

**CITY OF BOLIVAR**  
Special Council Meeting  
**January 21st, 2014 at 5:30 p.m.**  
To be held at SBU Campus, Sells Board Room  
1600 University Ave, Bolivar MO 65613

**Notice of open meeting**

\_\_\_\_\_,p.m.  
Posting date & time of Notice

**Notice is hereby given**

The Board of Aldermen will conduct a **Special Council Meeting** at **5:30 p.m.** on **Tuesday, January 21<sup>st</sup>, 2014** at the Sells Board Room, at Southwest Baptist University Bolivar MO.

The tentative agenda of this meeting includes:

1. Call to Order
2. JDC Building Final Closing
3. ORDINANCE AUTHORIZING CITY OF BOLIVAR, MISSOURI, TO ENTER INTO A BASE LEASE WITH CLAYTON HOLDINGS LLC, AND A LEASE PURCHASE AGREEMENT WITH CLAYTON HOLDINGS LLC TO FINANCE A CAPITAL PROJECT FOR THE CITY. BILL NUMBER 2014-46
4. Fire Grant Acceptance- SAFER GRANT
5. Adjournment

The news media may obtain copies of this notice by contacting:

Natalie Scrivner, Deputy City Clerk  
P.O. Box 9  
345 S. Main Ave.  
417-326-2489

**If you have a need for special accommodation,**

**Please notify the City Clerk's Office at least 24 hours prior to this meeting.**

**ORDINANCE AUTHORIZING CITY OF BOLIVAR, MISSOURI, TO ENTER INTO A BASE LEASE WITH CLAYTON HOLDINGS LLC, AND A LEASE PURCHASE AGREEMENT WITH CLAYTON HOLDINGS LLC TO FINANCE A CAPITAL PROJECT FOR THE CITY.**

**WHEREAS**, the City of Bolivar, Missouri (the "City"), desires to obtain moneys to finance the costs of acquiring certain land and the improvements thereon for the City (the "Project"); and

**WHEREAS**, in order to finance the costs of the Project, it is necessary and desirable for the City to take the following actions:

1. Enter into a Base Lease (the "Base Lease"), with Clayton Holdings LLC (the "Bank"), pursuant to which the City will lease the Project to the Bank; and
2. Enter into a Lease Purchase Agreement (the "Lease"), with the Bank, pursuant to which the City will lease the Project) from the Bank with an option to purchase.

**NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF ALDERMEN OF CITY OF BOLIVAR, MISSOURI, AS FOLLOWS:**

**Section 1. Approval of Base Lease and the Lease.** The Base Lease and the Lease are hereby approved in substantially the forms on file with the City, with such changes therein as shall be approved by the Mayor of the governing body, the Mayor's execution thereof to be conclusive evidence of the approval thereof, provided that such changes will not conflict with the proposal of Clayton Holdings LLC, to the City, a copy of which is on file with the City and the terms of which are approved. The principal amount of the financing shall not exceed \$500,000 and the interest rate for the financing will be calculated in accordance with the formula included in the proposal as follows: The interest rate pursuant to the five year interest rate swaps index as quoted in the Federal Reserve Statistaical Release H.15 (determined three days prior to the closing) + 2.09% and then multiplied by 0.65.

The Mayor of the governing body is hereby authorized and directed to execute and deliver the Base Lease and the Lease on behalf of and as the act and deed of the City. The City Clerk is hereby authorized to affix the City's seal thereto and attest said seal.

**Section 2. Further Authority.** The City shall, and the officials and agents of the City are hereby authorized and directed to, take such action, expend such funds and execute such other documents, certificates and instruments as may be necessary or desirable to carry out and comply with the intent of this Ordinance and to carry out, comply with and perform the duties of the City with respect to the Base Lease, the Lease and the Project.

**Section 3. Effective Date.** This Ordinance shall take effect and be in full force from and after its adoption by the governing body.

**ADOPTED** by the governing body of the City of Bolivar, Missouri, and **APPROVED** by the Mayor this 14th day of January, 2014.

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Mayor

[SEAL]

ATTEST:

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City Clerk

## LEASE PURCHASE AGREEMENT

**LESSOR:** CLAYTON HOLDINGS LLC, a Missouri limited liability company

**LESSEE:** CITY OF BOLIVAR, MISSOURI, a Missouri fourth class city

**DATE:** FEBRUARY 1, 2014

**THIS LEASE PURCHASE AGREEMENT**, dated as of the date set forth above, by and between the Lessor named above (together with its successors and assigns, "Lessor"), and the Lessee named above (together with its successors, "Lessee"),

### WITNESSETH:

**WHEREAS**, Lessor proposes to take the following actions:

- (a) Lease from Lessee, the real property described in **Schedule 1** (the "Land");
- (b) Provide funds in the aggregate amount of the principal portions of Rental Payments listed on **Exhibit A** to finance costs of acquiring the Land and the improvements located thereon (the "Improvements," with the Land and the Improvements being the "Project"); and
- (c) Lease its interest in the Project to Lessee for the rentals and upon the terms and conditions hereinafter set forth; and

**WHEREAS**, Lessee, pursuant to the foregoing proposals of Lessor, desires to lease the Project from Lessor, for the rentals and upon the terms and conditions hereinafter set forth,

**NOW, THEREFORE**, in consideration of the premises and the mutual covenants and agreements herein set forth, Lessor and Lessee do hereby covenant and agree as follows:

## ARTICLE I

### DEFINITIONS AND RULES OF CONSTRUCTION

**Section 1.1. Definitions of Words and Terms.** In addition to words and terms defined herein, the following words and terms as used in the Base Lease and this Lease shall have the following meanings, unless some other meaning is plainly intended:

"**Additional Rent**" means those payments required to be made by Lessee by **Section 4.2**.

"**Base Lease**" means the Base Lease dated as of the date hereof between Lessor and Lessee, as from time to time supplemented or amended in accordance with **Section 18** of the Base Lease.

"**Code**" means the Internal Revenue Code of 1986, as amended.

"**Cost**" or "**Costs**" means all reasonable or necessary expenses incidental to the acquisition of the Project, including the expenses of studies, surveys, land title and title policies, architectural and engineering services, legal and other special services and all other necessary and incidental expenses.

"**Counsel**" means an attorney duly admitted to practice law before the highest court of any state and, without limitation, may include legal counsel for either Lessee or Lessor.

"**Event of Default**" or "**Default**" means any Event of Default as defined in **Section 12.1**.

"**Fiscal Year**" means the fiscal year of Lessee for financial and budgetary purposes as set forth on **Exhibit B**.

"**Impositions**" means those Impositions defined as such in **Article VI**.

"**Improvements**" means the facilities, improvements, fixtures, equipment, furnishings and support facilities constituting a part of the Project, as further described on **Exhibit B**.

"**Land**" means the real property described in **Schedule 1** to this Lease.

"**Lease**" means this Lease Purchase Agreement between Lessor and Lessee, as from time to time supplemented and amended in accordance with **Article XIII**.

"**Lease Term**" means the Original Term and any Renewal Terms.

"**Lessee Representative**" means the Mayor, City Administrator, City Clerk or other person or persons at the time designated to act on behalf of Lessee in matters relating to the Base Lease and this Lease as evidenced by a written certificate furnished to Lessor containing the specimen signature of such person or persons and signed on behalf of Lessee by its presiding official. Such certificate may designate an alternate or alternates each of whom shall be entitled to perform all duties of Lessee Representative.

"**Lessor Representative**" means the person or persons at the time designated to act on behalf of Lessor in matters relating to the Base Lease and this Lease as evidenced by a written certificate furnished to Lessee containing the specimen signature of such person or persons and signed on behalf of Lessor by its authorized officer. Such certificate may designate an alternate or alternates, each of whom shall be entitled to perform all duties of the Lessor Representative.

"**Maximum Lease Term**" means the Original Term and all Renewal Terms through the final Rental Payment Date listed on **Exhibit A**.

"**Net Proceeds**" when used with respect to any insurance proceeds or any condemnation award or amounts received from the sale of property under the threat of condemnation, means the amount remaining after deducting all expenses (including attorneys' fees and any expenses of Lessee and Lessor) incurred in the collection of such proceeds or award from the gross proceeds thereof.

"**Original Term**" means the initial term of this Lease beginning as of the date on which funds to pay the Costs of the Project are deposited with the Lessee and ending on the last day of Lessee's current Fiscal Year.

"**Project**" means the project referred to in the recitals of this Lease, including Lessor's interest in the Land and the Improvements.

**"Project Documents"** means the Base Lease, the Lease and any other agreements, documents or certificates related to the foregoing or the Project.

**"Purchase Price"** means the amount designated as such on **Exhibit A** that Lessee may, in its discretion, pay to Lessor to purchase the Project.

**"Renewal Terms"** means the renewal terms of this Lease during which the Lease Term is extended in accordance with **Section 3.2**, each having a duration of one year and a term coextensive with Lessee's Fiscal Year except as otherwise provided in said **Section 3.2**.

**"Rental Payment Dates"** means the dates during the Lease Term on which Rental Payments are due as set forth on **Exhibit A**.

**"Rental Payments"** means those payments required to be made by Lessee by **Section 4.1**.

**"State"** means the state in which Lessee is located.

**Section 1.2. Rules of Construction.** Words of the masculine gender shall be deemed and construed to include correlative words of the feminine and neuter genders. Unless the context shall otherwise indicate, the words importing the singular number shall include the plural and vice versa, and words importing person shall include firms, associations and corporations, including public bodies, as well as natural persons.

The words "herein," "hereby," "hereunder," "hereof," "hereto," "hereinbefore," "hereinafter" and other equivalent words refer to this Lease and not solely to the particular article, section, paragraph or subparagraph hereof in which such word is used.

