.

Motion By \_\_\_\_\_ Seconded By \_\_\_\_\_

**Proposed Action:** Approve

VII. **CONSENT CALENDAR**

The Consent Calendar represents routine items acted upon in one motion by roll call vote. The recommendation is for adoption, unless otherwise specified. Any item can be removed for discussion upon request.

A. Contracts/Agreements/Proposals:

1. Agreement, Mobile Modular Piggyback Bid – VE Modulares (Pg 5)
2. Agreement, Mobile Modular Piggyback Bid – SLHS Modular (Pg 11)

VIII. **REPORTING CLOSED SESSION ACTION**

The Board will report action taken at the closed session held prior to the start of the meeting

IX. **CLOSED SESSION** (If necessary)

X. **REPORT OF CLOSED SESSION ACTION** (If necessary)

The Board will report if action was taken in closed session

XI. **ADJOURNMENT**

Americans with Disabilities Act Assistance: Auxiliary aids and services include a wide range of services and devices that promote effective communications for individuals with disabilities. If you require such assistance, please notify the Office of the Superintendent at 826-3801 as soon as possible. Every effort will be made to give primary consideration to expressed preferences or provide equally effective means of communication to insure equal access to Los Banos Unified School District programs and events.

**Board Reference Material**

**SUBJECT TITLE:**    Low-Performing Students Block Grant

**REQUESTED ACTION:** Approve

Action \_\_\_\_\_

Discussion/Information \_\_\_\_\_

---

---

**RECOMMENDATION:**

It is recommended the Board approve the proposed spending plan of the Low Performing Students Block Grant for the Los Banos Unified School District.

**BACKGROUND INFORMATION:**

This grant is available to local educational agencies (LEAs) with students identified as low-performing on the 2016-2017 administration of the CAASPP and who are not otherwise identified for supplemental grant funding under LCFF or eligible for Special Education funding. Entitlements are based on a rate of \$1976.02 per eligible student. Los Banos Unified has been identified as having 215 eligible students, totaling a grant award of \$495,982.

The Low-Performing Students Block Grant is a one-time grant. Funds are available for expenditure or encumbrance through the 2020-2021 fiscal year.

All LEAs using these funds must adopt a plan that describes how the funds will be used to increase the academic performance of students that generated the funds and how the effectiveness of services will be measured. Funds shall be used for evidence-based services that directly support student academic achievement, such as professional development for certificated staff, instructional materials, or additional support for students. Plans must align with an LEA's LCAP and must be discussed and adopted at a meeting of the LEA's governing board.

The grant money will be spent on Language Arts and/or Math.

**HOW DOES THIS ACTIVITY SUPPORT BOARD GOALS?**

Board/LCAP Goal #1: Promote the educational success of all students by closing the achievement gap between groups of students by using best practices to attain proficiency or better by all students in reading and mathematics.

**ALTERNATIVES/IDENTIFIED OPPOSITION:**

N/A

**SPECIFIC FINANCIAL IMPACT (Include Impact on School District Facilities):**

There is not a direct impact on district facilities.

---

---

ORIGINATOR: Paul Enos and Paula Mastrangelo, Assistant Superintendents

Date: February 28, 2019

## Board Reference Material

**SUBJECT TITLE:**     Authorize Participation in a Piggyback Contract

**REQUESTED ACTION:** Approve

Action   X  

Discussion/Information           

---

---

**RECOMMENDATION:**

It is recommended the Board approve the piggy-back contract with Mobile Modular held by Pajaro Unified School District for the purchase of 3 modular buildings for the Volta Elementary School site.

**BACKGROUND INFORMATION:**

Volta Elementary School is facing overcrowding and needs more classrooms. These classrooms will help mitigate this issue.

**HOW DOES THIS ACTIVITY SUPPORT BOARD GOALS?**

This directly supports Board goal #5: Provide student capacity in our schools for a single track schedule throughout the District.

**ALTERNATIVES/IDENTIFIED OPPOSITION:**

N/A

**SPECIFIC FINANCIAL IMPACT (Include Impact on School District Facilities):**

The cost is \$249,415.27 that will be paid from Developer Fee Fund 25.

