

**SAMPLE AGREEMENT FOR THE LEASE OF PORTABLE BUILDINGS TO THE
SAN FRANCISCO UNIFIED SCHOOL DISTRICT**

THIS AGREEMENT is made as of the day of «Month_and_Year_of_Agreement» by and between «Vendor», whose local place of business is at «Address_Street», «Address_City_State_and_Zip» hereinafter called "LESSOR" or «Vendor», and the San Francisco Unified School District, hereinafter referred to as "DISTRICT", acting under and by virtue of the authority vested in DISTRICT by the laws of the State of California.

WHEREAS, DISTRICT, by its Resolution No. «Resolution_NO» adopted on the «Day_of_Resolution» day of «Month_and_Year_of_Resolution» (a copy of which is attached and made a part of this Agreement), awarded to LESSOR the following Lease Agreement:

LEASE/SUPPLY & INSTALLATION AND REMOVAL OF TEMPORARY PORTABLE BUILDINGS
for
Various School Sites -- San Francisco Unified School District

NOW, THEREFORE, in consideration of the mutual covenants hereinafter set forth, LESSOR and DISTRICT agree as follows:

Article 1. Scope of Work

1.1 shall supply and install «#_of_Classrooms_words_and_s» «Size_of_Classrooms» portable classrooms at various Schools for the San Francisco Unified School District's Facilities Department for the duration of «Lease_Term_in_Months_Words».

1.2 «Vendor» shall provide all permits necessary for the delivery of the portables to the sites. DISTRICT shall provide all permits for the installation, assembly and occupancy of the portables.

1.3 LESSOR shall provide portables that meet or exceed the requirements of the State of California, Department of Housing Code, and Division of State Architect ("DSA") and/or Department of Housing requirements, as referenced in Exhibit A "Scope of Services and Building Specifications" and Exhibit B "Typical Classroom and Restroom Layouts".

Article 2. Project Management

2.1 DISTRICT will designate a Project Manager to assume all duties and responsibilities and have the rights and authorities assigned to the Project Manager in the Lease Agreement Task Orders in connection with completion of Work and in accordance with Lease Agreement Documents.

Article 3. Performance of Work

Work shall be assigned upon «Vendor»'s acceptance, signature and receipt of this executed Master Lease Agreement from District. Work will be assigned on a per project basis, and shall commence with the signature and award of a Project Lease Agreement by the Board of Education.

Any delay in «Vendor»'s delivery of the portables is excused only for delays in delivery due to fire, flood, windstorm, riot, civil disobedience, strike, Acts of God, or other circumstance beyond «Vendor»'s reasonable control, which «Vendor» could not anticipate, which shall prevent the making of deliveries in the normal course of business. «Vendor» is not otherwise excused for delay in delivery of the portables.

With respect to work performed on DISTRICT property, DISTRICT agrees and acknowledges that its' Contractor that performed and/ or will be performing a work of construction at the work site is responsible for providing traffic control, access to the work site and a safe work environment - Where no Lease Agreement for construction is underway, DISTRICT is required to provide necessary traffic control, including SFPD "No Parking Street Permits", access to the work site and a safe work environment.

Article 4. Lease Agreement Time

The Work will be assigned on a per project basis through Board-approved Project Lease Agreements commencing «Lease_Term_Beginning» and ending on «Lease_Term_Ending».

Article 5. Lease Agreement /Lease Rates/Charges

5.1 DISTRICT shall pay «Vendor» according to the agreed upon Lease Agreement rates per unit leased and their associated transport, installation, cleaning, damage/restoration fees and removal costs The Anticipated Lease Rates and Charges are defined in **Exhibit A** Attached to this Agreement.