Reference herein to a particular article, a particular section, a particular exhibit or a particular schedule shall be construed to be a reference to the specified article, section, exhibit or schedule hereof or hereto unless the context or use clearly indicates another or different meaning or intent.

Whenever an item or items are listed after the word "including," such listing is not intended to be a listing that excludes items not listed.

**Section 1.3. Section and Article Headings.** The Section and Article headings herein are for convenience only and in no way define, limit or describe the scope or intent of any of the provisions hereof.

**Section 1.4. Execution of Counterparts.** This Lease may be executed simultaneously in two or more counterparts, each of which shall be deemed to be an original, and all of which together shall constitute but one and the same instrument.

**Section 1.5. Construction and Enforcement.** This Lease shall be construed and enforced in accordance with the laws of the State. Wherever in this Lease it is provided that either party shall or will make any payment or perform or refrain from performing any act or obligation, each such provision shall, even though not so expressed, be construed as an express covenant to make such payment or to perform, or not to perform, as the case may be, such act or obligation.

**Section 1.6. Severability.** In the event any provision hereof shall be determined to be invalid or unenforceable, the validity and effect of the other provisions hereof shall not be affected thereby.

**Section 1.7. Complete Agreement.** This written agreement is a final expression of the agreement between the parties hereto and such agreement may not be contradicted by evidence of any prior oral agreement or of a contemporaneous oral agreement between the parties hereto. No unwritten oral agreement between the parties exists.

**Section 1.8. Accounting Terms.** Accounting terms used herein and not otherwise specifically defined shall have the meaning ascribed to such terms by accounting principles generally accepted in the United States of America as from time to time in effect.

## ARTICLE II

### REPRESENTATIONS

**Section 2.1. Representations by Lessee.** Lessee represents, warrants and covenants as follows:

(a) Lessee is a public body corporate and politic duly organized and existing under the constitution and laws of the State with full power and authority to enter into each of the Project Documents and the transactions contemplated hereby and to perform all of its obligations hereunder;

(b) The lease of the Project by Lessor to Lessee, as provided in this Lease, is desirable and in the public interest, and Lessee hereby declares its current need for the Project;

(c) The Project will result in structurally sound buildings and related improvements and support facilities which will be in compliance with all applicable building and design codes and Lessee's requirements and will result in a facility suitable for the use by Lessee set forth on **Exhibit B**;

(d) Lessee believes that the aggregate of the Costs of the Project will not exceed the amount being provided by Lessor under this Lease together with other funds Lessee has available to pay such Costs;

(e) Lessee has duly authorized the execution and delivery of each of the Project Documents by proper action by its governing body at a meeting duly called, regularly convened and attended throughout by the requisite majority of the members thereof or by other appropriate official approval, and all requirements have been met and procedures have occurred in order to ensure the validity and enforceability of each of the Project Documents;

(f) Neither the execution and delivery of any Project Document, nor the fulfillment of or compliance with the terms and conditions thereof, nor the consummation of the transactions contemplated thereby, conflicts with or results in a breach of the terms, conditions or provisions of any restriction or any agreement or instrument to which Lessee is a party or by which Lessee is bound;

(g) There is no proceeding pending or threatened in any court or before any governmental authority or arbitration board or tribunal challenging the validity of the authorization or the power or authority of Lessee to enter into any Project Document or the validity or enforceability of any Project Document or which, if adversely determined, would adversely affect



the transactions contemplated by any Project Document or the interest of Lessor or its assigns under any Project Document;

(h) Lessee has not made, done, executed or suffered, and warrants that it will not make, do, execute or suffer, any act or thing whereby Lessee's interests in any property now or hereafter included in the Project shall be or may be impaired, changed or encumbered in any manner whatsoever, except as contemplated by the Base Lease and this Lease;

(i) No event or condition that constitutes, or with the giving of notice or the lapse of time or both would constitute, an Event of Default exists at the date hereof;

(j) Lessee has, in accordance with the requirements of law, fully budgeted and appropriated sufficient funds for the current Fiscal Year to make the Rental Payments scheduled to come due during the Original Term, and to meet its other obligations for the Original Term, and such funds have not been expended for other purposes;

(k) Lessee will do or cause to be done all things necessary to preserve and keep in full force and effect its existence as a body corporate and politic;

(l) Lessee has complied, or will comply, with such public bidding requirements as may be applicable to any of the Project Documents and the acquisition by Lessee of the Project; and

(m) During the Lease Term, the Project will be used by Lessee only for the purpose of performing governmental or proprietary functions of Lessee consistent with the permissible scope of Lessee's authority.

### **ARTICLE III**

#### **GRANTING PROVISIONS; TERM**

**Section 3.1. Granting of Leasehold.** Lessor, by these presents, hereby rents, leases and lets the Project unto Lessee, and Lessee hereby rents, leases and hires the Project from Lessor for the Rentals and subject to the terms and conditions hereinafter set forth.

**Section 3.2. Lease Term.** The Original Term shall commence as of the date of delivery of this Lease and shall terminate on the last day of Lessee's current Fiscal Year. The Lease Term may be continued, at the option of Lessee, at the end of the Original Term or any Renewal Term for an additional one year Renewal Term; provided that the final Renewal Term shall not extend beyond the final Rental Payment Date set forth on **Exhibit A**. Lessee shall be deemed to have exercised its option to continue this Lease for the next Renewal Term unless Lessee shall have terminated this Lease pursuant to **Section 3.3** or **10.1**. The terms and conditions during any Renewal Term shall be the same as the terms and conditions during the Original Term, except that the Rental Payments shall be as provided on **Exhibit A**.

Lessee currently intends, subject to the provisions of **Section 3.3**, to continue this Lease through the Maximum Lease Term and to pay the Rentals hereunder. Lessee reasonably believes that legally available funds in an amount sufficient to pay all Rentals during the Original Term and each of the Renewal Terms through the Maximum Lease Term can be obtained. The responsible financial officer of Lessee shall do all things lawfully within his power to obtain and maintain funds from which the Rentals may be made, including making provision for such Rentals to the extent necessary in each proposed annual budget submitted for approval in accordance with applicable procedures of Lessee and to exhaust all available reviews and appeals in the event such portion of the budget is not approved. Notwithstanding the foregoing,

the decision to budget and appropriate funds or to extend this Lease for any Renewal Term is to be made in accordance with Lessee's normal procedures for such decisions, and the then current governing body of Lessee will have the final responsibility for that decision.

**Section 3.3. Nonappropriation.** Lessee is obligated only to pay such Rental Payments under this Lease as may lawfully be made from funds budgeted and appropriated for that purpose during Lessee's then current Fiscal Year. Should Lessee fail to budget, appropriate or otherwise make available funds sufficient to pay Rental Payments following the then current Original Term or Renewal Term, this Lease shall be deemed terminated at the end of the then current Original Term or Renewal Term. Lessee agrees to deliver notice to Lessor of such termination at least 90 days prior to the end of the then current Original Term or Renewal Term, but failure to give such notice shall not extend the term beyond such Original Term or Renewal Term. If this Lease is terminated in accordance with this Section, Lessee agrees to transfer possession of the Project to Lessor.

**Section 3.4. Use of Premises.** Lessee shall have the right to use the Project for any governmental or proprietary purpose of Lessee, subject to the limitations contained in the Project Documents.

#### ARTICLE IV

#### PROVISIONS FOR PAYMENT OF RENTALS

**Section 4.1. Rentals.** Lessee shall promptly make Rental Payments, exclusively from legally available funds, in lawful money of the United States of America to Lessor on each Rental Payment, in such amounts as are described on **Exhibit A**. Lessee shall pay Lessor a charge on any Rental Payment not paid on the Rental Payment Date such Rental Payment is due at the rate of 10% per annum or the maximum amount permitted by law, whichever is less, from such date. A portion of each Rental Payment is paid as, and represents payment of, interest, as set forth on **Exhibit A**.

**Section 4.2. Additional Rent.** Lessee shall pay, subject to the provisions of **Section 3.3**, as Additional Rent (i) all Impositions (as defined in **Article VI**); (ii) all amounts required under **Section 4.6** or **14.5** and all other payments of whatever nature which Lessee has agreed to pay or assume under this Lease; (iii) all expenses, including attorneys' fees, incurred in connection with the enforcement of any rights under this Lease by Lessor. Amounts required to be paid under this Section shall be paid directly to the person or entity owed.

**Section 4.3. Rentals and Additional Rent Constitute Current Expense.** The obligation of Lessee to pay the Rentals and the Additional Rent and other amounts payable hereunder is subject to the provisions of **Section 3.3**, constitutes a current expense of Lessee and does not constitute a general obligation or indebtedness of Lessee for which Lessee is obligated to levy or pledge any form of taxation or for which Lessee has levied or pledged any form of taxation; such obligation shall not be construed to be a debt of Lessee in contravention of any applicable constitutional or statutory limitation or requirement, but in each Fiscal Year shall be payable solely from the amounts budgeted or appropriated therefor out of the income and revenue provided for such Fiscal Year, any proceeds of the Project and the Net Proceeds of any insurance or condemnation awards.

**Section 4.4. Rentals and Additional Rent Payable Without Abatement or Set-Off; Lessee's Obligations.** Subject to the provisions of **Section 3.3**, Lessee covenants and agrees that all payments of Rentals and Additional Rent shall be made by Lessee on or before the date the same become due, and Lessee shall perform all of its other obligations, covenants and agreements hereunder (including the obligation to pay Rentals and Additional Rent) without notice or demand and without abatement, deduction,

setoff, counterclaim, recoupment or defense or any right of termination or cancellation arising from any circumstance whatsoever, whether now existing or hereafter arising and irrespective of whether the acquisition of the Project shall have been started or completed.

