

RESOLUTION NO. 14-81

A RESOLUTION OF THE MAYOR AND THE CITY COUNCIL OF THE CITY OF DORAL, FLORIDA, APPROVING AN EQUIPMENT LEASE AGREEMENT, IN SUBSTANTIALLY THE FORM ATTACHED, WITH MOBILE MODULAR MANAGEMENT CORPORATION FOR THE PROVISION OF ONE (1) OFFICE TRAILER FOR THE CITY OF DORAL POLICE DEPARTMENT; AUTHORIZING THE CITY MANAGER TO EXECUTE THE EQUIPMENT LEASE AGREEMENT AND CORRESPONDING DOCUMENTATION, AND EXPEND BUDGETED FUNDS ON BEHALF OF THE CITY ACCORDINGLY; PROVIDING FOR IMPLEMENTATION; AND PROVIDING FOR AN EFFECTIVE DATE

WHEREAS, the City of Doral Police Department has a need for temporary office and working space during which new and permanent office and other working space is undergoing renovation; and

WHEREAS, the City solicited three (3) written quotations, and Mobile Modular Management Corporation ("Mobile Modular") was determined to be the lowest bidder; and

WHEREAS, Mobile Modular is in the business of selling and leasing trailers and other modular equipment that may be used for a variety of purposes including, but not limited to temporary or auxiliary office/work areas; and

WHEREAS, the City desires to lease from Mobile Modular, for an amount of \$14,994.00, one (1) office trailer to be used as temporary office space for the City of Doral Police Department, as specified in the "Equipment Lease Agreement," which is attached hereto as Exhibit "A" and incorporated herein and made a part hereof by this reference; and

WHEREAS, the office trailer shall be located at 6100 N.W. 99th Avenue, Doral, Florida, for a period of twelve months with the option to extend the Agreement on a

month-to-month basis on the same terms and conditions as stipulated in the Agreement.

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF DORAL, FLORIDA, AS FOLLOWS:

Section 1. The aforementioned recitals are confirmed, adopted, and incorporated herein and made a part hereof by this reference.

Section 2. The Equipment Lease Agreement, in substantially the form attached hereto as Exhibit "A", is approved, subject to final approval from the City Attorney as to form and legal sufficiency.

Section 3. The City Manager is hereby authorized to execute the Equipment Lease Agreement and to expend City funds allocated from allocated from Account No. 001.220123 "Deposit/Police Move."

Section 4. The City Manager and City Attorney are hereby authorized to take such action as may be necessary to implement the provisions of this Resolution and the Equipment Lease Agreement once executed.

Section 5. This Resolution shall become effective immediately upon its adoption.

By unanimous consensus of the City Council, the item was approved

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| Mayor Luigi Boria | Aye |
| Vice Mayor Christi Fraga | Aye |
| Councilwoman Ana Maria Rodriguez | Aye |
| Councilwoman Bettina Rodriguez Aguilera | Aye |
| Councilwoman Sandra Ruiz | Aye |

PASSED AND ADOPTED this 11 day of June, 2014.



LUIGI BORIA, MAYOR

ATTEST:



BARBARA HERRERA, CITY CLERK

APPROVED AS TO FORM AND LEGAL SUFFICIENCY
FOR THE SOLE USE AND RELIANCE OF THE CITY OF DORAL:



WEISS SEROTA HELFMAN PASTORIZA COLE & BONISKE, P.L.
CITY ATTORNEY

EXHIBIT “A”

“EXHIBIT A”

EQUIPMENT LEASE AGREEMENT

This Equipment Lease Agreement (this “**Agreement**”) dated as of June ____, 2014 by and between MOBILE MODULAR MANAGEMENT CORPORATION, an active, for-profit California Corporation (the “**Lessor**”), and the CITY OF DORAL, a Florida municipal corporation located in Miami-Dade County (the “**City**”). Lessor and the City may be referred to herein individually as a “Party” and/or collectively as the “Parties”.

