

Board Office Use: Legislative File Info.	
File ID Number	13-2266
Committee	Facilities
Introduction Date	10-9-2013
Enactment Number	13-2104
Enactment Date	10/9/13 02



OAKLAND UNIFIED
SCHOOL DISTRICT

Memo

To Board of Education

From Dr. Gary Yee, Acting Superintendent and Secretary of the Board of Education
By: Vernon Hal, Deputy Superintendent, Business Operations VEH
Timothy White, Associate Superintendent, Facilities Planning and Management

Board Meeting Date October 9, 2013

Subject Division of Facilities Planning and Management P.O.'s. Less than \$50,000.00

Action Requested: Ratification by the Board of Education of the attached contracts for the Division of Facilities Planning and Management.

Legistar #	Name	Amount	Funding Source	P.O.	Project	Date	City
13-2231	AEKO Consulting	\$3,269.68	Measure B	P.O.	Facilities Department	5-6-2013	Oakland, CA
13-2233	American Time & Signal	\$325.71	County School Facilities Fund	P.O.	Washington Modernization	1-28-2013	Dassel, MN
13-2234	Anderson Carpet	\$11,494.00	County School Facilities Fund	P.O.	Claremont Landscaping	8-21-2013	Oakland
13-2235	B.P. Woods	\$9,260.12	General Fund	P.O.	Tilden RAD Relocation	6-7-2013	Dublin, CA
13-2242	B.P. Woods	\$726.25	County School Facilities Fund	P.O.	Stonehurst CDC Building Replacement	5-6-2013	San Jose, CA
13-2241	CDW Government	\$2,938.42	Measure B	P.O.	Lowell MS Modernization	4-30-2013	Chicago, IL
13-2243	Chussy International	\$5,850.00	General Fund	P.O.	Facilities Department	6-18-2013	Oakland, CA
13-2248	Collaborative for High Performance School	\$2,000.00	Measure B	P.O.	Highland New Classroom Building	7-11-2013	Sacramento, CA
13-2246	Comack Plumbing	\$4,195.81	Measure B	P.O.	Lowell Modernization	2-14-2013	Oakland, CA
13-2249	Cor-O-Van	\$1,900.007	Special Reserve Fund	P.O.	Lakeview School Closure	2-12-2013	Pleasanton
13-2250	Cor-O-Van	\$2,815.75	Measure B	P.O.	Arroyo Viejo	2-12-2013	Pleasanton, CA
13-2251	Creation Engine, Inc.	\$59.00	Measure A	P.O.	Facilities Department	3-8-2013	Mt. View, CA
13-2252	Creation Engine, Inc.	\$598.00	Measure A	P.O.	Facilities Department	2-6-2013	Mt. View, CA
13-2253	Crown Worldwide Moving	\$900.00	County School Facilities Fund	P.O.	Ralph Bunche HS	5-8-2013	San Leandro, CA
13-2254	Digital Design Communications	\$5,205.39	Measure B	P.O.	Lowell Modernization	2-14-2013	Oakland, CA
13-2255	E3 Systems	\$1,998.00	County School Facilities Fund	P.O.	District-wide Retro Commissioning	1-3-2013	Oakland, CA
13-2256	East Bay Blue Print & Supply Co.	\$19,500.00	Measure B	P.O.	Facilities Department	1-14-2013	Oakland, CA
13-2257	EBMUD	\$5,571.00	County School Facilities Fund	P.O.	Stonehurst CDC Building Replacement	8-21-2013	Oakland, CA
13-2258	Enviroplex, Inc.	\$9,460.00	County School Facilities Fund	P.O.	Burckhalter ES Portable Installation	7-11-2013	Stockton, CA