Nothing in this Lease shall be construed as a waiver by Lessee of any rights or claims Lessee may have against Lessor under this Lease or otherwise, but any recovery upon such rights and claims shall be from Lessor separately, it being the intent of this Lease that Lessee shall be unconditionally and absolutely obligated to perform fully all of its obligations, agreements and covenants under this Lease, including its obligation to pay Rentals and Additional Rent. Lessee may, however, at its own cost and expense and in its own name or in the name of Lessor, prosecute or defend any action or proceeding or take any other action involving third persons which Lessee deems reasonably necessary in order to secure or protect its right of possession, occupancy and use hereunder, and in such event Lessor hereby agrees to cooperate fully with Lessee and to take all action necessary to effect the substitution of Lessee for Lessor in any such action or proceeding if Lessee shall so request.

**Section 4.5. Prepayment of Rentals.** Lessee may at any time prepay all or any part of the Rentals provided for hereunder.

**Section 4.6. Advances.** In the event Lessee shall fail to either maintain the insurance required by this Lease or keep the Project in good repair, Lessor may, but shall be under no obligation to, purchase the required insurance and pay the cost of the premiums therefor and maintain and repair the Project and pay the cost thereof. All amounts so advanced by Lessor shall constitute Additional Rent for the then current Original Term or Renewal Term and Lessee covenants and agrees to pay such amounts so advanced by Lessor with interest thereon from the date advanced by Lessor until paid at the rate of 10% per annum or the maximum amount permitted by law, whichever is less.

**Section 4.7. DISCLAIMER OF WARRANTIES.** LESSOR MAKES NO WARRANTY OR REPRESENTATION, EITHER EXPRESS OR IMPLIED, AS TO THE VALUE, DESIGN, CONDITION OR FITNESS FOR PARTICULAR PURPOSE OR FITNESS FOR USE OF THE PROJECT OR ANY PART THEREOF, OR WARRANTY WITH RESPECT THERETO. IN NO EVENT SHALL LESSOR BE LIABLE FOR ANY INCIDENTAL, INDIRECT, SPECIAL OR CONSEQUENTIAL DAMAGE IN CONNECTION WITH OR ARISING OUT OF THIS LEASE OR THE EXISTENCE, FURNISHING, FUNCTIONING OR LESSEE'S USE OF THE PROJECT OR ANY PART THEREOF.

## **ARTICLE V**

### **RESERVED**

## **ARTICLE VI**

### **IMPOSITIONS**

**Section 6.1. Impositions.** Lessee shall bear, pay and discharge, before the delinquency thereof, as Additional Rent, all taxes and assessments, general and special, if any, which may be lawfully taxed, charged, levied, assessed or imposed upon or against or be payable for or in respect of the Project, including any taxes and assessments not of the kind enumerated above to the extent that the same are lawfully made, levied or assessed in lieu of or in addition to taxes or assessments now customarily levied against real or personal property, and further including all water and sewer charges, assessments and other general governmental charges and impositions whatsoever, foreseen or unforeseen, which if not paid when due

would impair the security of Lessor or encumber the Project (all of the foregoing being herein referred to as "Impositions").

**Section 6.2. Contest of Impositions.** Lessee shall have the right, in its own name or in Lessor's name, to contest the validity or amount of any Imposition which Lessee is required to bear, pay and discharge pursuant to the terms of this Article by appropriate legal proceedings instituted at least 10 days before the Imposition complained of becomes delinquent and may permit the Imposition so contested to remain unpaid during the period of such contest and any appeal therefrom unless Lessor shall notify Lessee that, in the opinion of Counsel, by nonpayment of any such items the interest of Lessor in the Project will be materially endangered or the Project or any part thereof will be subject to loss or forfeiture, in which event Lessee shall promptly pay such taxes, assessments or charges or provide Lessor with full security against any loss which may result from nonpayment, in form satisfactory to Lessor. Lessor agrees to cooperate with Lessee in connection with any and all administrative or judicial proceedings related to Impositions. Lessee shall hold Lessor whole and harmless from any costs and expenses Lessor may incur with respect to any Imposition.

## ARTICLE VII

### INSURANCE; INDEMNITY

**Section 7.1. Insurance Required.** Lessee shall, during the Lease Term, cause the Project to be kept continuously insured against such risks customarily insured against for facilities such as the Project and shall pay (except as otherwise provided herein), as the same become due, all premiums in respect thereof, such insurance to include the following policies of insurance:

(a) Insurance insuring the Project against loss or damage by fire, lightning and all other risks covered by the extended coverage insurance endorsement then in use in the State in an amount not less than the lesser of an amount equal to the full insurable value thereof or the then applicable purchase price under **Section 10.1** (subject to reasonable loss deductible clauses) issued by such insurance company or companies authorized to do business in the State as may be selected by Lessee. The full insurable value of the Project may be determined from time to time at the request of Lessee or Lessor (but not less frequently than every five years) by an architect, contractor, appraiser, appraisal company or one of the insurers, to be selected, subject to Lessor's approval, and paid by Lessee. The policy or policies of such insurance shall name Lessee and Lessor as insureds and loss payees. All proceeds from such policies of insurance shall be applied as provided in **Article XI**.

(b) During the construction of improvements to the Project and in lieu of the insurance required in subparagraph (a) of this Section, builder's risk-completed value insurance insuring the Project against fire, lightning and all other risks covered by the extended coverage endorsement then in use in the State to the full insurable value of the Project (subject to reasonable loss deductible clauses), but in no event shall such amount be less than the amount necessary to prevent the application of any co-insurance provisions, issued by such insurance company or companies authorized to do business in the State as may be selected by Lessee. Such policy or policies of insurance shall name Lessee and Lessor as insureds and loss payees, and all payments received under such policy or policies by Lessee shall be paid over to Lessor;

(c) Comprehensive general accident and public liability insurance (including coverage for all losses whatsoever arising from the ownership, maintenance, operation or use of any automobile, truck or other motor vehicle), under which Lessee and Lessor are named as insureds, in

an amount not less than the amount which the Lessor shall reasonably request for a combined single limit for bodily injuries and property damage;

(d) Workers' compensation and unemployment coverages to the extent, if any, required by the laws of the State;

(e) Owner's policy of title insurance, insuring Lessor's leasehold interest under the Base Lease, in the amount set forth on **Exhibit B**, on the standard ALTA forms, subject only to such exceptions as shall be acceptable to Lessor, with such endorsements and affirmative coverages as may be reasonably required by Lessor, including endorsements respecting zoning and access to public roads and an endorsement deleting the coinsurance provisions of the standard owner's policy, and otherwise in form and substance satisfactory to Lessor and issued by a company acceptable to Lessor and authorized to issue such insurance in the State.

Not less than 15 days prior to the expiration dates of the expiring policies, originals or copies of the policies required by this Section or certificates evidencing such insurance shall be delivered by Lessee to Lessor. All policies of such insurance, and all renewals thereof, shall contain a provision that such insurance may not be cancelled by the issuer thereof without at least ten days written notice to Lessee and Lessor.

Nothing in this Lease shall be construed as preventing Lessee from satisfying the insurance requirements herein set forth by using blanket policies of insurance provided each and all of the requirements and specifications of this Lease respecting insurance are complied with.

**Section 7.2. Enforcement of Contract and Surety Bonds.** In the event of material default of any contractor or subcontractor under or any contract made in connection with the acquisition and construction of improvements to the Project, or in the event of a material breach of warranty with respect to any materials, workmanship or performance, Lessee will promptly proceed, either separately or in conjunction with others, to pursue diligently the remedies of Lessee against the contractor or subcontractor in default and against each surety on a bond securing the performance of such contract. Any amounts recovered by way of damages, refunds, adjustments or otherwise in connection with the foregoing, after deduction of expenses incurred in such recovery and after reimbursement to Lessee of any amounts theretofore paid by Lessee and not previously reimbursed to Lessee for correction or remedying of the default which gave rise to the proceedings against the contractor, subcontractor or surety, shall be held by Lessee in a separate account and not commingled with other funds of Lessee and shall be appropriated solely for the purpose of paying Rentals under this Lease.

**Section 7.3. Release and Indemnification.** To the extent permitted by law, Lessee shall indemnify, protect, hold harmless, save and keep Lessor harmless from and against any and all liability, obligation, loss, claim, tax and damage whatsoever, regardless of cause thereof, and all expenses in connection therewith (including counsel fees and expenses) arising out of or as the result of (a) the entering into of the Base Lease or this Lease, (b) the acquisition of the Project, (c) injury, actual or claimed, of whatsoever kind or character, to property or persons, occurring or allegedly occurring in, on or about the Project during the Lease Term or otherwise arising during the Lease Term because of Lessor's interest in the Project, and/or (d) the breach of any covenant by Lessee herein or any material misrepresentation by Lessee contained herein. The indemnification arising under this section shall continue in full force and effect notwithstanding the full payment of all obligations under this Lease or the termination of this Lease for any reason.

## **ARTICLE VIII**

## **ASSIGNMENT AND SUBLEASING**

**Section 8.1. Assignment by Lessor.** Lessor's right, title and interest in, to and under this Lease and the Project may be assigned and reassigned in whole or in part to one or more assignees or subassignees by Lessor without the necessity of obtaining the consent of Lessee; provided that any assignment shall not be effective until Lessee has received written notice, signed by the assignor, of the name, address and tax identification number of the assignee. Lessee agrees to keep a record of all such notices of assignment and to execute all documents, including notices of assignment and financing statements that may be reasonably requested by Lessor or any assignee to protect its interests in the Project and in this Lease. Lessee shall not have the right to and shall not assert against any assignee any claim, counterclaim or other right Lessee may have against Lessor.