RECITALS

WHEREAS, the City has a need for temporary office and other working space for the City’s Police Department for a certain period of time during which new and permanent office and other working space is undergoing renovation; and

WHEREAS, Lessor is in the business of selling and leasing trailers and other modular equipment that may be used for a variety of purposes including, but not limited to temporary or auxiliary office/work areas; and

WHEREAS, the City desires to lease from Lessor, and Lessor desires to lease to the City, a certain office trailer as further specified herein for the use of the City Police Department, pursuant to the terms and conditions contained in this Agreement; and

AGREEMENT

NOW, THEREFORE, in consideration of the aforementioned recitals, which are incorporated herein and made a part hereof by this reference, the mutual promises, and conditions set forth herein, and other valuable consideration, the sufficiency of which is hereby acknowledged, the Parties do hereby agree as follows:

Article I **Lease; Term**

1.1 Lease of Equipment. The Lessor does hereby rent and lease to the City, and the City does hereby take, accept and lease from the Lessor, that certain equipment comprised of an office trailer, the specifications, cost, and conditions for which are specified in Exhibit “A” (the “Equipment”), on the terms and conditions, for the period of time, and for the purposes set forth herein. Lessor shall deliver the Equipment, and the City shall use the Equipment, at the City’s site located at 6100 NW 99th Avenue, Doral, FL 33166 (the “**City’s Site**”). Lessor shall deliver, and the City shall accept delivery of, the Equipment to the City’s Site within seven (7) business days of execution of this Agreement. City hereby acknowledges and agrees that the sole owner of the Equipment is the Lessor.

1.2 Term; Term Extension. This Agreement will be valid and in force upon being mutually executed by the Parties. The term of this Agreement (the “**Term**”) shall commence upon the date upon which the Equipment is delivered to City (the “**Commencement Date**”) and

shall continue in full force and effect for a period of twelve months, unless earlier terminated pursuant to Article VII. At the request of City, Lessor may agree (but is not obligated) to extend this Agreement on a month to month basis, on the same terms and conditions as during the Term, including, but not limited to, the monthly lease payment provided for below, with each month constituting an extension of the Agreement (the “**Extension Term**”).

Article II
Rent and Payment Terms

2.1 Rent Payments; Shipment Responsibility. For the lease of the Equipment for the Term, the City shall be responsible to pay rent and other charges to Lessor in the amount not to exceed FOURTEEN THOUSAND NINE HUNDRED NINETY-FOUR DOLLARS AND NO Cents (\$14,994.00) (the “Fee”), payable as provided in this Article. The Fee is the sum of “Monthly Rental Fees,” “One Time Charges Upon Delivery,” and “Charges Upon Return.” The Monthly Rental Fees shall be the sum of SIX HUNDRED FORTY-TWO DOLLARS AND NO CENTS (\$642.00), which is comprised of:

- Monthly Rental Fee: (\$522.00);
- Monthly Ramp Rental Fee: (\$100.00); and
- Monthly Adjustable Step Rental Fee: (\$20.00).

Should the term of the lease be extended for any amount of time, the City agrees to continue making a Monthly Rental Payment for each month during any extension, unless otherwise specified in a mutually agreed-upon and executed modification and/or addendum to this Agreement. The Monthly Rental Payments shall be due on the monthly anniversary of the Commencement Date, with the first payment due on the Commencement Date. Any payments past due hereunder shall be payable on demand with interest computed from the day payment was due at the maximum rate permitted by Florida law.

2.2 Delivery & Return Charges. Upon delivery of the Equipment, the City shall pay to Lessor one-time Delivery Charges in the amount of FOUR THOUSAND THREE HUNDRED NINETY-FIVE DOLLARS AND NO CENTS (\$4,395.00), which is comprised of:

- Equipment Set-up Fee: (\$2,595.00);
- Leveling Materials Fee: (\$1,100.00); and
- Ramp Installation Fee: (\$700.00).

Upon expiration or termination of this Agreement, the City shall pay to Lessor prior to removal of the Equipment one-time Charges Upon Return in the amount of TWO THOUSAND EIGHT HUNDRED NINETY-FIVE DOLLARS AND NO CENTS (\$2,895.00), which is comprised of:

- Equipment Break-Down Fee: (\$1,600.00);
- Preparation for Removal Fee: (\$395.00); and
- Return Haulage Fee: (\$900.00).