---

---

ORIGINATOR: Don Laursen- Assistant Superintendent, Administrative Services  
Date: February 28, 2019



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

**Sale Agreement**  
 Contract: 210042867.1  
 Date Printed: 02/25/2019

Customer & Site Information		Mobile Modular Contact
<b>Customer Information:</b> <b>Los Banos USD</b> 1717 South 11th Street Los Banos, CA 93635 Tom Worthy tworthy@losbanosusd.k12.ca.us (209) 826-1936	<b>Site Information:</b> Los Banos USD 24307 Ingomar Grade Volta Elementary School Los Banos, CA 93635 Tom Worthy tworthy@losbanosusd.k12.ca.us (209) 826-1936  <b>Customer PO/Reference:</b> Exp: // By:	Questions?  Please Contact: Kevin Gibson Kevin.Gibson@mobilemodular.com Direct Phone: (925) 453-3143 All other inquiries: (925) 606-9000

Product Information				
	Qty	Purchase Price	Extended Purchase Price	Taxable
Classroom, 24x40 DSA II (Item2001) <i>Right Hand Door Configuration Tackboard interior. 1 Door 2 Window Min</i>	1	\$72,877.00	\$72,877.00	Y
Classroom, 24x40 DSA II (Item2001) <i>Right Hand Door Configuration Tackboard interior. 1 Door 2 Window Min</i>	1	\$72,877.00	\$72,877.00	Y
Classroom, 24x40 DSA II (Item2001) <i>Right Hand Door Configuration Tackboard interior. 1 Door 2 Window Min</i>	1	\$72,877.00	\$72,877.00	Y

	Qty	Charge Each	Total One Time	Taxable
<b>Charges Upon Delivery:</b>				
<b>Classroom, 24x40 DSA II (Item2001)</b>				
Block and Level Building (B5) (PW) <i>Prevailing Wage Cert. Payroll</i>	1	\$4,520.00	\$4,520.00	N
Delivery Haulage Lowboy 12 wide	2	\$955.00	\$1,910.00	N
Delivery Haulage Permit 12 wide Lowboy	2	\$95.00	\$190.00	N
Installation, Closure Panel (PW) <i>Prevailing Wage Cert. Payroll</i>	2	\$225.00	\$450.00	Y
Installation, Ramp Skirting (PW) <i>Prevailing Wage Cert. Payroll</i>	36	\$14.00	\$504.00	Y
Zone/Adjustment Charge 2	1	\$251.00	\$251.00	N
			\$7,825.00	
<b>Classroom, 24x40 DSA II (Item2001)</b>				
Block and Level Building (B5) (PW) <i>Prevailing Wage Cert. Payroll</i>	1	\$4,520.00	\$4,520.00	N
Delivery Haulage Lowboy 12 wide	2	\$955.00	\$1,910.00	N
Delivery Haulage Permit 12 wide Lowboy	2	\$95.00	\$190.00	N
Installation, Closure Panel (PW) <i>Prevailing Wage Cert. Payroll</i>	2	\$225.00	\$450.00	Y
Installation, Ramp Skirting (PW) <i>Prevailing Wage Cert. Payroll</i>	36	\$14.00	\$504.00	Y
Zone/Adjustment Charge 2	1	\$251.00	\$251.00	N
			\$7,825.00	
<b>Classroom, 24x40 DSA II (Item2001)</b>				
Block and Level Building (B5) (PW) <i>Prevailing Wage Cert. Payroll</i>	1	\$4,520.00	\$4,520.00	N
Delivery Haulage Lowboy 12 wide	2	\$955.00	\$1,910.00	N
Delivery Haulage Permit 12 wide Lowboy	2	\$95.00	\$190.00	N
Installation, Closure Panel (PW) <i>Prevailing Wage Cert. Payroll</i>	2	\$225.00	\$450.00	Y
Installation, Ramp Skirting (PW)	36	\$14.00	\$504.00	Y



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

**Sale Agreement**  
 Contract: 210042867.1  
 Date Printed: 02/25/2019

Prevailing Wage Cert. Payroll  
 Zone/Adjustment Charge 2

1	\$251.00	\$251.00	N
		\$7,825.00	

Tax:	\$7,309.27
Total Sales Price Including Tax:	\$249,415.27

**Special Notes**

Pricing is per the Pajaro Valley Piggyback bid.