5.2 The parties understand and agree that this Master Lease Agreement has been prepared with the input and review of LESSOR and DISTRICT in order to memorialize a lease arrangement pursuant to which LESSOR has provided modular buildings to DISTRICT for DISTRICT'S use on an as-needed per project basis. In compensation for said use, LESSOR shall be due the Project Lease Agreement sum referenced in section 5.1 Exhibit A of this Master Lease Agreement and, from the date of the execution of this Master Lease Agreement, said compensation shall be paid as a monthly rental fee and shall be paid monthly, on the first day of the first month. All rent shall be paid to LESSOR at the address to which notices to LESSOR are given. Commencing on the date of execution of this agreement, DISTRICT shall pay «Vendor» the Lease Agreement sum for completion of Work and for rental of the portable buildings for the initial Lease Term. The Lease Agreement Sum shall be inclusive of all other labor, materials, site work, access, fees, taxes, costs and expenses and other related charges for performance of the Work listed in this Agreement as amended. Notwithstanding the foregoing, the cost of removal of the portables may be modified, upon mutual agreement by the parties, due to unknown or changed conditions.

Article 6. Project Lease Terms

6.1 The duration of the Project Lease term for each portable unit at each school site will be defined in a Project Lease Agreement. The Project Lease Agreement will define the Project Schedule for the portables where the site plans have been completed and delivered to «Vendor» and the date of delivery has been designated mutually determined by DISTRICT and vendor. For those portables where the site plan has not been completed and delivered to «Vendor» the duration of the Lease Term will begin upon receipt of the site plans to «Vendor» and installation of the portable at the DISTRICT site by «Vendor». Said term shall be referred to as the "Project Lease Term".

The term of the Project Lease Agreement shall include the partial month, if any, immediately preceding the first full calendar month of this year, unless terminated in accordance with the terms set forth herein.

6.2 The initial Project Lease Agreement Term for each portable at each school site may be extended, on a month-to-month basis upon DISTRICT's written notification of intent to extend and modification of the Project Lease Agreement. Said month-to-month lease extension shall continue

until such time that the DISTRICT provides thirty (30) days written notice to «Vendor» that said month-to-month extension shall be terminated. Any written notification of the month-to-month extension of the Project Lease Term shall specify the school site at which the extended term is applicable and shall only be applicable to that specific site listed. In the event that the Project Lease Agreement Term is extended, the compensation for rental of each separate portable listed on the Project Lease Agreement shall be paid on a monthly basis and shall be less than or equal to the monthly rental fee agreed to under the initial Project Lease Agreement Term.

Article 7. Lease Agreement Documents

The Master Lease Agreement and Project Lease Agreements which comprise the entire agreement between DISTRICT and LESSOR concerning the Work consist of this Agreement and shall not be modified except by written agreement between the parties

Article 8. Prevailing Wages

8.1 If any portion of the work or services to be performed under this Agreement is a public work of improvement, the VENDOR shall comply with California Labor Code Sections 1770 to 1780, inclusive. In accordance with said Section 1775, the VENDOR shall forfeit as a penalty to the DISTRICT \$25 for each calendar day or portion thereof for each workman paid less than stipulated prevailing wage rates for such work or craft in which such worker is employed for any work done under the contract by him or by any third-party VENDOR under him in violation of the provisions of the Labor Code and in particular, Labor Code Sections 1770 to 1780, inclusive. In addition to said penalty and pursuant to said Section 1775, the difference between such stipulated prevailing wage rates and the amount paid to each worker for each calendar date or portion thereof for which each worker was paid less than the stipulated prevailing wage rate shall be paid to each worker by VENDOR.

Pursuant to the provisions of Section 1773 of the Labor Code, the DISTRICT has obtained the general prevailing rate of per diem wages and the general prevailing rate for holiday and overtime work applicable to the work to be done from the Director of the Department of Industrial Relations. Copies of the prevailing rates are on file at the DISTRICT Office and are available to any interested party on request. Such wage rates must be prominently posted at the construction site.

Article 9. Inspection of Work/Defective or Damaged Work

9.1 DISTRICT shall inspect the materials, equipment and work provided by «Vendor» within seven (7) working days of delivery and inform in writing of any defects or damage in said work or materials. Any equipment found to be damaged or defective at the time of delivery shall be repaired, replaced or corrected by «Vendor» hereunder without additional cost to DISTRICT, unless the damage was caused by DISTRICT, its' agents, employees or Contractors. Equipment shall be returned to «Vendor» in the same condition as it was delivered less any normal wear and tear.