**Section 8.2. Assignment and Subleasing by Lessee.** None of Lessee's right, title and interest in, to and under this Lease and in the Project may be assigned or encumbered by Lessee for any reason, except that Lessee may sublease all or part of the Project if Lessee obtains the prior written consent of Lessor and an opinion of nationally recognized counsel on the subject of tax exempt municipal obligations satisfactory to Lessor that such subleasing will not adversely affect the exclusion of the interest components of the Rental Payments from gross income for federal income tax purposes. Any such sublease of all or part of the Project shall be subject to this Lease and the rights of Lessor in, to and under this Lease and the Project.

## ARTICLE IX

### MAINTENANCE, REPAIRS AND MODIFICATIONS

**Section 9.1. Maintenance, Repairs and Modifications.** Lessee shall, at its own expense, maintain, preserve and keep the Project in good repair, working order and condition, and shall from time to time make all repairs, replacements and improvements necessary to keep the Project in such condition. Lessor shall have no responsibility for any repairs, replacements or improvements. In addition, Lessee shall, at its own expense, have the right to renovate and improve any portion of the Improvements or to make additions, modifications and improvements thereto. All such additions, modifications and improvements shall thereafter comprise part of the Project and be subject to the provisions of this Lease; provided, however, that Lessee may install at its own expense any furniture, furnishings, trade fixtures and business equipment and such furniture, furnishings, trade fixtures and business equipment (specifically excluding lighting fixtures and heating, ventilating and air conditioning equipment and wiring within conduits) shall remain the property of Lessee and shall not be subject to the provisions of this Lease. Such additions, modifications and improvements shall not in any way damage the Project nor cause it to be used for purposes other than those permitted by this Lease and authorized under the provisions of municipal, state and federal law. The Project, upon completion of any additions, modifications and improvements made pursuant to this Section, shall be of a value which is not substantially less than the value of the Project immediately prior to the making of such additions, modifications and improvements. Any property for which a substitution or replacement is made pursuant to this Section may be disposed of by Lessee in such manner and on such terms as are determined by Lessee. Lessee will not permit any mechanic's or other lien to be established or remain against the Project for labor or materials furnished in connection with any remodeling, additions, modifications, improvements, repairs, renewals or replacements made by Lessee pursuant to this Section; provided that if any such lien is established and Lessee shall first notify Lessor of Lessee's intention to do so, Lessee may in good faith contest any lien filed or established against the Project, and in such event may permit the items so contested to remain undischarged and unsatisfied during the period of such contest and any appeal therefrom unless Lessor shall notify Lessee that, in the opinion of Counsel, by nonpayment of any such item the interest of Lessor in the Project will be materially endangered or the Project or any part thereof will be subject to loss or forfeiture, in which event Lessee shall promptly pay and cause to be satisfied and discharged all such unpaid items or provide Lessor with full security against any such loss or forfeiture, in form satisfactory to Lessor. Lessor will cooperate fully with Lessee in any such contest, upon request and at the expense of Lessee.

**Section 9.2. Liens.** Lessee shall not, directly or indirectly, create, incur, assume or suffer to exist any mortgage, pledge, lien, charge, encumbrance or claim on or with respect to the Project, other than the respective rights of Lessor and Lessee as herein and in the Base Lease provided. Except as expressly provided in this Article, Lessee shall promptly, at its own expense, take such action as may be necessary to duly discharge or remove any such mortgage, pledge, lien, charge, encumbrance or claim if the same shall arise at any time. Lessee shall reimburse Lessor for any expense incurred by it in order to discharge or remove any such mortgage, pledge, lien, charge, encumbrance or claim.

## ARTICLE X

### LESSEE'S OPTION TO PURCHASE THE PROJECT

**Section 10.1. Lessee's Option to Purchase the Project.** Lessee shall have the option to purchase Lessor's interest in the Project, upon giving written notice to Lessor at least 60 days before the date of purchase, at the following times and upon the following terms:

(a) On any Rental Payment Date occurring on or after the initial purchase date set forth on **Exhibit A**, upon payment in full of the Rental Payments then due hereunder plus the then applicable Purchase Price to Lessor; or

(b) In the event of substantial damage to or destruction or condemnation (other than condemnation by Lessee or any entity controlled by or otherwise affiliated with Lessee) of substantially all of the Project, on the Rental Payment Date Lessee specifies as the purchase date in Lessee's notice to Lessor of its exercise of the purchase option, upon payment in full of the Rental Payments then due hereunder plus all remaining principal portions of Rental Payments set forth on **Exhibit A** to Lessor.

**Section 10.2. Determination of Fair Purchase Price.** Lessee and Lessor hereby agree and determine that the Rental Payment hereunder during the Original Term and any Renewal Term represent the fair value of the use of the Project and that the amount required to exercise Lessee's option to purchase Lessor's interest in the Project pursuant to **Section 10.1** represents, as of the end of the applicable Rental Payment Date, the fair purchase price of the Project. Lessee hereby determines that the Rentals do not exceed a reasonable amount so as to place Lessee under an economic practical compulsion to renew this Lease or to exercise its option to purchase the Project hereunder. In making such determinations, Lessee and Lessor have given consideration to the Costs of the Project, the uses and purposes for which the Project will be employed by Lessee, the benefit to Lessee by reason of the acquisition of the Project and the use and occupancy of the Project pursuant to the terms and provisions of this Lease and Lessee's option to purchase the Project. Lessee hereby determines and declares that the acquisition of the Project and the leasing of the Project pursuant to this Lease will result in a Project of comparable quality and meeting the same requirements and standards as would be necessary if the acquisition of the Project was performed by Lessee other than pursuant to this Lease. Lessee hereby determines and declares that the Maximum Lease Term does not exceed the useful life of the Project.

## ARTICLE XI

### **DAMAGE, DESTRUCTION AND CONDEMNATION; USE OF NET PROCEEDS**

**Section 11.1. Damage, Destruction and Condemnation.** Unless Lessee shall have exercised its option to purchase the Project and terminate this Lease as provided in **Article X**, if (i) any component of the Project is destroyed (in whole or in part) or is damaged by fire or other casualty or (ii) title to or the temporary use of such component of the Project or the interest of Lessee or Lessor in the component of the Project, shall be taken under the exercise of the power of eminent domain, or the threat of such exercise, by any governmental body or by any person, firm or corporation acting under governmental authority, Lessee shall cause the Net Proceeds of any insurance or condemnation award or any sale under threat of condemnation to be applied to the prompt replacement, repair, restoration, modification or improvement of the Project by Lessee. Any balance of the Net Proceeds remaining after such work has been completed shall be held and appropriated by Lessee for the exclusive purpose of paying Rentals under this Lease.

If Lessee determines that the replacement, repair, restoration, modification or improvement of the Project is not economically feasible or in the best interest of Lessee, then, in lieu of making such replacement, repair, restoration, modification or improvement and if permitted by law, Lessee shall promptly purchase the Project by paying the Purchase Price to Lessor and such Net Proceeds shall be applied by Lessee to such payment to the extent required for such payment. Any balance of the Net Proceeds remaining after paying the Purchase Price to Lessor shall belong to Lessee.



**Section 11.2. Insufficiency of Net Proceeds.** If the Net Proceeds are insufficient to pay in full the cost of any repair, restoration, modification or improvement of any component of the Project in accordance with **Section 11.1**, subject to appropriation of sufficient funds, Lessee shall complete the work and pay any cost in excess of the amount of the Net Proceeds, and Lessee agrees that if by reason of any such insufficiency of the Net Proceeds Lessee shall make any payments pursuant to the provisions in this **Section 11.2**, Lessee shall not be entitled to any reimbursement therefor from Lessor or to any reduction in Rental Payments then due or thereafter coming due.

**Section 11.3. Cooperation of Lessor.** Lessor shall cooperate fully with Lessee, at the expense of Lessee, in filing any proof of loss with respect to any insurance policy covering the events described in **Section 11.1** and in the prosecution or defense of any prospective or pending condemnation proceeding with respect to the Project or any part thereof and will, to the extent it may lawfully do so, permit Lessee to litigate in any proceeding resulting therefrom in the name of and on behalf of Lessor. In no event will Lessor voluntarily settle, or consent to the settlement of, any proceedings arising out of any insurance claim or any prospective or pending condemnation proceeding with respect to the Project or any part thereof without the written consent of Lessee.

## ARTICLE XII

### DEFAULT PROVISIONS

**Section 12.1. Events of Default Defined.** The following shall be "Events of Default" under this Lease and the term "Events of Default" shall mean, whenever it is used in this Lease, any one or more of the following events:

(a) Failure by Lessee to pay any Rental Payment or other payment required to be paid hereunder at the time specified herein;

(b) Failure by Lessee to observe and perform any covenant, condition or agreement under any Project Document on its part to be observed or performed, other than as referred to in clause (a) of this Section, for a period of 30 days after written notice specifying such failure and requesting that it be remedied has been given to Lessee by Lessor; provided, however, if the failure stated in the notice cannot be corrected within the applicable period, Lessor shall consent to an extension of such time if Lessee certifies that corrective action has been instituted by Lessee within the applicable period and will be diligently pursued until such failure is corrected;

(c) Any statement, representation or warranty made by Lessee in or pursuant to any Project Document or any instrument or certificate related thereto or to the Project shall be incorrect, untrue or misleading in any material respect;

(d) Any provision of any Project Document shall at any time for any reason cease to be valid and binding on Lessee, or shall be declared to be null and void, or the validity or enforceability thereof shall be contested by Lessee or any governmental agency or authority if the loss of such provision would materially adversely affect the rights or security of Lessor, or Lessee shall deny that it has any further liability or obligation under this Lease or the Base Lease; or

(e) The filing by Lessee of a voluntary petition in bankruptcy, or failure by Lessee to promptly lift any execution, garnishment or attachment of such consequence as would impair the ability of Lessee to carry on its essential functions, or adjudication of Lessee as a bankrupt, or assignment by Lessee for the benefit of creditors, or the entry by Lessee into an agreement of composition with creditors, or the approval by a court of competent jurisdiction of a petition

applicable to Lessee in any proceedings instituted under the provisions of any applicable federal bankruptcy law.