**Additional Note:** This is a sale quote for a NEW 24x40 DSA Modular Classroom Unit. Flooring will be carpet ready. Installing carpet or vct tile flooring is available at an additional cost. Quote is based on level and accessible site by normal truck delivery.  
**Block/Level:** Price assumes building is installed using Mobile Modular standard foundation. Mobile Modular assumes installation on the minimum foundation design criteria/tolerances. For DSA buildings, it is assumed building will be installed on the minimum amount of foundation lumber per the applicable DSA approved stockpile drawings and site will not exceed 4-1/2" out of level. Additional material and labor charges apply for installing buildings above minimum foundation design criteria, raising buildings to meet specific finish floor elevations, raising building level to adjacent buildings, landings, walkways, transitions, etc.  
**Budgetary Quote:** Pricing provided is for budgetary purposes only. A revised quotation will be provided once project details are clarified. If you are new to modular buildings and wondering what you need to know about them, please visit [www.mobilemodularrents.com](http://www.mobilemodularrents.com) and view our FAQ worksheet "Considering Modular Buildings for Your Space Needs?". \*Delivery pricing is estimated based on delivery within 50 miles of branch location. Pilots and permits not included and may be required. We look forward to working with you to refine your requirements.

**Delivery Date:**

**Delivery Date:** Delivery date will not be confirmed until Mobile Modular receives and approves the signed Agreement and all credit conditions have been met.

**DSA Classrooms include:** (2) 8040 marker boards, (1) fire extinguisher at each exit, empty back box with conduit stubbed to ceiling for future pull station & horn, skirting for perimeter of building only, standard factory ramp, and wood sill foundation for level site.

**Site Installation Requirements:** Prior to delivery, Customer shall mark the four corners where the building is to be placed on the site/pad location, and shall also mark the locations of door(s) and ramp(s). Should special handling be required to position, install, or remove the classroom on Customer's site due to site conditions/constraints and/or obstructions, Customer will be responsible for additional charges. Additional rolling charges may be applicable as site conditions necessitate.

**Site Plan Review:** Mobile Modular is not responsible for review and verification of Customer's site plans, civil plans, soils tests/survey's, etc. It is the responsibility of the Customer to ensure the site plans and site conditions meet applicable codes and governing body approvals. This includes, but is not limited to, ensuring the building pad/site allows for standard delivery and installation based on the minimum foundation design tolerances as per applicable approved stockpile drawings/foundation design.

**Yes - Prevailing Wage:** Pricing includes prevailing wage and certified payroll for installation work performed on site.

**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.
- Unless otherwise noted, prices do not include prevailing wages, Davis-Bacon wages, or other special or certified wages.



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

**Sale Agreement**

Contract: 210042867.1  
 Date Printed: 02/25/2019

**Incorporation by Reference**

The Sale Agreement is subject to the Supplemental Sale Terms and Conditions, which are hereby incorporated by reference in their entirety, as updated from time to time by Seller, in its sole discretion, and can be viewed in the Resources section of Seller's website at (<https://www.mobilemodular.com/contractterms>). The Buyer hereby affirms that he/she has read in its entirety and understands the Supplemental Lease Terms and Conditions.

**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 ("**Seller**") and buyer ("**Buyer**", as described in the Sale Agreement in the section titled "Customer Information") hereby agree to this Sale Agreement and the terms and conditions set forth in the Sale 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 Sale.

<p><b>SELLER:</b>          Mobile Modular Management Corporation</p> <p>Signature: _____</p> <p>Print Name: _____</p> <p>Title: _____</p> <p>Date: _____</p>	<p><b>BUYER:</b>          Los Banos USD</p> <p>Signature: _____</p> <p>Print Name: _____</p> <p>Title: _____</p> <p>Date: _____</p>
--	---

**ATTACHMENT A**

**SALE TERMS AND CONDITIONS**

**1. SALE.** Seller sells to Buyer, and Buyer purchases from Seller, the equipment listed on the Sale Agreement hereto ("**Equipment**") on the terms and conditions set forth herein. Each such Sale Agreement ("**Agreement**"), and the sale provisions on the Seller's website at (<https://www.MobileModular.com/ContractTerms>) (the "**Incorporated Provisions**"), to which are incorporated by reference into the Agreement, shall constitute a separate and independent sale (a "**Sale**") of the Equipment listed in such Agreement under "Product Information". In the event of a conflict between this Agreement and Buyer's contract, purchase order or other document, the terms of this Agreement shall prevail.

**2. TIME PAYMENT; TITLE RETENTION.**

(a) **PURCHASE PRICE.** The aggregate amount of the purchase price (the "**Purchase Price**") is set forth in the Sale Agreement. Unless otherwise specified in writing, Buyer agrees to pay Seller twenty five percent (25%) of the Purchase Price upon execution of the Agreement; sixty five percent (65%) no fewer than two days prior to the scheduled delivery date; 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.