9.2 «Vendor» shall repair or replace any damaged or defective work, materials or equipment within ten (10) working days of notice by DISTRICT to repair, replace or correct such work, materials or equipment found to be damaged or defective at the time of delivery, then DISTRICT shall, upon written notice to «Vendor», have the authority to deduct the cost there from any compensation due or to become due to «Vendor». Nothing in this section shall limit or restrict the provisions regarding warranty of fitness set forth in this Agreement.

Article 10. Warranty

10.1 «Vendor» hereby warrants that the goods and/or services covered by this Lease Agreement will meet the requirements and conditions of the specification documents and shall be fit for the purpose intended and will be of first-class material and workmanship and free from defects.

DISTRICT reserves the right to cancel the unfilled portion of any order without liability to «Vendor», for «Vendor»'s breach of this warranty. Goods will be received subject to reasonable inspection and acceptance at destination by DISTRICT and risk of loss before acceptance shall be on «Vendor». Defective goods reasonably rejected by DISTRICT may without prejudice to any legal remedy, be held at «Vendor»'s risk and returned to «Vendor» at «Vendor»'s expense. Defects are not waived by acceptance of goods or by failure to notify «Vendor» thereof.

10.2 It is understood and agreed that compliance with this warranty and the acceptance of the materials, equipment or supplies to be manufactured or assembled pursuant to these specifications, does not waive any warranty either express or implied in sections 2312 through 2317 of the Commercial Code of the State of California or any liability of «Vendor» and or manufacturer as determined by any applicable decision of a court of the State of California or of the United States

Article 11. Warranty of Title

«Vendor» shall warrant to DISTRICT, its' successors and assigns, that the title to the material, supplies or equipment covered by this Lease Agreement, when delivered to DISTRICT or to its' successors or assigns, is free from all liens and encumbrances.

Article 12. District's Rights and Remedies for Default

- 12.1 DISTRICT may terminate the Master Lease Agreement at any time by giving thirty (30) days written notice thereof. Notice of termination shall be by certified mail. Upon termination, DISTRICT shall pay to «Vendor» its' allowable costs incurred to date of termination and those costs deemed necessary by «Vendor» to effect termination. In the event that «Vendor» at any time during the entire term of the Master Lease Agreement breaches the requirements or conditions of the Master Lease Agreement, and does not within ten (10) working days (or such other reasonable period as the DISTRICT may authorize in writing) of receipt of notice from the DISTRICT cure such breach or violation, the DISTRICT may immediately terminate the Lease Agreement and shall pay «Vendor» only its' allowable costs to date of the termination.
- 12.2 In the event that the circumstances giving rise to the breach are such that the breach cannot be cured within ten (10) working days, the DISTRICT and «Vendor» shall make a good faith effort to determine a reasonable time period in which the breach must be cured. The DISTRICT may immediately terminate the Lease Agreement and pay «Vendor» only its' allowable costs to date of the termination if the breach is not cured within a reasonable time period.
- 12.3 The parties understand and agree that DISTRICT has leased portable classrooms from «Vendor» for public education purposes and the removal of the portable classrooms, for any reason, must be coordinated with DISTRICT's academic schedule to avoid disruption of the District's delivery of public education and related public education operations. Accordingly, «Vendor» may terminate this agreement if DISTRICT at any time during the entire term of the LEASE AGREEMENT breaches the requirements or conditions of the Lease Agreement, and does not within thirty (30) working days (or such other reasonable period as the «Vendor» may authorize in writing) of receipt of notice from the «Vendor» cure such breach or violation. In the event that «Vendor» elects to terminate the Agreement, «Vendor» may remove its portable buildings and shall coordinate the removal of its portable buildings with DISTRICT to avoid or minimize any disruption of classes or public education operations of DISTRICT. DISTRICT must make a good faith and reasonable effort to cooperate with «Vendor» in the scheduling of the removal of portable buildings in the event of DISTRICT's default under the agreement. Upon termination, DISTRICT shall pay to its' allowable costs

incurred to date of termination and those costs deemed reasonable and necessary by «Vendor» and DISTRICT to effect termination.