2.3 Timing. Time is of the essence of this Agreement. All Rent Payments and other sums due hereunder shall be paid when due without notice, demand, counterclaim, setoff, deduction or defense and without abatement, suspension, deferment diminution or reduction

whatsoever. The obligations and liabilities of the City hereunder shall, in no way, be released, discharged or otherwise affected (other than by full and complete performance of same) for any reason, unless mutually agreed upon by the Parties in a writing following the same formalities as this Agreement and/or unless this Agreement is terminated in advance of the completion of the Term in accordance with Article VII herein. Lessor shall not be liable to the City for any failure or delay in obtaining, delivery, and/or setting up the Equipment. The City's responsibility to pay Lessor shall not begin until the Commencement Date, when the Equipment has been duly delivered and set-up. In the event that the set-up or use of the equipment is delayed because the City has failed to make the City Site ready for the equipment, the Commencement Date shall be such date on when the Equipment is delivered and the Lease Payments shall begin to accrue from that date.

Article III **Insurance**

3.1 **Insurance Required.** Throughout the Term of this Agreement and any Extension Term, the City agrees to procure, maintain, carry, and pay all premium related to such commercial liability and other insurance needed to protect and insure the Equipment from loss, destruction, or damage while in use by the City in accordance with the insurance requirements specified in Exhibit "B" (the "Insurance Requirements"). All insurance shall be in a form satisfactory to Lessor and shall not be subject to cancellation without thirty (30) days' prior notice to Lessor. The City shall deliver to Lessor evidence of insurance meeting the Insurance Requirements prior to Lessor delivering the Equipment. Proceeds of such insurance shall, at Lessor's option, be applied either towards replacement, restoration, or repair of the Equipment.

3.2 **Provision of Insurance by Lessor.** Should Lessee fail to provide satisfactory proof of insurance prior to delivery of the Equipment or at any time during the Term or any Extension Term, Lessor shall have the right, but not the obligation, to procure and pay for such insurance as meets the Insurance Requirements and to require the City to reimburse Lessor for the cost of such insurance. Lessor shall invoice the City for such procured insurance, substantiating the invoice with proof of purchase and valid certificates of insurance.

3.3 **Other Responsibility of the City.** The City acknowledges and accepts its responsibility for the Equipment during the Term and any Extension Term, to the extent provided for in Section 768.28, Florida Statutes, for: loss of or damage to all property, goods, wares and merchandise in, upon, or about the Equipment; injuries to the City, City's agents, and third persons; and the use or misuse of any portion of the Equipment. Lessor shall not be liable to the City for any special, incidental, or consequential damages of any kind, unless caused by Lessor's intentional, reckless and/or negligent acts or delay, resulting from the lease of the Equipment or the manufacture, delivery, installation, and/or removal of the Equipment, or in any other way connected with the rendition of Lessor's performance hereunder.

Article IV **Operation, Maintenance and Repair of the Equipment**

4.1 **Operation of Equipment.** During the Term, including any Extension Term, of this Agreement, City shall operate, maintain and repair the Equipment in accordance with all operating manuals, keeping it in good working order and in the same condition as delivered. Lessor shall have no obligation hereunder regarding the operation, maintenance, or repair of the Equipment. The Equipment shall not be altered or modified by City, without the express, written consent of the Landlord which shall not be unreasonably withheld. City shall operate the

Equipment within compliance of permitting, legal, environmental and regulatory requirements for such operation at the City's Site and in accordance with proper operational procedures applicable for such Equipment. City shall be solely responsible for obtaining the permitting necessary for the operation of the Equipment at the City's Site. City shall not use or permit the Equipment to be used for any purpose for which the Equipment is not designed or intended

4.2 Maintenance of Equipment. City shall be solely responsible for payment of all maintenance and repairs to the Equipment. City shall make all necessary adjustments and repairs to the Equipment in accordance with proper maintenance procedures applicable for such Equipment.