**Section 12.2. Remedies.** Whenever any Event of Default shall have happened and be continuing, Lessor shall have the right, at its option and without any further demand or notice, to take any one or more of the following remedial steps:

(a) By written notice to Lessee, Lessor may declare all Rental Payments and other amounts payable by Lessee hereunder to the end of the then current Original Term or Renewal Term to be due;

(b) With or without terminating this Lease, take possession of the Project, sell Lessor's interest in the Base Lease, or lease the Project and collect the rentals therefor for all or any portion of the remainder of its leasehold term upon such terms and conditions as it may deem satisfactory in its sole discretion, with Lessee remaining liable for the difference between the Rentals, Additional Rentals and other amounts payable by Lessee hereunder during the Original Term or then current Renewal Term, as the case may be, and the net proceeds of any purchase price, rents or other amounts paid by the purchaser, new lessee or sublessee of the Project, and, provided further, that, in such event, if Lessor shall receive a payment for sale of its interest or total Rentals for lease of the Project that are, after payment of Lessor's expenses in connection therewith, in excess of the then applicable Purchase Price, then such excess shall be paid to Lessee either by Lessor, its assigns, or by its sublessee; or

(c) Take whatever action at law or in equity may appear necessary or desirable to collect the Rental Payments then due and thereafter to become due during the then current Original Term or Renewal Term, or enforce performance and observance of any obligation, agreement or covenant of Lessee under this Lease.

**Section 12.3. No Remedy Exclusive.** No remedy herein conferred upon or reserved to Lessor is intended to be exclusive and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Lease or now or hereafter existing at law or in equity. No delay or omission to exercise any right or power accruing upon any default shall impair any such right or power or shall be construed to be a waiver thereof, but any such right and power may be exercised from time to time and as often as may be deemed expedient. In order to entitle Lessor or Lessee to exercise any remedy reserved to it in this Article it shall not be necessary to give any notice, other than such notice as may be required in this Article or by law.

**Section 12.4. No Additional Waiver Implied by One Waiver.** In the event any agreement contained in this Lease shall be breached by either party and thereafter waived by the other party, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other breach hereunder.

### **ARTICLE XIII**

#### **AMENDMENTS, CHANGES AND MODIFICATIONS**

**Section 13.1. Amendments, Changes and Modifications.** This Lease may be amended, changed or modified in any manner by written agreement of Lessor and Lessee. Any waiver of any provision of this Lease or any right or remedy hereunder must be affirmatively and expressly made in writing and shall not be implied from inaction, course of dealing or otherwise.

## ARTICLE XIV

### MISCELLANEOUS

#### **Section 14.1. Maintenance of Tax Exemption.**

(a) Lessee shall not take any action or fail to take any action which action or failure would cause the interest components of Rental Payments under this Lease to be includable in gross income for federal income tax purposes.

(b) Lessee will comply with all applicable provisions of the Code, including Sections 103 and 148 thereof, and the regulations of the Treasury Department thereunder from time to time proposed or in effect in order to maintain the exclusion from gross income for purposes of federal income taxation of the interest components of Rental Payments under this Lease.

**Section 14.2. Notices.** It shall be sufficient service of any notice, request, complaint, demand or other paper required by this Lease to be given or filed with Lessor or Lessee if the same shall be duly mailed by registered or certified mail with postage prepaid addressed as set forth on **Exhibit B**. Lessor and Lessee may, by notice given hereunder, designate any further or different addresses to which subsequent notices, certificates or other communications shall be sent.

**Section 14.3. Title to Personal Property.** Title to any portion of the Project that constitutes personal property shall vest in Lessee subject to Lessor's rights under this Lease and the Base Lease; provided that title thereto shall thereafter immediately and without any action by Lessee vest in Lessor and Lessee shall immediately surrender possession thereof to Lessor upon (i) any termination of this Lease without Lessee exercising its option to purchase pursuant to **Section 10.1** or (ii) the occurrence of an Event of Default. It is the intent of the parties hereto that any transfer of title to Lessor pursuant to this Section shall occur automatically without the necessity of any deed, bill of sale, certificate of title or other instrument of conveyance. Nevertheless, Lessee shall execute and deliver any such instruments as Lessor may request to evidence such transfer.

**Section 14.4. Security Interest.** To secure the payment of all of Lessee's obligations under this Lease, to the extent permitted by law, Lessor retains a security interest in that portion of the Project consisting of personal property or fixtures and on all additions, attachments, accessions thereto, substitutions therefor and on any proceeds therefrom. Lessee consents to the filing of financing statements with respect to such personal property and fixtures and shall execute such additional documents, including affidavits, notices and similar instruments, in form satisfactory to Lessor, which Lessor deems necessary or appropriate to establish and maintain its security interest.

**Section 14.5. Net Lease.** It is the understanding and agreement of the parties hereto that, subject to **Sections 3.3** and **4.3**, this is a clear "net" lease obligation and that Lessee shall bear all expenses and make all payments consistent with the principle of the "net" Lease. Lessee hereby assumes and agrees to perform all duties and obligations relating to the Project, as well as the use, operation, and maintenance thereof, even though such duties and obligations may otherwise be construed to be those of Lessor.

**Section 14.6. No Pecuniary Liability.** No provision, covenant or agreement contained in this Lease or any obligation herein imposed upon Lessor, or the breach thereof, shall constitute or give rise to or impose upon Lessor a pecuniary liability.

**Section 14.7. Access to Premises.** Lessee agrees that Lessor or any agent or representative of Lessor shall have the right at all reasonable times to enter upon and to examine and inspect the Project.

Lessee further agrees that Lessor and any such agent or representative shall have such rights of access to the Project as may be reasonably necessary to cause the proper maintenance of the Improvements in the event of failure by Lessee to perform its obligations hereunder.

**Section 14.8. Financial Statements.** Throughout the Lease Term, Lessee shall deliver to Lessor, as soon as available, a copy of Lessee's annual audited statement of income and expense and Lessee's annual audited balance sheet.

**Section 14.9. Title to the Land.** Lessee covenants that the title to the Land is and shall remain in Lessee, subject to the rights of Lessor hereunder and under the Base Lease.

**Section 14.10. Binding Effect.** This Lease shall inure to the benefit of and shall be binding upon Lessor and Lessee and their respective successors and assigns.

*[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]*

IN WITNESS WHEREOF, the parties hereto have executed these presents the day and year first above written.

CLAYTON HOLDINGS LLC

[SEAL]

By : \_\_\_\_\_  
Name:  
Title:

**ACKNOWLEDGMENT**

STATE OF MISSOURI )  
) SS  
COUNTY OF ST. LOUIS )

**BE IT REMEMBERED**, that on this \_\_\_\_ day of \_\_\_\_\_, 2014, before me, the undersigned, a Notary Public in and for the County and State aforesaid, came \_\_\_\_\_, \_\_\_\_\_ of **CLAYTON HOLDINGS LLC**, who is personally known to me to be such officer, and who is personally known to me to be the same person who executed, as such officer, the within instrument on behalf of said entity, and such person duly acknowledged the execution of the same to be the act and deed of said entity.

**IN WITNESS WHEREOF**, I have hereunto set my hand and affixed my official seal, the day and year last above written.

\_\_\_\_\_  
Printed Name: \_\_\_\_\_  
Notary Public in and for said State  
Commissioned in \_\_\_\_\_ County

My commission expires: \_\_\_\_\_

**CITY OF BOLIVAR, MISSOURI**

[SEAL]

By: \_\_\_\_\_  
Name: Dr. John Best  
Title: Mayor

ATTEST:

\_\_\_\_\_  
Name:  
Title: City Clerk

**ACKNOWLEDGMENT**

STATE OF MISSOURI        )  
  ) SS  
COUNTY OF POLK         )

**BE IT REMEMBERED**, that on this \_\_\_\_ day of \_\_\_\_\_, 2014, before me, the undersigned, a Notary Public in and for the County and State aforesaid, came Dr. John Best, Mayor of **CITY OF BOLIVAR, MISSOURI**, a body politic and corporate duly authorized, incorporated and existing under and by virtue of the constitution and laws of the State of Missouri, who is personally known to me to be such officer, and who is personally known to me to be the same person who executed, as such officer, the within instrument on behalf of said body, and such person duly acknowledged the execution of the same to be the act and deed of said body.

**IN WITNESS WHEREOF**, I have hereunto set my hand and affixed my official seal, the day and year last above written.

\_\_\_\_\_  
Printed Name: \_\_\_\_\_  
Notary Public in and for said State  
Commissioned in \_\_\_\_\_ County

My commission expires:

**EXHIBIT A TO LEASE PURCHASE AGREEMENT**

**RENTAL PAYMENT SCHEDULE**

**Date                      Payment                      Interest                      Principal                      Purchase Price**

**EXHIBIT B TO LEASE PURCHASE AGREEMENT**

**OTHER PROVISIONS**

**Improvements:** The Project consists of the acquisition of the Land and an approximately 11,000 square foot building with a full basement. The building is concrete block construction over a poured concrete basement foundation, with a combination of brick and stucco exterior. The Project has no on-site parking.