Article 13. Failure to Complete Lease Agreement - Effect

In case of failure on the part of «Vendor» to complete its' Lease Agreement within the specified time or a mutually agreed upon and authorized extension thereof, in accordance with the notice requirements of Section 12.1, Default, the Lease Agreement may be terminated and DISTRICT shall in such event not thereafter pay or allow «Vendor» any further compensation for any labor, materials or equipment furnished by him under such Lease Agreement; and DISTRICT may proceed to complete such Lease Agreement either by re-letting or otherwise, and «Vendor» and his bondsmen shall be liable to DISTRICT for all loss or damage which it may suffer on account of «Vendor»'s failure to complete its' Lease Agreement.

Article 14. Indemnification

- 14.1 With respect to the willful misconduct, negligent acts or omissions of «Vendor», or its' employees, officers, agents, or subcontractors only, «Vendor» shall indemnify, keep and hold harmless, the DISTRICT, its' directors, officers, employees, subcontractors and/or agents, against all losses, or claims based on any injury or death of any person or damage to or loss of use of any property arising out of or in any way connected with or alleged to be connected with the work and services to be performed under this Agreement by «Vendor», its ,employees, officers, agents or subcontractors whether or not it shall be claimed that the injury was caused through a negligent act or omission of or its' employees; and «Vendor» shall, at its' expense pay all charges of attorneys and all costs and other expenses arising there from or incurred in connection therewith, and if any judgments shall be rendered against the DISTRICT its' directors officers, employees and/or agents in any such action, «Vendor» shall at its' expense satisfy and discharge the same.
- 14.2 With respect to the willful misconduct, negligent acts or omissions of DISTRICT its' employees, officers, agents, subcontractors or attendees, DISTRICT shall indemnify, keep and hold harmless, «Vendor», its directors, officers, employees, subcontractors and/or agents, against all losses, or claims based on any injury or death of any person or damage to or loss of use of any property arising out of or in any way connected with or alleged to be connected with the buildings (or any item provided with the buildings) under this Agreement caused by DISTRICT, its' employees, officers, agents, sublesees, or subcontractors or attendees, whether or not it shall be claimed that the injury was caused through a negligent act or omission of DISTRICT or its' employees, officers, agents, subcontractors, or attendees; DISTRICT shall, at its' expense pay all charges of attorneys and all costs and other expenses arising there from or incurred in connection therewith and if any judgment shall be rendered against «Vendor» its' directors, officers, employees and/or agents in any such action, DISTRICT shall at its expense satisfy and discharge the same.

Article 15. Infringement of Patents

«Vendor» agrees that it will at its own expense, defend all suits or proceedings instituted against the DISTRICT, and pay any award of damages assessed against the DISTRICT in such suits or proceedings, insofar as the same are based on any claim that the materials, or equipment, or any part thereof, or any tool, article or process used in the manufacture thereof, constitutes an infringement of any patent held by any other party, provided the DISTRICT gives to«Vendor» prompt notice in writing of the institution of the suit or proceedings and permits «Vendor» through

his counsel to defend the same and gives «Vendor» information, assistance and authority to enable «Vendor» to do so.

Article 16. Assignment and Delegation

«Vendor» shall neither delegate any duties or obligations under this LEASE AGREEMENT nor assign, transfer, convey, sublet or otherwise dispose of the Lease Agreement or its right, title or interest in or to the same, or any part thereof, without prior consent in writing of the DISTRICT.

Article 17. Equal Employment Opportunity

In connection with the performance of this Agreement «Vendor» shall not discriminate against any employee or applicant for employment because of race, religion, color, sex, disability, sexual orientation or national origin.