(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. CANCELLATION.** All sales are final and non-refundable upon delivery of the Equipment to Buyer's site location. Any requests to cancel or reschedule orders prior to delivery may or may not be accepted in Seller's sole discretion and must be agreed upon by Seller in writing. Without waiving any of its rights, Seller is entitled to recover its costs incurred and profits lost as a result of Buyer's cancellation or rescheduling of an order. A cancellation fee may be assessed against Buyer. In no event shall such fee exceed the full value of the Sale Agreement. If Buyer has made down payment(s) to Seller prior to cancellation and the cancellation fee is less than the amount(s) already paid, Seller shall deduct the amount of the cancellation fee from any refund that may be owed to Buyer. If down payment amount(s) already made are less than the cancellation fee, Seller shall apply the full down payment amount(s) to the payment of the cancellation fee and Buyer will pay the remaining cancellation fee balance within ten (10) business days after receiving written notice of the balance due. If no down payment has





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

## Sale Agreement

Contract: 210042867.1  
Date Printed: 02/25/2019

been made by Buyer at the time of cancellation, Buyer shall pay to Seller the entire cancellation balance within ten (10) business days of receipt of written notice from Seller stating the cancellation fee balance that is due.

**4. DELIVERY AND PLACEMENT OF EQUIPMENT.** Seller agrees to deliver the Equipment to the site location listed on the Sale Agreement (the "Site"). Buyer warrants and represents that it has exercised due diligence and care in selecting a suitable site for the Equipment, shall clearly mark the site of placement and shall direct Seller on exact placement and orientation of the Equipment. Upon request from Buyer and for an additional fee, Seller will perform a site visit and make recommendations on placement as it relates to site accessibility and layout. Buyer further warrants that the Site will have (1) safe access free from encumbrances; (2) a level pad, which is hereby defined as having no greater than a 4-inch drop in 40 feet (length) and no greater than a 1-inch drop in 8 feet (width); and (3) adequate soil bearing pressure of not less than 1500 psf, except in the state of Florida, where the minimum soil bearing pressure is 2000 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, and Site preparation.

**5. 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 Buyer and Seller that Buyer has inspected the Equipment and that all Equipment is in conformance with the Agreement and has been accepted by Buyer.

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

**7. LOSS OR DAMAGE.** All risk of loss or damage to the Equipment shall transfer to Buyer upon delivery of the Equipment to the site location. Buyer agrees to indemnify and hold Seller harmless from any loss resulting from the theft, destruction or damage to the Equipment. The cost of any required repairs shall be borne by Buyer. Any loss of or damage to the Equipment shall not alleviate Buyer's obligation to pay Seller any remaining balance of the Purchase Price existing at the time of the loss.

**8. INSURANCE.** Upon delivery of the Equipment and until Buyer has paid for the Equipment in full, Buyer shall provide, maintain, and pay all premiums for property insurance covering the loss, theft, destruction, or damage to the Equipment in an amount not less than the full replacement value and will name Seller as loss payee of the proceeds, unless Buyer has paid Seller the entire purchase price in full prior to the scheduled delivery of the Equipment. This coverage will extend to all property of Seller located at the delivery site during the installation. 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 general liability insurance in the amount of \$1,000,000.00 (one million dollars) and name Seller as an additional insured. All insurance shall be with a company having an A.M. Best rating of A- or better, and shall not be subject to cancellation without thirty (30) days prior written notice to Seller. Buyer shall deliver to Seller insurance certificates, or evidence of insurance proving the existence of policies meeting the above requirements, upon execution of the Agreement. Seller may require Buyer's insurance carrier to be licensed to do business in the state where the Equipment is being sold. Buyer's obligation to provide said insurance will cease once Equipment has been paid for in full and pursuant to [Section 2](#).

### 9. 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.

**10. 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 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 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 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 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.



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

**Sale Agreement**  
Contract: 210042867.1  
Date Printed: 02/25/2019

11. **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.

12. **JURISDICTION.**

(a) If the law of the State of Maryland or Virginia shall apply to the Agreement, it is agreed that the venue for a legal action relating to the Agreement shall be proper if brought in Alameda County, State of California. Subject to Section 9, 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 Agreement. Further, it is agreed that the venue for a legal action relating to the Agreement shall be proper if brought in Alameda County, State of California. Subject to Section 9, the prevailing party shall be entitled to recover reasonable attorneys' fees and court costs, whether or not the action proceeds to judgment.