Article V **Return of Equipment**

Return of Equipment. Promptly upon the termination of this Agreement, Lessor, at Lessor sole expense, shall remove the Equipment from the City's Site. The Equipment shall be in the same or substantially operating order, repair, condition and appearance as on the Commencement Date, reasonable wear and tear excepted. City shall be responsible for all costs necessary to return the Equipment to the same condition as on the Commencement Date, except for changes in condition that attributed to normal wear and tear. In the event of any material damage or destruction of the Equipment, City shall pay to Lessor full replacement cost.

Article VI **Ownership and Inspection of the Equipment**

6.1 Title. Title to the Equipment shall, at all times during the Term, including all Extension Terms, of this Agreement, remain vested in Lessor. It is expressly understood that the Equipment shall be and remain personal property of Lessor, notwithstanding the manner in which the same may be attached or affixed to realty, and City shall do all acts necessary to ensure that the Equipment remains personal property of Lessor.

6.2 Equipment Inspection. Lessor may, upon reasonable notice to City, affix tags, decals or plates to the Equipment indicating ownership and title to the Equipment, and City shall not permit their removal or concealment. Upon reasonable notice to City, Lessor or its agents shall have limited access to the Equipment during specific times offered by the City for the purpose of inspection and for any other purpose contemplated by this Agreement.

6.3 No Liens or Encumbrances. City shall keep the Equipment leased hereunder free and clear of all liens, security interests and other encumbrances whatsoever, and City shall not assign this Agreement or any of its rights hereunder or sublease the Equipment.

Article VII **Default; Remedies; Termination**

7.1 Event of Default. The following shall be deemed events of default hereunder (each an "Event of Default"):

- (a) City fails to make a Lease Payment within three (3) days after the same is due and payable; or

- (b) City attempts to remove, sell, transfer, or encumber the Equipment, except as expressly permitted herein; or
- (c) City fails to observe, perform or commence performance of any of the other obligations required to be observed or performed by City hereunder within five (5) days of City's receipt of notice from Lessor; or
- (d) City ceases doing business as a going concern; makes an assignment for the benefit of creditors; admits in writing its inability to pay its debts as they become due; files a voluntary petition in bankruptcy; is adjudicated bankrupt or an insolvent; files a petition seeking for itself any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar arrangement under any present or future statute, law or regulation or files an answer admitting the material allegations of a petition filed against it in any such proceeding; consents to or acquiesces in the appointment of a trustee, receiver or liquidator of it or of all or any substantial part of its assets or properties, or if it or its shareholders shall take any action to effect its dissolution or liquidation, or, within sixty (60) days after the commencement of any proceedings against City seeking reorganization, arrangement, readjustment, liquidation, dissolution or similar relief under any present or future statute, law or regulation, such proceedings shall not have been dismissed, or if within sixty (60) days after the appointment without City's consent or acquiescence of any trustee, receiver or liquidator of it or of all or any substantial part of its assets and properties, such appointment shall not be vacated.

7.2 Remedies. Upon the occurrence of any Event of Default and at any time thereafter, Lessor may, upon notice to the City and following a fifteen (15) day period for the City to cure, exercise one or more of the following remedies, in its sole discretion, elect: declare all unpaid lease payments under the Lease to be immediately due and payable; terminate the Agreement; provide the City notice of its intent to collect the Equipment in thirty (30) days; initiate appropriate legal action against the City to enforce performance, to recover damages, and to seek other remedies available at law and at equity; and exercise any other rights available to Lessor under this Agreement and the law.

7.3 Lessor Right to Perform. In the event City shall fail to perform any of its obligations hereunder, after notice thereof as provided above, then Lessor, in addition to all of its rights and remedies hereunder, may perform the same, but shall not be obligated to do so, at the cost and expense of City. In any such event, City shall promptly reimburse Lessor for any such costs and expenses incurred by Lessor together with interest computed at the maximum rate of interest allowed by applicable law at the time.