Article 18. Environmental and Safety Health Standards Compliance

«Vendor» shall comply with the applicable environmental statutes, regulations and guidelines in performing the work under this Lease Agreement. «Vendor» shall also comply with applicable Occupational Safety and Health standards, regulations and guidelines in performing the work under this Lease Agreement.

Article 19. Hazardous Chemicals and Wastes

«Vendor» shall bear full and exclusive responsibility for any release of hazardous or nonhazardous chemicals or substances arising out of the operations of «Vendor» or any subcontractors during the course of performance of this Lease Agreement. «Vendor» shall immediately report any such release to the DISTRICT Project Manager. «Vendor» shall be solely responsible for all claims and expenses associated with the response to, removal and remediation of the release, including, without limit, payment of any fines or penalties levied against the DISTRICT, its directors, officers, employees or agents as a result of such re-lease and shall hold harmless, indemnify and defend the DISTRICT, its' directors, officers, employees or agents from any claims arising from such release. For purposes of this section only, the term "claims" shall include (1) all notices, orders, directives, administrative or judicial proceedings, fines, penalties, fees or charges imposed by any governmental agency with jurisdiction, and (2) any claim, cause of action, or administrative or judicial proceeding brought against the DISTRICT, its' directors, officers, employees or agents for any loss, cost (including reasonable attorney's fees), damage or liability sustained or suffered by any person or entity, including the DISTRICT.

Article 20. Insurance

The Consultant shall procure and maintain at all times it performs any portion of the Services the following insurance with minimum limits equal to the amount indicated below.

- 20.1 **Commercial General Liability and Automobile Liability Insurance.** Commercial General Liability Insurance and Any Auto Automobile Liability Insurance that insure against all claims of bodily injury, property damage, personal injury, death, advertising injury, and medical payments arising from Consultant's performance of any portion of the Services. (Form CG 0001 and CA 0001)
- 20.2 **Workers' Compensation and Employers' Liability Insurance.** Workers' Compensation Insurance and Employers' Liability Insurance for all of its employees

performing any portion of the Services. In accordance with provisions of section 3700 of the California Labor Code, the Consultant shall be required to secure workers' compensation coverage for its employees. If any class of employee or employees engaged in performing any portion of the Services under this Agreement are not protected under the Workers' Compensation Statute, adequate insurance coverage for the protection of any employee(s) not otherwise protected must be obtained before any of those employee(s) commence performing any portion of the Services.

Type of Coverage	Minimum Requirement
Commercial General Liability Insurance, including Bodily Injury, Personal Injury, Property Damage, Advertising Injury, and Medical Payments	
Each Occurrence	\$ 1,000,000
General Aggregate	\$ 2,000,000
Automobile Liability Insurance - Any Auto	
Each Occurrence	\$ 1,000,000
General Aggregate	\$ 2,000,000
Professional Liability NA	\$ 2,000,000
Workers Compensation	Statutory Limits
Employer's Liability	\$ 1,000,000

20.3 **Proof of Carriage of Insurance.** The Consultant shall not commence performing any portion of the Services until all required insurance has been obtained and certificates indicating the required coverage's have been delivered in duplicate to the District and approved by the District. Certificates and insurance policies shall include the following:

20.3.1 A clause stating: "This policy shall not be canceled or reduced in required limits of liability or amounts of insurance until notice has been mailed to the District, stating date of cancellation or reduction. Date of cancellation or reduction shall not be less than thirty (30) days after date of mailing notice."

20.3.2 Language stating in particular those insured, extent of insurance, location and operation to which insurance applies, expiration date, to whom cancellation and reduction notice will be sent, and length of notice period.

20.3.3 An endorsement stating that the District and the State and their representatives, employees, trustees, officers, and volunteers are named additional insureds under all policies except Workers' Compensation Insurance, Professional Liability, and Employers' Liability Insurance. An endorsement shall also state that Consultant's insurance policies shall be primary to any insurance or self-insurance maintained by District.

20.3.4 All policies shall be written on an occurrence form, except for Professional Liability which shall be on a claims-made form.