OAKLAND UNIFIED SCHOOL DISTRICT

13-2260	First Alarm	\$24,401.00	Measure A	P.O.	Metwest Educational Center Phase 2	1-28-2013	San Jose, CA
13-2261	Gary Doupnik	\$7,056.00	County School Facilities Fund	P.O.	Washington Sankofa Portable Installation	3-6-2013	Loomis, CA
13-2262	Gary Doupnik Manufacturing	\$27,600.00	County School Facilities Fund	P.O.	Madison Portable Installation	3-8-2013	Loomis, CA
13-2263	JUV, Inc.	\$1,478.00	County School Facilities Fund	P.O.	Stonehurst CDC Building Replacement	8-21-2013	Oakland, CA
13-2264	Lee Signs	\$10,000.00	County School Facilities Fund	P.O.	Metwest Educational Center Phase 2	3-1-2013	Oakland, CA
13-2265	MACO Security Products	\$203.39	Special Reserve Fund	P.O.	La Escuelita Educational Center Phase 1 Increment 3	3-11-2013	Oakland, CA
13-2266	Mobile Modular Portable Storage	\$248.10	County School Facilities Fund	P.O.	Washington Modernization	4-30-2013	Livermore, CA
13-2267	North American Fence & Railing, Inc.	\$4,205.00	Measure B	P.O.	Lowell MS Modernization	3-6-2013	Oakland, CA
13-2268	North American Fence & Railing, Inc.	\$1,920.00	Measure A	P.O.	Arroyo Viejo CDC Renovation of Building	2-5-2013	Oakland, CA
13-2269	Pacific Light and Shade	\$2,470.00	County School Facilities Fund	P.O.	Grass Valley ES Portable Installation	2-14-2013	Oakland, CA
13-2270	Payless Repair Services	\$4,425.00	Measure A	P.O.	Facilities Department	6-18-2013	Oakland, CA
13-2271	Peterson Power Systems	\$876.81	County School Facilities Fund	P.O.	La Escuelita Educational Complex	9-12-2013	San Leandro
13-2272	PG&E	\$1,000.00	County School Facilities Fund	P.O.	Stonehurst CDC Building Replacement	2-22-2013	Oakland, CA
13-2274	Rays Electric	\$2,026.80	Measure A	P.O.	Piedmont Portable Installation	1-14-2013	Oakland, CA
13-2275	RMT Landscaping	\$25,000.00	County School Facilities Fund	P.O.	Havenscourt New Cafeteria & Classroom Building	8-7-2013	Oakland, CA
13-2277	School Services of California Inc.	\$525.00	Measure A	P.O.	Facilities Department	2-26-2013	Sacramento, Ca
13-2278	Summerhill Electric	\$3,117.00	County School Facilities Fund	P.O.	Havenscourt New Cafeteria & Classroom Building	1-17-2013	Oakland

Discussion:

Among the key purposes of the District's Facilities Master Plan is to provide an academic environment for the Oakland community that will give every student, educator, and community member using our facilities the best possible opportunity for learning.

Through implementation of the Facilities Master Plan, the District intends to improve the District's facilities in terms of structural integrity, safety, reliability of operating (mechanical) systems, access to modern resources, number and type of appropriate laboratories and specialized instruction rooms, opportunities for physical education, and attractiveness, such that the Oakland Public Schools are second to none. Operation of the District schools under the planned approach is intended to ensure safety, cleanliness, and orderliness for all individuals participating in the learning process.

The basic facility needs of students such as proper lighting, functional roofs, noise control and well maintained buildings, not only convey the message that we value our students and teachers but may foster a sense of school pride and community ownership which may improve attitudes towards learning. The



OAKLAND UNIFIED
SCHOOL DISTRICT

implementation of the Facilities Master Plan is our first step in that direction.

Fiscal Impact:

Various

Recommendation:

The Board of Education is requested to approve the Facilities Planning and Management contracts and Purchase Orders for the OUSD school sites.

OAKLAND UNIFIED SCHOOL DISTRICT
Department of Facilities Planning & Management

AGREEMENT REQUEST FORM

4050767

DATE SUBMITTED: April 25, 2012 SUBMITTED BY: Richard Rodgers

SECTION I. TYPE OF AGREEMENT (PLEASE CHECK ONE BOX)

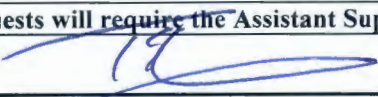
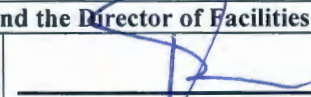
1.) A&E (Architects and Engineers) Contract	<input type="checkbox"/>	5.) "Small"(under \$15,000.00) Construction Contract	<input type="checkbox"/>
2.) IOR (Inspector of Record) Contract	<input type="checkbox"/>	6.) Resolution Awarding Bid & Construction Contract	<input type="checkbox"/>
3.) Agreement for Professional Services-Testing Etc.	<input type="checkbox"/>	7.) Change Order P.O. Under \$50K:	<input type="checkbox"/>
4.) Amendment to Agreement for Professional Services (Amendment #--)	<input type="checkbox"/>	8.) Purchase Order To: MB <u>79</u> To DR: _____	<input checked="" type="checkbox"/>

Vendor Number: _____
Fiscal Year: 2012
Date Processed: 5-9-2013

SECTION II LOCAL BUSINESS PARTICIPATION PERCENTAGE

Local Business	Small Local Business	Small Local Resident Business	Total Percentage
No	0%	0%	0%

All requests will require the Assistant Superintendent's and the Director of Facilities Authorization and Signature

 Timothy E. White Assistant Superintendent	Date	 Tadashi Nakadegawa Director of Facilities	Date <u>4/26/13</u>
---	------	--	---------------------

SECTION III. AGREEMENT INFORMATION:

Project Name:	Washington Elementary	Project No:	6012 <u>1619003882-</u>
Vendor Name:	Mobile Modular Portable Storage	Vendor Contact:	Katherine Baysinger <u>6262</u>
Vendor Phone Number:	925-606-9000 925-453-3201	Vendor Mailing Address:	5700 Las Positas Road Livermore, CA 94551
Agreement Start & Stop Dates:	June 1, 2013 September 30, 2013	Amounts:	Current Contract Amount: \$248.10 Not to Exceed Amount: Revised Contract Amount:
Has Work Started?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> If yes give an explanation:	Has Work Been Completed?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
Certificate of Insurance Attached	<input type="checkbox"/> Yes <input type="checkbox"/> No	Date provided:	

RECEIVED
4-30-2013

For Construction Contracts \$15,000, please provide or attach the following:

- 1) Number of Bids Received, List of Bidders and Amounts (Bid Form) (Attach Bid Documents)
 - 2) Date(s) of Bid Advertisement No. 13-2200
 - 3) Date of Bid Opening Introduction Date 10-9-2013
 - 4) Name of Architect
 - 5) Liquidated damages per day Enactment No. 13-204 Enactment Date 10/9/13
 - 6) Performance Bonds Attached _____
 - 7) Payment Bonds Attached _____
 - 8) Number of Phases _____
- (Sections 6 & 7 to be completed by Contract Administration department)

Scope of Work: (Needed to prepare Executive Summary)
To provide additional storage for surplus

Discussion Information (Needed to prepare Executive Summary)
David Kakishiba
President, Board of Education

Gary Yee, Ed.D.
Secretary, Board of Education

OAKLAND, CA 94601
955 HIGH STREET

Funding Source Fund 35

Budget Number: 2013 APR 29 PM 3 57

RES 7710

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion: The District certifies to the best of its knowledge and belief, that it and its officials: Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency according to Federal Acquisition Regulation Subpart 9.4, and by signing this contract, certifies that this vendor does not appear on the Excluded Parties List. <https://www.sam.gov/portal/public/SAM>



Mobile Modular Portable Storage
 5700 Las Positas Road
 Livermore, CA 94551
 Phone: (925) 606-9000 Fax: (925) 453-3201
www.mobilemodularrents-portablestorage.com

Container Lease Agreement
 Contract: 210014336.1
Contract Term: 2 Months
 Date Printed: 04/11/2013
 Start Rent Date: 04/15/2013

- A minimum cleaning charge of \$50 for containers with offices. No minimum cleaning charge applies for storage containers. If assessed, cleaning charges will be based on the condition of the returned unit.
- 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.
- 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.
- Rent will be billed in advance every 30 calendar days.

Special Notes

Insurance Requirements

Please send, or have your insurance company send, a Certificate of Insurance to us. We require liability coverage (minimum of \$1,000,000) listing Mobile Modular Management Corporation as an additional insured and property coverage for the value of the unit(s) leased listing Mobile Modular Management Corporation as loss payee.