7.4 No Release of Liability. Except as specifically provided by applicable laws, no termination of this Agreement, in whole or in part, or exercise of any remedy hereunder shall relieve City of any of its liabilities and obligations hereunder arising prior to such termination or exercise of remedies which remain unpaid or unperformed at such time and the City shall be liable for any and all unpaid portions of the Fee due hereunder before, after or during the exercise of any of the remedies permitted hereunder that remains unpaid after the exercise of any such remedies.

7.5 Termination by City; by Lessor. The City shall have the right to terminate this Agreement for any reason prior to the expiration of the Term or any Extension Term, upon

providing Lessor notice of such termination no less than thirty (30) days prior to the desired date of termination. In the event of such termination, the City shall make the Equipment available for retrieval by Lessor on and after the date of termination, and the City shall be responsible to pay Lessor up to and including the date of termination, including, but not limited to, the pro-rated portion of Lease Payment corresponding to the month in which the termination date falls, as well as the Charges Upon Return. Lessor shall only be allowed to terminate this Agreement if the City conducts an act of default and fails to cure such act within fifteen (15) days.

Article VIII
Miscellaneous

8.1 Notices. All notices, consents or requests desired or required to be given hereunder shall be in writing and shall be delivered either in person, telefaxed, emailed or sent by registered or certified mail, return receipt requested, postage prepaid, to the address of the other party set forth on the first page hereof or to such other address as such party shall have designated by the proper notice:

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| If to Lessor: | Alex Deuribizu, Commercial Sales Specialist Mobile Modular 1100 State Highway 559 Auburndale, FL 33823 |
| If to City: | Jose Olivo, Interim City Manager City of Doral 8401 NW 53rd Terrace Doral, FL 33166 |
| With a Copy to: | Daniel A. Espino, Esq., City Attorney Weiss Serota Helfman Pastoriza Cole & Boniske, PL 2525 Ponce De Leon Boulevard, Suite 700 Coral Gables, FL 33134 |

8.2 Severability. If any provision of this Agreement shall be invalid, illegal or unenforceable in any jurisdiction, the remaining provisions hereof shall continue to be valid and enforceable and such provisions shall continue to be valid and enforceable in any other jurisdiction. To the extent prohibited by applicable laws, City hereby waives any provision of law which renders any provision hereof prohibited or unenforceable in any respect.

8.3 Intention of the Parties. It is the intention of the parties hereto that the relationship established by this Agreement be solely that of lessor and City and no other relationship of any kind is intended to be created between the parties hereto.

8.4 Governing Law. This Agreement shall be construed in accordance with and governed by the laws of the State of Florida. Exclusive venue for any litigation arising out of this Agreement shall be in Miami-Dade County, Florida, in a court of competent jurisdiction.

8.5 Entire Agreement/Modification/Amendment. This writing contains the entire Agreement of the Parties and supersedes any prior oral or written representations. No

representations were made or relied upon by either party, other than those that are expressly set forth herein. No agent, employee, or other representative of either party is empowered to modify or amend the terms of this Agreement, unless executed with the same formality as this document.

8.6 Ownership and Access to Records and Audits. Lessor shall comply with the provisions of Chapter 119, Florida Statute, by performing such tasks as, without limitation:

- (a) Keep and maintain public records that ordinarily and necessarily would be required by the City in order to perform the service;
- (b) Provide the public with access to public records on the same terms and conditions that the City would provide the records and at a cost that does not exceed the cost provided in Chapter 119 or as otherwise provided by law;
- (c) Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law; and
- (d) Meet all requirements for retaining public records and transfer, at no cost, to the public agency all public records in possession of the contractor upon termination of the contract and destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. All records stored electronically must be provided to the public agency in a format that is compatible with the information technology systems of the public agency.

All records, books, documents, maps, data, deliverables, papers and financial information (the "Records") that result from this Agreement be the property of the City. The City Manager or his designee shall, during the term of this Agreement and for a period of three (3) years from the date of termination of this Agreement, have access to and the right to examine and audit any Records of the Lessor involving transactions related to this Agreement. The City may cancel this Agreement for refusal by the Lessor to allow access by the City Manager or his designee to any Records pertaining to work performed under this Agreement that are subject to the provisions of Chapter 119, Florida Statutes.