20.3.5 Acceptability of Insurers. Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A: VII, unless otherwise acceptable to the District.

Article 21. Audit and Inspection of Records

During the term of this Agreement, «Vendor» shall permit representatives of DISTRICT to have access to, examine and make copies, at DISTRICT'S expense, of its books, records and documents specifically relating to this Lease Agreement at all reasonable times.

Article 22. Notices

All communications relating to the day to day activities of the project shall be exchanged between the DISTRICT'S Project Manager, «_PM» and «Vendor»'s «Vendor_PM». All other notices and communications deemed by either party to be necessary or desirable to be given to the other party shall be in writing and may be given by personal delivery to a representative of the parties or by mailing the same postage prepaid, addressed as follows:

If to the DISTRICT:

San Francisco Unified School District

If to «Vendor»:

«Vendor»

«Address_Street»,

«Address_City_State_and_Zip»

Tel: «Phone_»

Fax: «Fax»

Email:

Attention: «Vendor_PM»

The address to which mailings may be made may be changed from time to time by notice mailed as described above. Any notice given by mail shall be deemed given on the day after that on which it is deposited in the United States Mail as provided above.

Article 23. District Representative

- 23.1 Except when approval or other action is required to be given or taken by «District_Signor» of the DISTRICT, or such person as he or she shall designate, shall represent and act for the DISTRICT
- 23.2 It is understood and agreed that in no instance is any party signing this Agreement for or on behalf of DISTRICT or acting as an employee or representative of DISTRICT, liable on this Lease Agreement, or upon any warranty of authority, or otherwise.

Article 24. Clayton Act and Cartwright Act

In entering into a public works Lease Agreement or a sublease Agreement to supply goods, services or materials pursuant to a public works Lease Agreement, or subcontractors offers and agrees to assign to the awarding body all rights, title and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 U.S.C. § 15) or under the Cartwright Act (Chapter 2 (commencing with Section 16700) of Part 2 of Division 7 of the Business and Professions Code), arising from purchases of goods, services or materials pursuant to the public works Lease Agreement or the sublease Agreement

This assignment shall be made and become effective at the time DISTRICT tenders final payment to the «Vendor», without further acknowledgment by the parties.

Article 25. DSA Construction Reports

LESSOR shall provide to the District all documents required for compliance with and substantiating LESSOR'S compliance with the applicable local, state and federal laws and regulations, including such documents, which are necessary, and which may be required for submission to the

Department of the State Architect in connection with the use of portable buildings for public education. LESSOR shall provide accurate and complete reports and records regarding the portable buildings leased under this Agreement for reporting to the State of California and the Department of the State Architect.

Article 26. Miscellaneous Provisions

All terms and conditions required by law are deemed part of the Lease Agreement.

GOVERNING LAW. This agreement shall be deemed to have been entered into in the City and County of San Francisco, and governed in all respects by California Law.

ENTIRE AGREEMENT/AMENDMENT. This Lease Agreement contains the entire agreement of the parties and there are no other promises or conditions in any other agreement whether oral or written with respect to the lease of the Premises. This Lease may be modified or amended in writing, if the party obligated under the amendment signs in writing.

SEVERABILITY. If any portion of this Lease is held to be invalid or unenforceable for any reason, the remaining provisions will continue to be valid and enforceable. If a court finds that any provision of this Lease is invalid or unenforceable, but that by limiting such provision, it would become valid and enforceable, then such provision will be deemed to be written, construed, and enforced as so limited.

WAIVER. The failure of either party to enforce any provisions of this Lease will not be construed as a waiver or limitation of that party's right to subsequently enforce and compel strict compliance with every provision of this Lease.

CUMULATIVE RIGHTS. The rights of the parties under this Lease are cumulative, and will not be construed as exclusive unless otherwise required by law.

IN WITNESS WHEREOF, LESSOR has executed this Agreement, and the District, by its «District_Signor», who is authorized to do so, has executed this agreement.

«Vendor»:

By: _____ Dated: _____

Its: _____