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

14. **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 where applicable.

15. **COMPLIANCE WITH LAW.** Buyer assumes all responsibility for any and all licenses, clearances, permits and other certificates as may be required for Buyer's lawful operation, use, possession and occupancy of the Equipment. Buyer agrees to fully comply with all laws, rules, regulations and orders of all local, state and federal governmental authorities which in any way relate to the Equipment; and to indemnify and hold Seller harmless from any and all fines, forfeitures, seizures, penalties or other liabilities that may arise from any infringement or violation of any such law, rule, regulation or order.

16. **FEDERAL CONTRACTOR.** As a federal contractor, Seller's contracts are subject to the provisions of (i) Executive Order 11246, (41 CFR 60-1.4); (ii) section 503 of the Rehabilitation Act of 1973, (41 CFR 60-741.5(a)); and (iii) section 4212 of the Vietnam Era Veterans Readjustment Act of 1974, (41 CFR 60-300.5(a)). **Seller shall abide by the requirements of 41 CFR 60-741.5(a) and 41 CFR 60-300.5(a). These regulations prohibit discrimination against qualified individuals on the basis of disability, and qualified protected veterans, and require affirmative action by covered prime contractors and subcontractors to employ and advance in employment qualified individuals with disabilities, and qualified protected veterans.**

17. **MISCELLANEOUS.**

(a) **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. 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.

(b) **NO WAIVER.** Failure of Seller to enforce any term or condition of the 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 Agreement shall be valid only as provided in subsection (a) above and only with respect to the specific matter to which such waiver relates.

(c) If the law of the State of North Carolina shall apply to the Agreement, the Sale 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.

18. **ENTIRE AGREEMENT.** This 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 Agreement will be eliminated.

Sale Terms and Conditions, Rev. 08/22/16

## Board Reference Material

**SUBJECT TITLE:**     **Authorize Participation in a Piggyback Contract**

**REQUESTED ACTION:**   Approve

                  Action   X  

  Discussion/Information \_\_\_\_\_

---

---

**RECOMMENDATION:**

It is recommended the Board approve the piggy-back contract with Mobile Modular held by Pajaro Unified School District for the purchase of a modular building for the San Luis High School site.

**BACKGROUND INFORMATION:**

San Luis High School is facing overcrowding and needs another classroom. This classroom will help mitigate this issue.

**HOW DOES THIS ACTIVITY SUPPORT BOARD GOALS?**

This directly supports Board goal #5: Provide student capacity in our schools for a single track schedule throughout the District.

**ALTERNATIVES/IDENTIFIED OPPOSITION:**

N/A

**SPECIFIC FINANCIAL IMPACT (Include Impact on School District Facilities):**

The cost is \$134,383.66 that will be paid from Developer Fee Fund 25.

---

---

**ORIGINATOR:** Don Laursen- Assistant Superintendent, Administrative Services  
**Date:** February 28, 2019



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

**Sale Agreement**  
 Contract: 210042391.1  
 Date Printed: 02/25/2019

Customer & Site Information		Mobile Modular Contact
<b>Customer Information:</b> <b>Los Banos USD</b> 1717 South 11th Street Los Banos, CA 93635 Tom Worthy tworthy@losbanosusd.k12.ca.us (209) 826-1936	<b>Site Information:</b> Los Banos USD 125 7th Street San Luis High School Los Banos, CA 93635 Tom Worthy tworthy@losbanosusd.k12.ca.us (209) 826-1936  <b>Customer PO/Reference:</b> Exp: // By:	<b>Questions?</b>  Please Contact: Kevin Gibson Kevin.Gibson@mobilemodular.com Direct Phone: (925) 453-3143 All other inquiries: (925) 606-9000

Product Information				
	Qty	Purchase Price	Extended Purchase Price	Taxable
Classroom, 24x40 DSA II (Item2001) <i>Right Hand Door Configuration Tackboard interior. 1 Door 2 Window Min</i>	1	\$72,877.00	\$72,877.00	Y

<i>Charges Upon Delivery:</i>	Qty	Charge Each	Total One Time	Taxable
<b>Classroom, 24x40 DSA II (Item2001)</b>				
Block and Level Building (B5) (PW) <i>Prevailing Wage Cert. Payroll</i>	1	\$4,520.00	\$4,520.00	N
Concrete Foundation	1	\$42,840.00	\$42,840.00	Y
Crane On Delivery (PW) <i>Prevailing Wage Cert. Payroll</i>	1	\$7,930.00	\$7,930.00	N
Delivery Haulage Lowboy 12 wide	2	\$955.00	\$1,910.00	N
Delivery Haulage Permit 12 wide Lowboy	2	\$95.00	\$190.00	N
Zone 2	1	\$298.00	\$298.00	N
			\$57,688.00	

**Tax:** \$3,818.66  
**Total Sales Price Including Tax:** \$134,383.66

**Special Notes**

REVISION #1 - Added crane cost. Provided price for Concrete Foundation which includes the following. 1. Excavate 128 l.ft. of perimeter foundation for (1) 24x40 portable. 2. Excavate 40 l.ft. for mod line foundation for (1) 24x40 portable. 3. Perimeter foundation to be 12" wide 18" below grade and 18" above grade. 4. Mod line foundation to be 18" wide 18" below grade and 18" above grade. 5. Install all required # 5 rebar per plans. 6. Pour concrete with approved mix design. 7. Day after pour, strip forms and clean all loose debris inside footprint of 24x40. Note: Costs based on prevailing wage rates. GC to provide a certified pad prior to excavation. GC to mark offsets/ corners and provide elevations. All spoils to be left on site. Pricing is per the Pajaro Valley Piggyback bid.

**Additional Note:** This is a sale quote for a NEW 24x40 DSA Modular Classroom Unit. Flooring will be carpet ready. Installing carpet or vct tile flooring is available at an additional cost. Quote is based on level and accessible site by normal truck delivery. **Block/Level:** Price assumes building is installed using Mobile Modular standard foundation. Mobile Modular assumes installation on the minimum foundation design criteria/tolerances. For DSA buildings, it is assumed building will be installed on the minimum amount of foundation lumber per the applicable DSA approved stockpile drawings and site will not exceed 4-1/2" out of level. Additional material and labor charges apply for installing buildings above minimum foundation design criteria, raising buildings to meet specific finish floor elevations, raising building level to adjacent buildings, landings, walkways, transitions, etc. **Budgetary Quote:** Pricing provided is for budgetary purposes only. A revised quotation will be provided once project details are clarified. If you are new to modular buildings and wondering what you need to know about them, please visit [www.mobilemodularrents.com](http://www.mobilemodularrents.com) and view our FAQ worksheet "Considering Modular Buildings for Your Space Needs?". \*Delivery pricing is estimated based on delivery within 50 miles of branch location. Pilots and permits not included and may be required. We look forward to working with you to refine your requirements.

**Delivery Date:**



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

## Sale Agreement

Contract: 210042391.1  
Date Printed: 02/25/2019

**Delivery Date:** Delivery date will not be confirmed until Mobile Modular receives and approves the signed Agreement and all credit conditions have been met.

**DSA Classrooms include:** (2) 8040 marker boards, (1) fire extinguisher at each exit, empty back box with conduit stubbed to ceiling for future pull station & horn, skirting for perimeter of building only, standard factory ramp, and wood sill foundation for level site.

**Ramps:** Site conditions may affect ramp configuration and cost. Customer is responsible for transition from end of ramp to grade and for extended or custom rails, if needed. Ramp skirting is available for an additional charge. Mobile Modular provides used/refurbished ramps - new ramps are available for purchase only.

**Site Installation Requirements:** Prior to delivery, Customer shall mark the four corners where the building is to be placed on the site/pad location, and shall also mark the locations of door(s) and ramp(s). Should special handling be required to position, install, or remove the classroom on Customer's site due to site conditions/constraints and/or obstructions, Customer will be responsible for additional charges. Additional rolling charges may be applicable as site conditions necessitate.

**Site Plan Review:** Mobile Modular is not responsible for review and verification of Customer's site plans, civil plans, soils tests/survey's, etc. It is the responsibility of the Customer to ensure the site plans and site conditions meet applicable codes and governing body approvals. This includes, but is not limited to, ensuring the building pad/site allows for standard delivery and installation based on the minimum foundation design tolerances as per applicable approved stockpile drawings/foundation design.

**Yes - Prevailing Wage:** Pricing includes prevailing wage and certified payroll for installation work performed on site.

**Additional Note:** REVISION #1. Removed closure panels and ramp skirting. Also, classroom will not include a ramp, per customer's request. Pricing is per the Pajaro Piggyback.

### 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.
- **Unless otherwise noted, prices do not include prevailing wages, Davis-Bacon wages, or other special or certified wages.**



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

**Sale Agreement**

Contract: 210042391.1  
 Date Printed: 02/25/2019

**Incorporation by Reference**

The Sale Agreement is subject to the Supplemental Sale Terms and Conditions, which are hereby incorporated by reference in their entirety, as updated from time to time by Seller, in its sole discretion, and can be viewed in the Resources section of Seller's website at (<https://www.mobilemodular.com/contractterms>). The Buyer hereby affirms that he/she has read in its entirety and understands the Supplemental Lease Terms and Conditions.

**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 ("**Seller**") and buyer ("**Buyer**", as described in the Sale Agreement in the section titled "Customer Information") hereby agree to this Sale Agreement and the terms and conditions set forth in the Sale 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 Sale.

<p><b>SELLER:</b>          Mobile Modular Management Corporation</p> <p>Signature: _____</p> <p>Print Name: _____</p> <p>Title: _____</p> <p>Date: _____</p>	<p><b>BUYER:</b>          Los Banos USD</p> <p>Signature: _____</p> <p>Print Name: _____</p> <p>Title: _____</p> <p>Date: _____</p>
--	---

**ATTACHMENT A**

**SALE TERMS AND CONDITIONS**

**1. SALE.** Seller sells to Buyer, and Buyer purchases from Seller, the equipment listed on the Sale Agreement hereto ("**Equipment**") on the terms and conditions set forth herein. Each such Sale Agreement ("**Agreement**"), and the sale provisions on the Seller's website at (<https://www.MobileModular.com/ContractTerms>) (the "**Incorporated Provisions**"), to which are incorporated by reference into the Agreement, shall constitute a separate and independent sale (a "**Sale**") of the Equipment listed in such Agreement under "Product Information". In the event of a conflict between this Agreement and Buyer's contract, purchase order or other document, the terms of this Agreement shall prevail.

**2. TIME PAYMENT; TITLE RETENTION.**

(a) **PURCHASE PRICE.** The aggregate amount of the purchase price (the "**Purchase Price**") is set forth in the Sale Agreement. Unless otherwise specified in writing, Buyer agrees to pay Seller twenty five percent (25%) of the Purchase Price upon execution of the Agreement; sixty five percent (65%) no fewer than two days prior to the scheduled delivery date; 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.

(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. CANCELLATION.** All sales are final and non-refundable upon delivery of the Equipment to Buyer's site location. Any requests to cancel or reschedule orders prior to delivery may or may not be accepted in Seller's sole discretion and must be agreed upon by Seller in writing. Without waiving any of its rights, Seller is entitled to recover its costs incurred and profits lost as a result of Buyer's cancellation or rescheduling of an order. A cancellation fee may be assessed against Buyer. In no event shall such fee exceed the full value of the Sale Agreement. If Buyer has made down payment(s) to Seller prior to cancellation and the cancellation fee is less than the amount(s) already paid, Seller shall deduct the amount of the cancellation fee from any refund that may be owed to Buyer. If down payment amount(s) already made are less than the cancellation fee, Seller shall apply the full down payment amount(s) to the payment of the cancellation fee and Buyer will pay the remaining cancellation fee balance within ten (10) business days after receiving written notice of the balance due. If no down payment has



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

## Sale Agreement

Contract: 210042391.1  
Date Printed: 02/25/2019

been made by Buyer at the time of cancellation, Buyer shall pay to Seller the entire cancellation balance within ten (10) business days of receipt of written notice from Seller stating the cancellation fee balance that is due.

**4. DELIVERY AND PLACEMENT OF EQUIPMENT.** Seller agrees to deliver the Equipment to the site location listed on the Sale Agreement (the "Site"). Buyer warrants and represents that it has exercised due diligence and care in selecting a suitable site for the Equipment, shall clearly mark the site of placement and shall direct Seller on exact placement and orientation of the Equipment. Upon request from Buyer and for an additional fee, Seller will perform a site visit and make recommendations on placement as it relates to site accessibility and layout. Buyer further warrants that the Site will have (1) safe access free from encumbrances; (2) a level pad, which is hereby defined as having no greater than a 4-inch drop in 40 feet (length) and no greater than a 1-inch drop in 8 feet (width); and (3) adequate soil bearing pressure of not less than 1500 psf, except in the state of Florida, where the minimum soil bearing pressure is 2000 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, and Site preparation.

**5. 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 Buyer and Seller that Buyer has inspected the Equipment and that all Equipment is in conformance with the Agreement and has been accepted by Buyer.

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

**7. LOSS OR DAMAGE.** All risk of loss or damage to the Equipment shall transfer to Buyer upon delivery of the Equipment to the site location. Buyer agrees to indemnify and hold Seller harmless from any loss resulting from the theft, destruction or damage to the Equipment. The cost of any required repairs shall be borne by Buyer. Any loss of or damage to the Equipment shall not alleviate Buyer's obligation to pay Seller any remaining balance of the Purchase Price existing at the time of the loss.

**8. INSURANCE.** Upon delivery of the Equipment and until Buyer has paid for the Equipment in full, Buyer shall provide, maintain, and pay all premiums for property insurance covering the loss, theft, destruction, or damage to the Equipment in an amount not less than the full replacement value and will name Seller as loss payee of the proceeds, unless Buyer has paid Seller the entire purchase price in full prior to the scheduled delivery of the Equipment. This coverage will extend to all property of Seller located at the delivery site during the installation. 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 general liability insurance in the amount of \$1,000,000.00 (one million dollars) and name Seller as an additional insured. All insurance shall be with a company having an A.M. Best rating of A- or better, and shall not be subject to cancellation without thirty (30) days prior written notice to Seller. Buyer shall deliver to Seller insurance certificates, or evidence of insurance proving the existence of policies meeting the above requirements, upon execution of the Agreement. Seller may require Buyer's insurance carrier to be licensed to do business in the state where the Equipment is being sold. Buyer's obligation to provide said insurance will cease once Equipment has been paid for in full and pursuant to Section 2.

### 9. 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.

**10. 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 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 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 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 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.



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

<p align="center"><b>Sale Agreement</b></p> <p>Contract: 210042391.1 Date Printed: 02/25/2019</p>
---

11. **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.

12. **JURISDICTION.**

(a) If the law of the State of Maryland or Virginia shall apply to the Agreement, it is agreed that the venue for a legal action relating to the Agreement shall be proper if brought in Alameda County, State of California. Subject to Section 9, 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 Agreement. Further, it is agreed that the venue for a legal action relating to the Agreement shall be proper if brought in Alameda County, State of California. Subject to Section 9, the prevailing party shall be entitled to recover reasonable attorneys' fees and court costs, whether or not the action proceeds to judgement.

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

14. **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 where applicable.

15. **COMPLIANCE WITH LAW.** Buyer assumes all responsibility for any and all licenses, clearances, permits and other certificates as may be required for Buyer's lawful operation, use, possession and occupancy of the Equipment. Buyer agrees to fully comply with all laws, rules, regulations and orders of all local, state and federal governmental authorities which in any way relate to the Equipment; and to indemnify and hold Seller harmless from any and all fines, forfeitures, seizures, penalties or other liabilities that may arise from any infringement or violation of any such law, rule, regulation or order.

16. **FEDERAL CONTRACTOR.** As a federal contractor, Seller's contracts are subject to the provisions of (i) Executive Order 11246, (41 CFR 60-1.4); (ii) section 503 of the Rehabilitation Act of 1973, (41 CFR 60-741.5(a); and (iii) section 4212 of the Vietnam Era Veterans Readjustment Act of 1974, (41 CFR 60-300.5(a). **Seller shall abide by the requirements of 41 CFR 60-741.5(a) and 41 CFR 60-300.5(a). These regulations prohibit discrimination against qualified individuals on the basis of disability, and qualified protected veterans, and require affirmative action by covered prime contractors and subcontractors to employ and advance in employment qualified individuals with disabilities, and qualified protected veterans.**

17. **MISCELLANEOUS.**

(a) **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. 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.

(b) **NO WAIVER.** Failure of Seller to enforce any term or condition of the 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 Agreement shall be valid only as provided in subsection (a) above and only with respect to the specific matter to which such waiver relates.

(c) If the law of the State of North Carolina shall apply to the Agreement, the Sale 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.

18. **ENTIRE AGREEMENT.** This 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 Agreement will be eliminated.

Sale Terms and Conditions, Rev. 08/22/16