8.7 Nonassignability. This Agreement shall not be assignable by the City, unless such assignment is first approved by Lessor, which shall not be unreasonably withheld.

8.8 Severability. If any term or provision of this Agreement shall to any extent be held invalid or unenforceable, the remainder of this Agreement shall not be affected thereby, and each remaining term and provision of this Agreement shall be valid and be enforceable to the fullest extent permitted by law.

8.9 Compliance with Laws. Lessor shall comply with all applicable laws, ordinances, rules, regulations, and lawful orders of public authorities relating to the provision of the Equipment. It is Lessor's responsibility to ensure that it has all applicable permits, licenses, and/or certifications necessary to conduct business in the manner necessary to perform under

this Agreement, and it is City's responsibility to ensure that it has all applicable permits, licenses, and/or certificates necessary to use the Equipment contemplated.

8.10 Waiver. The failure of either party to this Agreement to object to or to take affirmative action with respect to any conduct of the other which is in violation of the terms of this Agreement shall not be construed as a single or continuing waiver of the violation or breach, or of any future violation, breach or wrongful conduct.

8.11 Survival of Provisions. Any terms or conditions of either this Agreement that require acts beyond the date of the term of the Agreement, shall survive termination of the Agreement, shall remain in full force and effect unless and until the terms or conditions are completed and shall be fully enforceable by either party.

8.12 Prohibition Of Contingency Fees. Lessor warrants that he/she/it has not employed or retained any company or person, other than a bona fide employee working solely for Contractor, to solicit or secure this Agreement and that he or she has not paid or agreed to pay any person, company, corporation, individual, or firm, other than a bona fide employee working solely for the registered surveyor and/or mapper, any fee, commission, percentage, gift, or other consideration contingent upon or resulting from the award or making of this agreement. For the breach or violation of this provision, the City shall have the right to terminate the agreement without liability and, at its discretion, to deduct from the contract price, or otherwise recover, the full amount of such fee, commission, percentage, gift, or consideration.

8.13 Force Majeure. It is understood that performance of any act by the City or Lessor hereunder may be delayed or suspended at any time while, but only so long as, either party is hindered in or prevented from performance by acts of God, the elements, war, rebellion, strikes, lockouts or any cause beyond the reasonable control of such party, provided however, the City shall have the right to provide substitute service from third parties or City forces as may be necessary to meet City needs, and, in such event, the City shall withhold payment due Contractor for such period of time, if any. If the condition of force majeure exceeds a period of fourteen (14) days, the Town may, at its option and discretion, cancel or renegotiate the Agreement

8.14 Non-collusion. Lessor certifies the it has not divulged, discussed or compared his/her/its quote with other individuals and/or entities that provided quotes to the City for the Equipment and has not colluded with any other individual or entity whatsoever.

8.15 Truth in Negotiating Certificate. Lessor hereby certifies, covenants, and warrants that wage rates and other factual unit costs supporting the compensation for the Equipment that may be offered pursuant to this Agreement will be accurate, complete, and current at the time of contracting. Lessor further agrees that the Fee provided shall be adjusted to exclude any significant sums by which the City determines the agreement price was increased due to inaccurate, incomplete, or non-current wage rates and other factual unit costs. All such agreement adjustments shall be made within one (1) year following the end of the Term or any Extension term.

8.16 Counterparts. This Agreement may be executed in several counterparts, each of which shall be deemed an original and such counterpart shall constitute one and the same instrument.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their duly authorized representatives as of the date first set forth above.

Attest:

CITY OF DORAL

Barbara Herrera, City Clerk

Jose Olivo, Interim City Manager
Date:

Approved as to form and legal sufficiency for the sole use and reliance of the City of Doral:

Weiss Serota Helfman Pastoriza
Cole & Boniske, PL
City Attorney

Mobile Modular Management Corp.

Alex Deurbizu, Commercial Sale Specialist
Date: