

**CITY OF NORTH MIAMI
PROFESSIONAL SERVICES AGREEMENT**

(Piggyback Agreement – School District of Suwannee County RFP# 11-203)

THIS PROFESSIONAL SERVICES AGREEMENT (“Agreement”) is made and entered into this _____ day of 9/8/2014, 2014 by and between the **City of North Miami**, a Florida municipal corporation, having its principal office at 776 NE 125th Street, North Miami, FL 33161 (“City”) and **Mobile Modular Management Corporation**, a foreign for-profit corporation registered and authorized to do business in the State of Florida, having its principal office at 5700 Las Positas Road, Livermore, CA 94551 (“Contractor”). The City and Contractor shall collectively be referred to as the “Parties”, and each may individually be referred to as a “Party”.

RECITALS

WHEREAS, on January 12, 2012, the School District of Suwannee County, Florida (“County”), issued *Request for Proposals RFP #11-203*, as subsequently amended on July 1, 2014 (“RFP”), seeking proposals from qualified contractors to fabricate, deliver and install permitted panelized modular units, including related accessories on an “as needed” basis at locations within the County, in accordance with the technical specifications, terms and conditions contained in the RFP (“Services”); and

WHEREAS, Contractor submitted its Proposal in response to the RFP, and was ranked and selected by the County on the basis of completeness, pricing, availability of inventory, and the variety of options offered to the County by Contractor; and

WHEREAS, on January 17, 2012, the County issued an official award to Contractor for Services, with a renewable term of three (3) additional years; and

WHEREAS, the City administration has identified the need for Services by Contractor for the continued operational use of the City of North Miami Public Library (“Library”), as required throughout the period for the completion of the interior renovation and remodeling project of the Library; and

WHEREAS, on October 23, 2007, the Mayor and City Council of the City of North Miami, adopted Ordinance 1244, which authorizes the City Manager to approve the purchase of supplies, goods and/or services from current contracts of other governmental entities (“piggyback”), such as the County; and

WHEREAS, Contractor is willing to provide Services to the City at the same favorable terms, conditions and rates extended to the County; and

WHEREAS, the City Manager finds that the diligent procurement of Services to facilitate ongoing Library operations, using the most cost effective means available, is in the City’s best interest.

NOW THEREFORE, in consideration of the mutual terms and conditions set forth herein and other good and valuable consideration, the Parties hereto agree as follows:

ARTICLE 1 - RECITALS

1.1 The recitals are true and correct and are hereby incorporated into and made a part of this Agreement.

ARTICLE 2 - CONTRACT DOCUMENTS

2.1 The following documents, collectively referred to as the "Contract Documents", are incorporated into and made part of this Agreement:

2.1.1 County's *Request for Proposals RFP #11-203*, attached hereto by reference;

2.1.2 County's amendments to *Request for Proposals RFP #11-203*, indicated as Attachment "A", "B", "C", and "D", dated July 1, 2014, attached hereto as "Exhibit A";

2.1.3 Contractor's response to County's RFP, dated January 12, 2012 ("Proposal"), attached hereto as "Exhibit B";

2.1.3 County's Recommendation of Award Memorandum, dated January 12, 2012, attached hereto as "Exhibit C";

2.1.4 Any additional documents which are required to be submitted by Contractor in the provision of Services.

ARTICLE 3 - TERM OF AGREEMENT

3.1 Subject to authorized time adjustments, the Term of this Agreement shall be a period of six (6) months, commencing on the date this Agreement is executed. This Term may be extended by the written mutual consent of the Parties.

3.2 When, in the opinion of the City, reasonable grounds for uncertainty exist with respect to the Contractor's ability to perform Services or any portion thereof, the City may request that the Contractor, within a reasonable time frame set forth in the City's request, provide adequate assurances to the City in writing, of Contractor's ability to perform in accordance with terms of this Agreement. In the event that the Contractor fails to provide the City the requested assurances within the prescribed time frame, the City may treat such failure as a repudiation or breach of this Agreement, and resort to any remedy for breach provided for in this Agreement or at law.

ARTICLE 4 - COMPENSATION

4.1 The City agrees to pay Contractor an amount not to exceed Fourteen Thousand Six Hundred Twenty Three Dollars and fifty cents (\$14,623.50) for Services rendered for the Term of Agreement. Funding for this Agreement is contingent on the availability of funds and the Agreement is subject to amendment or termination due to lack of funds or a reduction of funds, upon ten (10) days written notice to Contractor.

4.2 Contractor's price list shall remain fixed for the duration of the Term of Agreement and for any subsequent renewal periods.

4.3 The City shall pay Contractor within forty-five (45) days of receipt of invoice the total shown to be due on such invoice, provided the City has accepted the Services.

ARTICLE 5 - SCOPE OF SERVICES

5.1 Contractor shall provide all labor, supervision, materials, equipment, tools, services and expertise necessary for the completion of Services, in accordance with the specifications, terms and conditions contained in the Contract Documents. Contractor shall perform the Services in accordance with that degree of care and skill ordinarily exercised by reputable members of its profession.

5.2 Contractor represents and warrants to the City that: (i) Contractor possesses all qualifications, licenses and expertise required for the provision of Services, with personnel fully licensed by the State of Florida; (ii) Contractor is not delinquent in the payment of any sums due the City, including payment of permit fees, local business taxes, or in the performance of any obligations to the City; (iii) all personnel assigned to perform work shall be, at all times during the term hereof, fully qualified and trained to perform the tasks assigned to each; (iv) the Services will be performed in the manner and at such times and locations as described by the City for the budgeted amount; and (v) the person executing this Agreement on behalf of Contractor is duly authorized to execute same and fully bind Contractor as a party to this Agreement.

5.3 Contractor agrees and understands that: (i) any and all subcontractors used by Contractor shall be paid by Contractor and not paid directly by the City; and (ii) any and all liabilities regarding payment to, or use of subcontractors for any of the work related to this Agreement, shall be borne solely by Contractor.

5.4 Contractor warrants that any and all work, materials, services or equipment that may reasonably be inferred from the Contract Documents as being required to produce the intended result, will be supplied by the Contractor at its own cost, whether or not specifically called for.

5.5 The Services shall be completed by the Contractor to the satisfaction of the City. The City shall make decisions on all claims regarding interpretation of the Agreement and on all other matters relating to the execution, progress and quality of the Services.

ARTICLE 6 - CITY'S TERMINATION RIGHTS

6.1 The City shall have the right to terminate this Agreement, in its sole discretion at any time, with or without cause, upon ten (10) days written notice to Contractor. In such event, the City shall pay Contractor compensation for Services rendered prior to the effective date of termination. The City shall not be liable to Contractor for any additional compensation, or for any consequential or incidental damages.

ARTICLE 7 - INDEPENDENT CONTRACTOR

7.1 Contractor has been procured and is being engaged by the City as an independent contractor, and not as an agent or employee of the City. Accordingly, Contractor shall not attain, nor be entitled to, any rights or benefits under the Civil Service or Pension Ordinances of the City, nor any rights generally afforded classified or unclassified employees of the City. Contractor further understands that Florida workers' compensation benefits available to employees of the City, are not available to Contractor. Therefore, Contractor agrees to provide workers' compensation insurance for any employee or agent of Contractor rendering services to the City under this Agreement.

ARTICLE 8 - CONFLICTS OF INTEREST

8.1 The Contractor represents and warrants to the City that it has not employed or retained any person or company employed by the City to solicit or secure this Agreement and that it has not offered to pay, paid, or agreed to pay any person any fee, commission, percentage, brokerage fee, or gift of any kind contingent upon or in connection with, the award of this Agreement.

8.2 Contractor covenants that no person under its employ who presently exercises any functions or responsibilities on behalf of the City in connection with this Agreement has any personal financial interest, directly or indirectly with Contractor. Contractor further covenants that, in the performance of this Agreement, no person having such conflicting interest shall be employed.

ARTICLE 9 - DEFAULT

9.1 If Contractor fails to comply with any term or condition of this Agreement, or fails to perform any of its obligations hereunder, then Contractor shall be in default. The City shall have the right to terminate this Agreement, in the event Contractor fails to cure a default within ten (10) business days after receiving Notice of Default. Contractor understands and agrees that termination of this Agreement under this section shall not release Contractor from any obligations accruing prior to the effective date of termination.