**Fiscal Year:** Lessee's Fiscal Year currently begins on January 1 of each year.

**Delivery Date of Lease:** \_\_\_\_\_, 2014.

**Interest Rate:** The interest portions of Rental Payments are calculated using a per annum interest rate of \_\_\_\_\_% and on the basis of a 360 day year of 12 - 30 day months.

**Title Insurance:** The owner's policy of title insurance required under **Article VII** shall be in the amount of \$500,000.

**Initial Purchase Date:** The initial purchase date for purposes of **Section 10.1(a)** is the date of the delivery of this Lease.

**Addresses:** The following addresses shall be used as described in **Section 14.2**, unless changed as described therein:

- (a) If to Lessor: Clayton Holdings LLC  
8000 Forsyth  
P.O. Box 11309  
St. Louis, Missouri 63105  
Attention: Leasing Department
  
- (b) If to Lessee: City of Bolivar  
345 S. Main  
Bolivar, Missouri 65613  
Attention: City Administrator



**SCHEDULE 1 TO BASE LEASE AND TO LEASE PURCHASE AGREEMENT**

**DESCRIPTION OF THE LAND**

Beginning at the Northwest corner of Lot 5 of VILES SUBDIVISION of the City of Bolivar, Missouri, thence North 70 degrees 05 minutes East along the North line of said Lot a distance of 150 feet, thence Southerly to a point that is 236 feet North 69 degrees 22 minutes East from the Southwest corner of Lot 5, thence South 69 degrees 22 minutes West 236 feet to said Southwest Corner, thence North 01 degrees 53 minutes 44 seconds East along the West line of Lot 5 a distance of 223.56 feet, more or less, to the point of beginning.

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**LEASE PURCHASE AGREEMENT**

**between**

**CLAYTON HOLDINGS LLC**  
**as Lessor/Grantor**

**and**

**CITY OF BOLIVAR, MISSOURI**  
**as Lessee/Grantee**

---

Grantor: 8000 Forsyth, St. Louis, MO 63105 Attn: Leasing Department  
Grantee: 345 South Main Street, Bolivar, MO 65613 Attn: City Administrator  
Legal Description may be found on Schedule 1.

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## **BASE LEASE**

**BASE LESSOR:**           **CITY OF BOLIVAR, MISSOURI**, a Missouri fourth class city

**BASE LESSEE:**         **CLAYTON HOLDINGS LLC**, a Missouri limited liability company

**DATE:**                   **FEBRUARY 1, 2014**

**THIS BASE LEASE** (the "Base Lease"), dated as of the date set forth above, by and between the Base Lessor named above (together with its successors and assigns, "Base Lessor"), and the Base Lessee named above (together with its successors, "Base Lessee"),

### **WITNESSETH:**

**WHEREAS**, in order to carry out the governmental and proprietary functions of Base Lessor, the governing body of Base Lessor deems it necessary to acquire the real estate describe in **Schedule 1** hereto (the "Land") and to provide funds in the aggregate amount stated in the hereinafter defined Lease to finance the costs to acquire the Land and related improvements, fixtures, equipment, furnishings and related support facilities thereon (the "Improvements");

**WHEREAS**, the Base Lessor has offered to lease the Land and Improvements (together, the "Project") to Base Lessee upon the terms and conditions of this Base Lease, and Base Lessee has agreed to lease the Project to Base Lessor pursuant to a Lease Purchase Agreement dated as of the date hereof (as amended or supplemented from time to time, the "Lease") by and between Base Lessee, as lessor, and Base Lessor, as lessee upon the terms and conditions set forth in the Lease;

**NOW, THEREFORE**, in consideration of the premises and the mutual covenants and agreements herein set forth, Base Lessor and Base Lessee do hereby covenant and agree as follows:

**Section 1.       Representations by Base Lessor.** Base Lessor represents, warrants and covenants as follows:

(a)       Base Lessor is a body politic and corporate established and existing under and pursuant to the laws of the state in which it is located (the "State");

(b)       The lease of the Project to Base Lessee pursuant to this Base Lease and the lease of the Project by Base Lessee to Base Lessor, as provided in the Lease, is desirable and in the public interest, and Base Lessor hereby declares its current need for the Project;

(c)       Base Lessor, pursuant to proper action duly taken by its governing body, has full power and authority to enter into this Base Lease and the Lease and the transactions contemplated by this Base Lease and the Lease and to carry out its obligations hereunder and thereunder, has been duly authorized to execute and deliver this Base Lease and the Lease and by proper action has duly authorized the execution and delivery of this Base Lease and the Lease;

(d)       Neither the execution and delivery of this Base Lease or the Lease, nor the fulfillment of or compliance with the terms and conditions hereof or thereof, nor the consummation of the transactions contemplated hereby, conflicts with or results in a breach of the terms, conditions

or provisions of any restriction or any agreement or instrument to which Base Lessor is now a party or by which Base Lessor is bound;

(e) Base Lessor has good and marketable fee title to the Land;

(f) The Land is not subject to any dedication, easement, right of way, reservation in patent, covenant, condition, restriction, lien or encumbrance which would prohibit or materially interfere with the use of the Improvements on the Land, as contemplated by the Lease;

(g) All taxes, assessments or impositions of any kind with respect to the Land, except current taxes, have been paid in full;

(h) The Land is properly zoned for the purpose of the Improvements; and

(i) Base Lessor has not made, done, executed or suffered, and warrants that it will not make, do, execute or suffer, any act or thing whereby Base Lessor's interests in any property now or hereafter included in the Project shall be or may be impaired, changed or encumbered in any manner whatsoever except as permitted by this Base Lease and the Lease.

**Section 2. Lease.** Base Lessor hereby leases to Base Lessee, and Base Lessee hereby rents and leases from Base Lessor, the Land on the terms and conditions hereinafter set forth.

**Section 3. Term.** The term of this Base Lease shall commence as of the date of the delivery hereof, and shall end on the twentieth anniversary of such date, unless such term is sooner terminated as hereinafter provided.

**Section 4. Rental.** As and for rental hereunder and in consideration for the leasing of the Land to Base Lessee, Base Lessee shall:

(a) Simultaneously with the delivery of this Base Lease, enter into the Lease; and

(b) Deposit the amount set forth on **Schedule 2** as directed by the Base Lessor.

**Section 5. Assignments and Subleases.** Base Lessee may assign its rights under this Base Lease or sublet the Project without the consent of Base Lessor (i) in connection with any assignment of its rights under the Lease, (ii) if the Lease is terminated for any reason or (iii) if an "event of default" as defined in the Lease has occurred.

**Section 6. Termination.** This Base Lease shall terminate upon the completion of the term set forth in **Section 3**; provided, however, in the event Base Lessor makes payment of the purchase price or makes all of the rental payments provided for in **Article IV** of the Lease and exercises its option to purchase Base Lessee's interest in the Project pursuant to **Article X** of the Lease, then this Base Lease shall be considered assigned to Base Lessor and terminated through merger of the leasehold interest with the fee interest if Base Lessor is the owner of the fee interest.

If an "event of default" under the Lease occurs or if Base Lessor terminates the Lease pursuant to **Section 3.2** of the Lease, Base Lessee shall have the right to possession of the Project for the remainder of the term of this Base Lease and shall have the right to sublease the Project or sell its interest in the Project and this Base Lease upon whatever terms and conditions it deems prudent; provided, however, that Base

Lessee shall provide Base Lessor with adequate public liability insurance covering the premises for the remainder of the term and will furnish Base Lessor with evidence thereof.

**Section 7. Default.** Base Lessor shall not have the right to exclude Base Lessee from the Project or take possession of the Project (other than pursuant to the Lease) or to terminate this Base Lease prior to the expiration of its term upon any default by Base Lessee hereunder, except that if, upon the exercise of the option to purchase Base Lessee's interest in the Project granted to Base Lessor in **Article X** of the Lease and after the payment of the purchase price specified therein and other sums payable under the Lease, Base Lessee fails to convey its interest in the Project to Base Lessor pursuant to said option, then Base Lessor shall have the right to terminate this Base Lease, such termination to be effective thirty (30) days after delivery of written notice of such termination to Base Lessee. In the event of any default by Base Lessee hereunder, however, Base Lessor may maintain an action for damages or, if permitted in equity, for specific performance.

**Section 8. Quiet Enjoyment.** At all times during the term of this Base Lease, Base Lessee shall peaceably and quietly have, hold and enjoy all of the Project, subject to the rights of Base Lessor under the Lease.

**Section 9. No Merger.** No union of the interests of Base Lessor and Base Lessee herein shall result in a merger of this Base Lease and the title to the Land, except as described in **Section 6**.

**Section 10. Taxes and Assessments.** Base Lessor covenants and agrees to pay any and all assessments of any kind or character and all taxes levied or assessed upon the Land.

**Section 11. Warranty and Indemnity Regarding Environmental Matters.** Base Lessor hereby warrants and represents that (i) there has not been any "release" (as defined in 42 U.S.C. § 9601(22)) or threat of a "release" of any "hazardous substances" (as defined in 42 U.S.C. § 9601(14)) on or about any of the Project, (ii) no part of the Project is or may be a "facility" (within the meaning of 42 U.S.C. § 9607(a)), and (iii) the Project and the use thereof are in compliance with all applicable laws, statutes, ordinances, rules and regulations of any governmental or quasi-governmental authority, specifically including without limitation the Resource Conservation and Recovery Act and the Comprehensive Environmental Response, Compensation and Liability Act, both as amended, and all other environmental protection or toxic waste or hazardous substance handling, treatment, storage or disposal laws, statutes, ordinances, rules and regulations.

Base Lessor agrees to provide Base Lessee with copies of any notifications of releases of oil or hazardous materials or substances or of any environmental hazards or potential hazards which are given by or on behalf of Base Lessor to any federal, state or local agencies or authorities or which are received by Base Lessor from any federal, state or local agencies or authorities with respect to the Project. Such copies shall be sent to Base Lessee concurrently with their being mailed or delivered to the governmental agencies or authorities or within 10 days after they are received by Base Lessor.

Base Lessor agrees to provide Base Lessee with copies of all emergency and hazardous chemical inventory forms (hereinafter "Notices") with respect to the Project previously given, as of the date hereof, to any federal, state or local governmental authority or agency as required pursuant to the Emergency Planning and Community Right-to-Know Act of 1986, 42 U.S.C.A. Section 1101 *et seq.*, and to provide Base Lessee with copies of all such Notices subsequently sent to any such governmental authority or agency as required pursuant to the Emergency Planning and Community Right-to-Know Act of 1986. Such copies of



subsequent Notices shall be sent to Base Lessee concurrently with their being mailed to any such governmental authority or agency.

Base Lessor hereby covenants and agrees, to the extent permitted by law, to indemnify, protect and hold harmless Base Lessee from and against any and all claims, demands, liabilities and costs, including without limitation attorneys' fees, arising from (a) any "release" (as defined above) or threat of a "release," actual or alleged, of any "hazardous substances" (as defined above) upon or about the Project or respecting any products or materials previously or now located upon, delivered to or in transit to or from the Project regardless of whether such release or threat of a release or alleged release or threat of release has occurred prior to the date hereof and hereafter occurs and regardless of whether such release or threat of a release or alleged release or threat of a release occurs as the result of the negligence or misconduct of Base Lessor or any third party or otherwise, or (b) any violation, actual or alleged, of or any other liability under or in connection with any law, statute, ordinance, rule or regulation of any governmental or quasi-governmental authority, specifically including without limitation the Resource Conservation and Recovery Act and the Comprehensive Environmental Response Compensation and Liability Act, both as amended, or any other environmental protection or toxic waste or hazardous substance handling, treatment, storage or disposal laws, statutes, ordinances, rules or regulations upon or about the Project or respecting any products or materials previously or now located upon, delivered to or in transit to or from the Project, regardless of whether such violation or alleged violation has occurred prior to the date hereof or hereafter occurs and regardless of whether such violation or alleged violation occurs as a result of the negligence or misconduct of Base Lessor or any third party or otherwise. Notwithstanding the foregoing, Base Lessor shall not be obligated to indemnify and hold harmless Base Lessee from and against any claims, demands, liabilities and costs, including without limitation attorneys' fees, which arise solely as a result of the negligence or misconduct of Base Lessee.

**Section 12. Waiver of Personal Liability.** All liabilities under this Base Lease on the part of Base Lessee are solely corporate liabilities of Base Lessee as a corporation, and, to the extent permitted by law, Base Lessor hereby releases each and every director and officer of Base Lessee of and from any personal or individual liability under this Base Lease. No director or officer of Base Lessee shall at any time or under any circumstances be individually or personally liable under this Base Lease for anything done or omitted to be done by Base Lessee hereunder.

**Section 13. Eminent Domain.** (a) In the event the whole or any part of the Project is taken by eminent domain proceedings, the interest of the Base Lessee shall be recognized. The proceeds of said condemnation shall be applied as provided in **Article XI** of the Lease. Under State statutes, the Base Lessor has the power to condemn property for its purposes, and the Base Lessor acknowledges that if the Base Lessor condemned the Project, such action could adversely affect the continuation of this Base Lease. The Base Lessor further acknowledges that condemnation of the Project would adversely affect the Base Lessee and that without the Base Lessee's interest in the Project, the Base Lessee might not lease the Project to the Base Lessor pursuant to the Lease.

The Base Lessor and the Base Lessee have reached agreement on the terms of the acquisition of the Project, at Base Lessor's option, and to the use of the Project, all as set forth in the Lease. Any acquisition of the Base Lessee's interest in the Project or rights to its use by the Base Lessor (whether pursuant to the exercise of eminent domain powers or otherwise) shall be pursuant to and in accordance with the Lease, including payment of Rental Payments and the applicable Purchase Price (as defined and set forth in the Lease). If the Base Lessor allows the Lease to expire without exercising its option to purchase (whether by failure to exercise its option to extend the Lease for a Renewal Term, failure to exercise its option to purchase at the conclusion of the Maximum Lease Term or failure to cure an Event

of Default [as those terms are defined in the Lease), that action shall constitute an irrevocable determination by the Base Lessor that the Project is not required by it for any public purpose for the term of this Base Lease.

The Base Lessor hereby covenants and agrees, to the extent it may lawfully do so, that if for any reason it exercises the power of eminent domain with respect to the Project, the appraisal value of the Project shall not be less than the Rental Payments then due plus the then applicable Purchase Price as defined and set forth in the Lease.

(b) In the event that title to all or a portion of the Land is challenged or threatened by means of competent legal or equitable action, the Base Lessor covenants that it shall cooperate with the Base Lessee and shall take all reasonable actions, including where appropriate the lawful exercise of the Base Lessor's power of eminent domain, in order to quiet title to the Land in the Base Lessor.

**Section 14. Leaseback to Base Lessor; Term; Rental.** Contemporaneously herewith Base Lessee and Base Lessor will execute the Lease whereby Base Lessee subleases back to Base Lessor and Base Lessor subleases from Base Lessee the Project. Title to the Project shall remain in Base Lessor at all times. The Lease includes in **Article X** thereof the option of Base Lessor, upon payment of the purchase price, to purchase Base Lessee's interest in the Project.

**Section 15. Partial Invalidity.** If any one or more of the terms, provisions, covenants or conditions of this Base Lease shall to any extent be declared invalid, unenforceable, void or voidable for any reason whatsoever by a court of competent jurisdiction, the finding or order or decree of which becomes final, none of the remaining terms, provisions, covenants and conditions of this Base Lease shall be affected thereby, and each provision of this Base Lease shall be valid and enforceable to the fullest extent permitted by law.

**Section 16. Notices.** All written notices to be given under this Base Lease shall be given by mail to the party entitled thereto at its address set forth in the Lease, or at such address as the party may provide to the other party in writing from time to time. Any such notice shall be deemed to have been received 48 hours after deposit in the United States mail in registered form, with postage fully prepaid.

**Section 17. Section Headings.** All section headings contained herein are for convenience of reference only and are not intended to define or limit the scope of any provision of this Base Lease.

**Section 18. Amendments, Changes and Modifications.** This Base Lease may not be effectively amended, changed, modified, altered or supplemented except with the written consent of both Base Lessee and Base Lessor. Any waiver of any provision of this Base Lease or any right or remedy hereunder must be affirmatively and expressly made in writing and shall not be implied from in action, course of dealing or otherwise.

**Section 19. Applicable Law.** This Base Lease shall be governed by and construed in accordance with the laws of the State.

**Section 20. Execution.** This Base Lease may be executed in any number of counterparts, each of which shall be deemed to be an original but all together shall constitute but one and the same Base Lease. It is also agreed that separate counterparts of this Base Lease may be executed by Base Lessee and Base Lessor all with the same force and effect as though the same counterpart had been executed by both Base Lessee and Base Lessor.

**Section 21. Successors.** This Base Lease shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

**Section 22. Complete Agreement.** This written agreement is a final expression of the agreement between the parties hereto and such agreement may not be contradicted by evidence of any prior oral agreement or of a contemporaneous oral agreement between the parties hereto. No unwritten oral agreement between the parties exists.

*[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]*

**IN WITNESS WHEREOF**, Base Lessor and Base Lessee have caused this Base Lease to be executed by their respective officers thereunto duly authorized, all as of the day and year first above written.

**CITY OF BOLIVAR, MISSOURI**

[SEAL]

By: \_\_\_\_\_  
Name: Dr. John Best  
Title: Mayor

ATTEST:

\_\_\_\_\_  
Name:  
Title: Deputy City Clerk

**ACKNOWLEDGMENT**

**STATE OF MISSOURI**        )  
  ) **SS**  
**COUNTY OF POLK**         )

**BE IT REMEMBERED**, that on this \_\_\_\_ day of \_\_\_\_\_, 2014, before me, the undersigned, a Notary Public in and for the County and State aforesaid, came Dr. John Best, Mayor of **CITY OF BOLIVAR, MISSOURI**, a body politic and corporate duly authorized, incorporated and existing under and by virtue of the constitution and laws of the State of Missouri, who is personally known to me to be such officer, and who is personally known to me to be the same person who executed, as such officer, the within instrument on behalf of said body, and such person duly acknowledged the execution of the same to be the act and deed of said body.

**IN WITNESS WHEREOF**, I have hereunto set my hand and affixed my official seal, the day and year last above written.

\_\_\_\_\_  
Printed Name: \_\_\_\_\_  
Notary Public in and for said State  
Commissioned in \_\_\_\_\_ County

My commission expires: \_\_\_\_\_

Base Lease

**CLAYTON HOLDINGS LLC**

[SEAL]

By: \_\_\_\_\_  
Name:  
Title:

**ACKNOWLEDGMENT**

STATE OF MISSOURI        )  
  ) SS  
COUNTY OF ST. LOUIS    )

**BE IT REMEMBERED**, that on this \_\_\_\_ day of \_\_\_\_\_, 2014, before me, the undersigned, a Notary Public in and for the County and State aforesaid, came \_\_\_\_\_, \_\_\_\_\_ of **CLAYTON HOLDINGS LLC**, who is personally known to me to be such officer, and who is personally known to me to be the same person who executed, as such officer, the within instrument on behalf of said entity, and such person duly acknowledged the execution of the same to be the act and deed of said entity.