Item & Description	Qty	Ins. Value
Container, 8x40 Storage (Item1834)	1	\$6,300.00



Mobile Modular Portable Storage
 5700 Las Positas Road
 Livermore, CA 94551
 Phone: (925) 606-9000 Fax: (925) 453-3201
www.mobilemodularrents-portablestorage.com

Container Lease Agreement

Contract: 210014336.1
 Contract Term: 2 Months
 Date Printed: 04/11/2013
 Start Rent Date: 04/15/2013

Customer & Site Information		Mobile Modular Contact
Customer Information: Oakland USD Acct:#: 2739.12 955 High St Oakland, CA 94601 Pamila Henderson PamilaM.Henderson@Ousd.K12.CA.US 5108793668 Customer PO/Reference: Washington Elementary	Site Information: Oakland USD 581 61st Street Washington Elem. Oakland, CA 94609	Questions? Please Contact: Katherine Baysinger K.Baysinger@MobileModularRents.com Direct Phone: (925) 453-3129 All other inquiries: (925) 606-9000

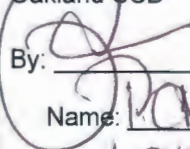
EXHIBIT A

Product Information				
Charges Upon Delivery	Qty	Charge Ea	Billed As	Ext Price Taxable
Container, 8x40 Storage (Item1834) <i>Storage Only</i>	1	\$90.00	Rent	\$90.00 Y
Delivery Haulage Fuel Cont.	1	\$15.00		\$15.00 N
Delivery Haulage Cont.	1	\$60.00		\$60.00 N
Return Fuel Container	1	\$15.00		\$15.00 N
Return Haulage Container	1	\$60.00		\$60.00 N
Tax:				\$8.10
Estimated Initial Invoice:				\$248.10

Charges Upon Return Of Unit	Qty	Charge Ea	Billed As	Ext Price Taxable
Container, 8x40 Storage (Item1834)				
Estimated Charges Due Upon Return Of Unit:				\$0.00

Special Terms & Important Contractual Information

• The parties hereto, MOBILE MODULAR PORTABLE STORAGE, a division of McGrath RentCorp, a California corporation, as lessor (the "Lessor") and lessee ("Lessee"), as described above in the section titled "Customer Information" hereby agree to this Container Lease Agreement and the terms and conditions set forth below in the Lease Terms and Conditions. **THIS AGREEMENT IS FOR THE LEASE OF CONTAINERS ONLY.** Lessee shall not acquire ownership interest in the Containers. The individual signing this Lease Agreement affirms that he/she is duly authorized to execute and commit to this Lease Agreement for the above named Lessee.

LESSOR: Mobile Modular Portable Storage, a division of McGrath RentCorp, a California corporation By: _____ Name: _____ Signature Title: _____ Print Date: _____	LESSEE: Oakland USD By:  Name: Pamila Miller Henderson Signature Title: Labor Compliance Print Date: 4/24/2013
--	--



Mobile Modular Portable Storage
5700 Las Positas Road
Livermore, CA 94551
Phone: (925) 606-9000 Fax: (925) 453-3201
www.mobilemodularrents-portablestorage.com

Container Lease Agreement

Contract: 210014336.1
Contract Term: 2 Months
Date Printed: 04/11/2013
Start Rent Date: 04/15/2013

attorney fees), claims, actions, demands, fines, forfeitures, seizures or penalties (collectively, "**Claims**") arising out of Lessee's negligence in the maintenance, possession or use of the Equipment by Lessee, its employees, agents or any person invited, suffered or permitted by Lessee to use or be in, on or about the Equipment, and any theft or destruction of, or damage to, the Equipment.

11. EVENTS OF DEFAULT.

(a) Each of the following shall constitute an "**Event of Default**": (1) default by Lessee in making required payment(s) hereunder and the continuance of such default for ten (10) consecutive days; (2) any default or breach by Lessee (3) default by Lessee in the performance of any obligation, covenant or liability contained in the Lease or any other agreement or document with Lessor and the continuance of such default for ten (10) days after written notice, thereof by Lessor to Lessee; (4) loss, theft, damage, destruction or the attempted sale or encumbrance by Lessee of any of the Equipment, or any levy, seizure or attachment thereof or thereon; or (6) Lessee's dissolution, termination of existence, discontinuance of business, insolvency, or business failure; or the appointment of a receiver of any part of, the assignment for the benefit of creditors by, or the commencement of any proceedings under any bankruptcy, reorganization or arrangement laws by or against, Lessee. Lessee acknowledges that any Event of Default will substantially impair the lease value hereof.

(b) Upon Lessee's default, (1) Lessor has the right to accelerate all payments due hereunder; (2) terminate the Lease as to any or all items of the Equipment; (3) take possession of the Equipment wherever found, and for this purpose enter upon any premises of Lessee and remove the Equipment, without any liability for suit, action or other proceedings by Lessee; (4) direct Lessee at its expense to promptly prepare the Equipment for pickup by Lessor; (5) take such action that is permitted under law. Lessee waives any and all rights or claims of sovereign immunity and any property remaining in such Equipment upon its return will be deemed abandoned by Lessee subject to [Section 18](#) below.

12. **OWNERSHIP AND MARKING OF EQUIPMENT.** Title to the Equipment shall remain in Lessor (or its Principal). Excepting only as may be granted in a separate writing signed by Lessor, no option or other right to purchase the Equipment is granted or implied by the Lease to Lessee or any other person. The Equipment shall remain and be deemed to be personal property of Lessor, whether attached to realty or not, and upon termination of the Lease or the occurrence of an Event of Default, Lessee shall have the duty and Lessor shall have the right to remove the Equipment whether or not affixed to any realty or building without any liability to Lessor for damage to the realty or building caused by the removal of the Equipment. Any replacement, substitutes, accessories or parts, whether placed in or upon the Equipment or not, whether made a component part thereof or not, shall be the property of Lessor and shall be included under the terms of the Lease.

13. **COMPLIANCE WITH LAW.** Lessee assumes all responsibility for any and all licenses, clearances, permits and other certificates as may be required for Lessee's lawful operation, use, possession and occupancy of the Equipment. Lessee 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. Lessee shall pay the cost of all license and registration fees and renewals thereof.

14. **GOVERNING LAW.** Lessee and Lessor agree that the Lease 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.

15. **JURISDICTION.** In any case where the Equipment is located in the State of Maryland or the State of Virginia, it is agreed that the venue for a legal action relating to the Lease shall be proper if brought in Alameda County, State of California. Subject to [Section 10](#), the prevailing party shall be entitled to recover reasonable attorneys' fees and court costs, whether or not the action proceeds to judgment.

In all other cases, the Federal District Courts located within the State of California shall have non-exclusive jurisdiction over any lawsuit brought by Lessee or Lessor as a result of any dispute regarding matters arising in connection with the Lease. Further, it is agreed that the venue for a legal action relating to the Lease shall be proper if brought in Alameda County, State of California. Subject to [Section 10](#), the prevailing party shall be entitled to recover reasonable attorneys' fees and court costs, whether or not the action proceeds to judgment.

16. **MEDIATION, ARBITRATION.** Lessee agrees to abide by Lessor's option (if Lessor shall so choose) to have any claims, disputes, or controversies arising out of or in relation to the performance, interpretation, application, or enforcement of the Lease, including but not limited to breach thereof, referred to mediation before, and as a condition precedent to, the initiation of any adjudicative action or proceeding, including arbitration. If mediation fails to resolve the claims, disputes or controversies between Lessor and Lessee, Lessee agrees to abide by Lessor's option (if Lessor shall so choose) to have the claims, disputes or controversies referred to binding arbitration. The parties hereto acknowledge that the subject matter of the Lease is a matter of interstate commerce.

17. **CREDIT CARD AUTHORIZATION.** Lessee hereby gives authorization to Lessor to charge against credit card provided all amounts billed for this transaction including applicable taxes, shipping and handling charges. For a rental/lease transaction, charges may be recurring and additional billing and charges will occur until such time as all Equipment and respective accessories are returned and the rental is terminated.

18. **LESSEE'S PERSONAL PROPERTY.** In the event that Lessee does not make a payment and does not remove its personal property from the Equipment (as required herein), Lessor shall place a lien on Lessee's personal property stored in Equipment, to secure rent or other Lessee obligations under this Agreement which shall grant Lessor the right to dispose of personal property left in the Equipment at the end of the Lease Term or an Event of Default. At the end of the Lease Term, Lessee shall, at its expense, prepare the Equipment for pick up which includes but is not limited to removing all personal property of Lessee from the Equipment provided that, if any personal property shall remain located in the Equipment at such time, Lessee consents to Lessor's possession and disposal or destruction of such personal property without notice or accounting to Lessee, the costs and expenses of which disposal or destruction, including reasonable attorneys' costs related thereto, shall be reimbursed by Lessee.

19. **HAZARDOUS MATERIALS.** Lessee agrees that no water, paint or chemicals, and no illegal, hazardous, controlled, toxic, explosive, flammable, restricted, contaminated or other dangerous materials, shall be maintained or stored in or on the Equipment.

20. **MISCELLANEOUS.** Time is of the essence of each and every provision of the Lease. Failure of Lessor to enforce any term or condition of the Lease shall not constitute a waiver of subsequent defaults by Lessee, nor shall it, in any manner, affect the rights of Lessor to enforce any of the provisions hereunder. The invalidity or unenforceability of any provision of the Lease shall not affect the validity or enforceability of any other provision.

21. **ENTIRE AGREEMENT.** The Lease constitutes the entire agreement between Lessor and Lessee with respect to the subject matter hereof and, except for the Incorporated Provisions that may be updated by Lessor from time to time in its sole discretion, may not be amended, altered or modified except by a writing signed by both Lessor and Lessee.



Mobile Modular Portable Storage
5700 Las Positas Road
Livermore, CA 94551
Phone: (925) 606-9000 Fax: (925) 453-3201
www.mobilemodularrents-portablestorage.com

Container Lease Agreement

Contract: 210014336.1
Contract Term: 2 Months
Date Printed: 04/11/2013
Start Rent Date: 04/15/2013

CONTAINER LEASE TERMS AND CONDITIONS

1. **LEASE TERM.** The Lease shall commence on the Start Rent Date specified in the Agreement (which may be adjusted by mutual agreement of Lessee and Lessor), and shall continue thereafter for the number of months specified in the Agreement as the "Lease Term". Lessee is responsible for paying the Monthly Rent specified in the Agreement (as such may be adjusted pursuant to Section 3) for each month during the Lease Term. Lessee may be subject to cancellation fee if the Lease terminates prior to the expiration of the Lease Term. Lessor shall not be liable to Lessee for any failure or delay in obtaining, delivering or setting up the Equipment.

2. **EQUIPMENT PLACEMENT, RETURN AND CONDITION.** Regardless of the stated Lease Term, Lessee must provide a minimum of 10 business days' prior notice for return delivery of Equipment.

(a) **EQUIPMENT PLACEMENT:** The driver may not have the ability to move the Equipment more than a few feet. Avoid placing the Equipment in low lying areas in case of flooding or on surfaces with inadequate drainage. Lessor recommends the use of blocks of wood or concrete to elevate any Equipment, as Lessee deems appropriate to avoid flooded areas. In the case of Equipment located in the State of Florida, do not place the Equipment closer than two feet to another structure without advance written approval from the Lessor. Additional Set-up time due to unlevel site conditions may result in extra charges. The Lessee is responsible for any and all costs associated with obtaining necessary approval of the site and installation of the Equipment including any permits subject to jurisdiction where Equipment will be located. Any costs associated with moving the Equipment will be the responsibility of the Lessee.

(b) Equipment is leased to Lessee "AS IS". Lessor warrants only that the Equipment correspond with the description thereof set forth in the Lease, and, otherwise, **LESSOR MAKES NO WARRANTIES OR REPRESENTATIONS, EITHER EXPRESS OR IMPLIED, RELATING TO THE EQUIPMENT, INCLUDING WITHOUT LIMITATION, THE CONDITION OF ANY EQUIPMENT, ITS MERCHANTABILITY OR ITS FITNESS FOR ANY PARTICULAR PURPOSE, ANY WARRANTY AGAINST INFRINGEMENT OR AS TO TITLE OR OTHERWISE.**

(c) Lessee acknowledges and agrees to maintain all Equipment in good condition and repair (normal wear and tear excluded) and shall not make any alterations, improvements additions to Equipment without Lessor's prior written consent. Lessee shall be responsible for any repair costs (including water filtration) associated with repairs needed other than those resulting from normal wear and tear.

(d) **CLEANING:** Unless otherwise noted in the Lease Agreement, Lessor reserves the right to charge a \$50 cleaning fee per each piece of Equipment. This fee is refundable only if the Equipment is returned in a cleanliness condition equal to or better than when it was originally shipped.

(e) **PRORATION:** Lessor prorates rent in one-half (1/2) month increments only. Any Equipment on rent beyond the 14th day of a billing cycle, Lessee will be responsible for the full month's rental payment. Under no circumstances will any Lease Term be for less than one (1) month.

3. **HOLDING OVER; LEASE EXTENSION.** If Lessee (a) fails to notify Lessor of the intended return of Equipment, (b) fails to prepare the Equipment for removal as required or (c) fails to pay the charges upon return as required, the Lease Term shall be extended, on a month-to-month basis, beyond the Lease Term stated above. In this event, Lessor may establish a revised rental rate and other charges related to the return of the Equipment may also be revised by Lessor for such extended Lease Term.

4. **LESSEE AGREEMENTS.** Lessee agrees that:

(a) Lessor (or its agents, employees or contractors) may, from time to time at any reasonable time, enter upon the premises of Lessee for the purposes of (1) inspecting the Equipment or posting "Notices of Non-Responsibility" or similar notices thereon, or (2) photographing the Equipment, including any items or occupants within or surrounding the Equipment, for promotional or other purposes. If Lessor determines that repairs to the Equipment are needed, Lessee shall grant access for said repairs. Lessor shall bear the expense of any repairs that it determines are needed to ameliorate normal wear and tear; the expense of all other repairs (including any repairs requested by Lessee) shall be borne by Lessee. If Lessee does not grant access for such repairs between 8:00 a.m. and 5:00 p.m., Monday through Friday, Lessee shall bear the cost of repair rates for labor at the applicable overtime rates.

5. **ASSIGNMENT.** Lessee will not assign, convey, transfer, or hypothecate its interest, or any part thereof, in and to any Lease or the Equipment, whether voluntarily or involuntarily, without the prior written consent of Lessor.

6. **PAYMENTS.** Lessee agrees to pay to Lessor (at the office of Lessor or to such other person or at such other place as Lessor may from time to time designate to Lessee in writing) each payment specified herein on a net invoice basis without demand by Lessor. All payments due from Lessee pursuant to the terms of the Lease shall be made by Lessee without any abatement or setoff of any kind whatsoever arising from any cause whatsoever.

7. **TAXES AND LIENS.** Lessee agrees to keep the Equipment free of all levies, liens or encumbrances. Lessee shall, in the manner directed by Lessor, (a) make and file all declarations and returns in connection with all charges, fees and taxes (local, state and federal) levied or assessed either upon Lessee or Lessor, or upon the ownership, leasing, rental, sale, possession, use, or operation of the Equipment, and (b) pay all such charges, fees and taxes. However, Lessor shall pay all local, state or federal net income taxes relating to the Lease. If Lessee fails to pay taxes and charges as required by this Section, Lessor shall have the right, but not the obligation, to make such payments. In the event that Lessor makes any such payments, Lessee shall reimburse Lessor for such costs as deemed appropriate by Lessor and as invoiced by Lessor.

8. **LOSS OR DAMAGE.** Until the Equipment is returned to Lessor, Lessee assumes all risk of loss or damage to the Equipment. Subject to Section 10(b), should any Equipment damaged be capable of repair, the Lease shall not terminate, but Lessee shall cause the Equipment to be repaired and restored to its condition existing prior to such damage, at Lessee's sole expense. Lessee shall be entitled to the benefit of the proceeds from any insurance recovery received by Lessor, up to an amount equal to that paid to Lessor pursuant to this paragraph.

9. **INSURANCE.** (a) Lessee shall provide, maintain, and pay all premiums for insurance covering the loss, theft, destruction, or damage to the Equipment in an amount not less than the full replacement value thereof, naming Lessor as loss payee of the proceeds. Should Lessee fail to procure and maintain such insurance, Lessee shall indemnify Lessor to the extent Lessor suffers or incurs loss, damage, liability or expense as a consequence of such failure.

10. **WAIVER AND INDEMNIFICATION.**

(a) Lessor shall not be responsible for any loss or damage upon or about the Equipment in Lessee's possession and any injuries to Lessee, Lessee's agent and third parties. Under no circumstances shall Lessor be liable to Lessee for any special, incidental or consequential damages of any kind (including, but not limited to damages for loss of use, or profit, by Lessee or for any collateral damages), whether or not caused by Lessor's negligence or delay, resulting from the Lease or the manufacture, delivery, installation, removal or use of the Equipment, or in connection with the services rendered by Lessor hereunder, even if the Lessee has been advised of the possibility of such damages.

(b) Lessee agrees to indemnify and hold harmless Lessor from and against any and all losses, liabilities, costs, expenses (including