ARTICLE 10- NOTICES

10.1 All notices, demands, correspondence and communications between the City and Contractor shall be deemed sufficiently given under the terms of this Agreement when delivered by personal service, faxed, or dispatched by mail or certified mail, addressed as follows:

To Contractor: Mobile Modular Management Corporation
 Attn: Alex de Urbizu
 1100 State Highway 559
 Auburndale, FL 33823-9356
 Phone: (863) 965-3700
 Fax: (863) 965-7814
 Email: Alex.Deubizu@MobileModularRents.com

To City: City of North Miami
 Attn: City Manager
 776 N.E. 125th Street

North Miami, Florida 33161

With a copy to: City Attorney
City of North Miami
776 N.E. 125th Street
North Miami, Florida 33161

10.2 Either Party may at any time designate a different address and/or contact person by giving notice as provided above to the other Party. Such notices shall be deemed given upon receipt by the addressee.

10.3 In the event there is a change of address and the moving Party fails to provide notice to the other Party, then notice sent as provided in this Article shall constitute adequate notice.

ARTICLE 11 - PUBLIC RECORDS

11.1 Contractor understands that the public shall have access, at all reasonable times, to all documents and information pertaining to City contracts, subject to the provisions of Chapter 119, Florida Statutes, and agrees to allow access by the City and the public to all documents subject to disclosure under applicable law.

11.2 The Contractor shall additionally comply with the provisions of Section 119.0701, Florida Statutes, entitled "Contracts; public records".

ARTICLE 12 - INDEMNIFICATION

12.1 Contractor shall defend, indemnify and hold harmless the City, its officers and employees from and against any and all claims, costs, losses and damages including, but not limited to reasonable attorney's fees, caused by the negligent acts or omissions of the Contractor, its officers, directors, agents, partners, subcontractors, employees and managers in the performance of the Services under this Agreement.

12.2 The Contractor shall be fully responsible to City for all acts and omissions of the Contractor, its employees, subcontractors, suppliers, or other persons directly or indirectly employed by its subcontractors or suppliers, and any other persons or organizations performing or furnishing supplies under a direct or indirect agreement with Contractor. Nothing in the Contract Documents shall create any contractual relationship between City and any such subcontractor, supplier or other person or organization, nor shall it create any obligation on the part of City to pay or to cause the payment of any money due any subcontractor, supplier, employee or agent except as may otherwise be required by law.

12.3 Nothing contained in this Agreement is any way intended to be a waiver of the limitation placed upon the City's liability as set forth in Chapter 768, Florida Statutes. Additionally, the City does not waive sovereign immunity, and no claim or award against the City shall include attorney's fees, investigative costs or pre-judgment interest.

ARTICLE 13 - INSURANCE

13.1 Prior to commencing Services, the Contractor shall submit certificates of insurance evidencing the required coverage under the Contract Documents and specifically providing that the City is an additional named insured with respect to the required coverage and the operations of the Contractor under this Agreement. Contractor shall not commence Services under this Agreement until after Contractor has obtained all of the minimum insurance described and the policies of such insurance detailing the provisions of coverage have been received and approved by the City.

13.2 Contractor shall not permit any subcontractor to begin work until after similar minimum insurance to cover subcontractor has been obtained and approved. In the event the insurance certificate provided indicates that the insurance shall terminate and lapse during the term of this Agreement, Contractor shall furnish, at least thirty (30) calendar days prior to expiration of the date of the insurance, a renewed certificate of insurance as proof that equal and like coverage and extension is in effect. Contractor shall not continue to perform the Services required by this Agreement unless all required insurance remains in full force and effect.

13.3 All insurance policies required of the Contractor shall be written by a company with a Best's rating of B+ or better and duly authorized and licensed to do business in the State of Florida and be executed by duly licensed managers upon whom service of process may be made in Miami-Dade County, Florida. The City may accept coverage with carriers having lower Best's ratings upon review of financial information concerning Contractor and the insurance carrier.

ARTICLE 14 - FORCE MAJEURE

14.1 A "Force Majeure Event" shall mean an act of God, act of governmental body or military authority, fire, explosion, power failure, flood, storm, hurricane, sink hole, other natural disasters, epidemic, riot or civil disturbance, war or terrorism, sabotage, insurrection, blockade, or embargo. In the event that either Party is delayed in the performance of any act or obligation pursuant to or required by the Agreement by reason of a Force Majeure Event, the time for required completion of such act or obligation shall be extended by the number of days equal to the total number of days, if any, that such Party is actually delayed by such Force Majeure Event. The Party seeking delay in performance shall give notice to the other Party specifying the anticipated duration of the delay, and if such delay shall extend beyond the duration specified in such notice, additional notice shall be repeated no less than monthly so long as such delay due to a Force Majeure Event continues. Any Party seeking delay in performance due to a Force Majeure Event shall use its best efforts to rectify any condition causing such delay and shall cooperate with the other Party to overcome any delay that has resulted.

ARTICLE 15 - MISCELLANEOUS PROVISIONS

15.1 No waiver or breach of any provision of this Agreement shall constitute a waiver of any subsequent breach of the same or any other provision hereof, and no waiver shall be effective unless made in writing.

15.2 All representations, indemnifications, warranties and guarantees made in, required by, or given in accordance with this Agreement, as well as all continuing obligations indicated in the

Contract Documents, shall survive final payment, completion and acceptance of the Services and termination or completion of the Agreement.

15.3 Should any provision, paragraph, sentence, word or phrase contained in this Agreement be determined by a court of competent jurisdiction to be invalid, illegal or otherwise unenforceable under the laws of the State of Florida, such provision, paragraph, sentence, word or phrase shall be deemed modified to the extent necessary in order to conform with such laws, or if not modifiable, then same shall be deemed severable, and in either event, the remaining terms and provisions of this Agreement shall remain unmodified and in full force and effect or limitation of its use.

15.4 Services shall not be subcontracted, transferred, conveyed, or assigned under this Agreement in whole or in part to any other person, firm or corporation without the prior written consent of the City.

15.5 The City is exempt from Federal Excise and State taxes. The applicable tax exemption number or certificate shall be made available upon request.

15.6 This Agreement constitutes the sole and entire agreement between the Parties. No modification or amendments hereto shall be binding on either Party unless in writing and signed by both Parties.

15.7 This Agreement shall be construed and enforced according to the laws of the State of Florida. Venue in any proceedings between the Parties shall be in Miami-Dade County, Florida.

15.8 The City reserves the right to audit the records of the Contractor covered by this Agreement at any time during the provision of Services and for a period of three years after final payment is made under this Agreement.

15.9 The Contractor agrees that it shall not discriminate as to race, sex, color, creed, national origin, or disability, in connection with its performance under this Agreement.

15.10 The professional Services to be provided by Contractor pursuant to this Agreement shall be non-exclusive, and nothing herein shall preclude the City from engaging other firms to perform Services.

15.11 This Agreement shall be binding upon the Parties herein, their heirs, executors, legal representatives, successors and assigns.

15.12 The Contractor agrees to comply with and observe all applicable federal, state, and local laws, rules, regulations, codes and ordinances, as they may be amended from time to time.

15.13 All other terms and conditions set forth in the Contract Documents which have not been modified by this Agreement, shall remain in full force and effect.

15.14 In the event of any dispute arising under or related to this Agreement, the prevailing Party shall be entitled to recover all actual attorney fees, costs and expenses incurred by it in connection with that dispute and/or the enforcement of this Agreement, including all such actual attorney fees, costs and expenses at all judicial levels, including appeal, until such dispute is resolved with finality.

15.15 This Agreement may be executed in two or more counterparts, each of which shall constitute an original but all of which, when taken together, shall constitute one and the same Agreement.

IN WITNESS WHEREOF, the Parties have executed this Agreement by their respective proper officers duly authorized the day and year first written above.

ATTEST:

Mobile Modular Management Corporation, a foreign for-profit corporation:

Corporate Secretary or Witness:

"Contractor"

By: [Signature]

By: [Signature]

Print Name: KEITH JONES

Print Name: Alex de Urbizu

Title: Operations Manager

Title: Sales Rep.

Date: 9/2/2014

Date: 9/2/2014

ATTEST:

City of North Miami, a Florida municipal corporation:

DocuSigned by:
By: [Signature]
2C7010872EE0414
Michael A. Etienne
City Clerk

DocuSigned by:
By: [Signature]
AD8C42G2AF4E44B
Aleem A. Ghany
City Manager

APPROVED AS TO FORM AND LEGAL SUFFICIENCY:

By: [Signature]
9787BB01BC7F413
Regine M. Monestime
City Attorney