**IN WITNESS WHEREOF**, I have hereunto set my hand and affixed my official seal, the day and year last above written.

\_\_\_\_\_  
Printed Name: \_\_\_\_\_  
Notary Public in and for said State  
Commissioned in \_\_\_\_\_ County

My commission expires: \_\_\_\_\_

**SCHEDULE 1 TO BASE LEASE AND TO LEASE PURCHASE AGREEMENT**

**DESCRIPTION OF THE LAND**

Beginning at the Northwest corner of Lot 5 of VILES SUBDIVISION of the City of Bolivar, Missouri, thence North 70 degrees 05 minutes East along the North line of said Lot a distance of 150 feet, thence Southerly to a point that is 236 feet North 69 degrees 22 minutes East from the Southwest corner of Lot 5, thence South 69 degrees 22 minutes West 236 feet to said Southwest Corner, thence North 01 degrees 53 minutes 44 seconds East along the West line of Lot 5 a distance of 223.56 feet, more or less, to the point of beginning.

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**SCHEDULE 2 TO BASE LEASE**

**Deposit to Escrow Fund: \$500,000**

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**BASE LEASE**

**between**

**CITY OF BOLIVAR, MISSOURI**  
**as Base Lessor/Grantor**

**and**

**CLAYTON HOLDINGS LLC**  
**as Base Lessee/Grantee**

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Grantor: 345 South Main Street, Bolivar, MO 65613 Attn: City Administrator

Grantee: 8000 Forsyth, St. Louis, MO 63105 Attn: Leasing Department

Legal Description may be found on Schedule 1.



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Grant states that we need to do the following to accept the award:

“Awards made under the HIRING of FIREFIGHTER CATEGORY require the support of you governing body prior to acceptance of the award. Therefore, by accepting this award you are confirming that you have discussed this application with your local officials and that there is a clear understanding of the long term obligations if the SAFER grant and that both the department and governing body are committed to fulfilling the requirements of this grant immediately upon acceptance.”

*James Ludden  
Bolivar City Fire Department / Fire Chief  
(417) 328-0276 Work / (417) 770-4312 Mobile  
312 S Springfield Ave, Bolivar, MO 65613  
jludden@bolivar.mo.us / www.bolivar.mo.us*

Our Family helping to serve and protect the lives and property of your family through  
Excellence, Integrity, Hard Work, and Professionalism with a Customer Service Attitude!

## Award Package

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U.S. Department of Homeland Security  
Washington, D.C. 20472



Mr. Brent Watkins  
Bolivar City Fire Department  
PO Box 9  
Bolivar, Missouri 65613-0009

Re: Grant No.EMW-2013-FH-00547

Dear Mr. Watkins:

On behalf of the Federal Emergency Management Agency (FEMA) and the Department of Homeland Security (DHS), I am pleased to inform you that your grant application submitted under the FY 2013 Staffing for Adequate Fire and Emergency Response (SAFER) grants has been approved. FEMA's Grant Programs Directorate (GPD), in consultation with the U.S. Fire Administration (USFA), carries out the Federal responsibilities of administering your grant. The approved project costs total to \$608,400.00. The Federal share is \$608,400.00 of the approved amount and your share of the costs is \$0.00.

**Before you request and receive any of the Federal Grant funds awarded to you, you must establish acceptance of the Grant and Grant Agreement Articles through the Assistance to Firefighters Grant Programs' (AFG) e-grant system.** Please make sure you read and understand the articles as they outline the terms and conditions of your grant award. By accepting the grant, you agree not to deviate from the approved scope of work without prior written approval, via amendment request, from FEMA. Maintain a copy of these documents for your official file.

If your SF 1199A has been reviewed and approved, you will be able to request payments online. Remember, you should request funds when you have an immediate cash need.

If you have any questions or concerns regarding the process to request your grant funds, please call 1-866-274-0960.

Sincerely,

A handwritten signature in blue ink, appearing to read "B. Kamoie", is positioned above the typed name of the sender.

Brian E. Kamoie  
Assistant Administrator  
Grant Programs Directorate

## Summary Award Memo

**SUMMARY OF ASSISTANCE ACTION  
STAFFING FOR ADEQUATE FIRE AND EMERGENCY RESPONSE GRANTS  
Application**

**INSTRUMENT:** GRANT  
**AGREEMENT NUMBER:** EMW-2013-FH-00547  
**GRANTEE:** Bolivar City Fire Department  
**AMOUNT:** \$608,400.00, Hiring

**Project Description**

The purpose of the Staffing for Adequate Fire and Emergency Response program is to provide funding directly to fire departments and volunteer firefighter interest organizations in order to help them increase or maintain the number of trained, "front line" firefighters available in their communities.

After careful consideration, FEMA has determined that the recipient's project submitted as part of the recipient's application, and detailed in the project narrative as well as the request details section of the application - including budget information - was consistent with the Staffing for Adequate Fire and Emergency Response Grants program's purpose and worthy of award. The recipient shall perform the work described in the approved grant application as itemized in the request details section of the application and further described in the grant application narrative. These sections of the application are made a part of these grant agreement articles by reference. The recipient may not change or make any material deviations from the approved scope of work outlined in the above referenced sections of the application without prior written approval, via amendment request, from FEMA.

**Grantee Concurrence**

By providing the Primary Contact's electronic signature and indicating acceptance of the award, the recipient accepts and agrees to abide by the terms and conditions of the grant as set forth in this document. Recipients agree that they will use the funds provided through the Fiscal Year 2013 Staffing for Adequate Fire and Emergency Response grant in accordance with these Articles of Agreement and the program guidelines provided in the Fiscal Year 2013 Staffing for Adequate Fire and Emergency Response program guidance. All documents submitted as part of the original grant application are made a part of this agreement by reference.

**Period of Performance**

08-APR-14 to 07-APR-16

**Amount Awarded**

The amount of the award is detailed in the attached Obligating Document for Award. The following are the budgeted estimates for object classes for this grant (including Federal share plus recipient match):

Personnel:	\$454,500.00
Fringe Benefits	\$153,900.00
Travel	\$0.00
Equipment	\$0.00
Supplies	\$0.00
Contractual	\$0.00
Other	\$0.00
Indirect Charges	\$0.00
Total	\$608,400.00

**NEGOTIATION COMMENTS IF APPLICABLE (max 4000 characters)**

4000 characters left

**System for Award Management (SAM)**

**Prior to requesting federal funds, all recipients are required to register their entity information in the System for Award Management (SAM.gov).** As the recipient, you must register and maintain current information in SAM.gov until you submit the final financial report required under this award or receive the final payment, whichever is later. This requires that the recipient review and update the information at least annually after the initial registration, and more frequently for changes in your information. There is no charge to register in SAM.gov. Your registration must be completed on-line at <https://www.sam.gov/portal/public/SAM/>. It is your entity's responsibility to have a valid DUNS number at the time of registration.

**FEMA Officials**

**Program Officer:** The Program Specialist is responsible for the technical monitoring of the stages of work and technical performance of the activities described in the approved grant application. If you have any programmatic questions regarding your grant, please call the AFG Help Desk at 866-274-0960 to be directed to a program specialist.

**Grants Assistance Officer:** The Assistance Officer is the Federal official responsible for negotiating, administering, and executing all grant business matters. The Officer conducts the final business review of all grant awards and permits the obligation of federal funds. If you have any questions regarding your grant please call ASK-GMD at 866-927-5646 to be directed to a Grants Management Specialist.

**Grants Operations POC:** The Grants Management Specialist shall be contacted to address all financial and administrative grant business matters for this grant award. If you have any questions regarding your grant please call ASK-GMD at 866-927-5646 to be directed to a specialist.

**ADDITIONAL REQUIREMENTS (IF APPLICABLE) (max 4000 characters)**

Program Office comments: Fund as requested.

No cost share or match required.

If you have any questions about your award package, please contact your GPD Grants Management Specialist: Francisco Bernal at [Francisco.Bernal@fema.dhs.gov](mailto:Francisco.Bernal@fema.dhs.gov).

3756 characters left

## Agreement Articles



# FEMA

U.S. Department of Homeland Security  
Washington, D.C. 20472

## AGREEMENT ARTICLES

### STAFFING FOR ADEQUATE FIRE AND EMERGENCY RESPONSE

**GRANTEE:** Bolivar City Fire Department

**PROGRAM:** Staffing for Adequate Fire and Emergency Response (SAFER) - Hiring

**AGREEMENT NUMBER:** EMW-2013-FH-00547

**AMENDMENT NUMBER:**

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#### Article I - Administrative Requirements

The administrative requirements that apply to most DHS award recipients through a grant or cooperative agreement arise from two sources: - Office of Management and Budget (OMB) Circular A-102, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments (also known as the "A-102 Common Rule"), found under FEMA regulations at Title 44, Code of Federal Regulations (CFR) Part 13, "Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments." - OMB Circular A-110, Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations, relocated to 2 CFR Part 215. The requirements for allowable costs/cost principles are contained in the A-102 Common Rule, OMB Circular A-110 (2 CFR § 215.27), DHS program legislation, Federal awarding agency regulations, and the terms and conditions of the award. The four costs principles circulars are as follows: - OMB Circular A-21, Cost

Principles for Educational Institutions, relocated to 2 CFR Part 220. - OMB Circular A-87, Cost Principles for State, Local, and Indian Tribal Governments, relocated to 2 CFR Part 225. - OMB Circular A-122, Cost Principles for Non-Profit Organizations, relocated to 2 CFR Part 230. - OMB Circular A-133, Audits of States, Local Governments and Non-Profit Organizations.

#### **Article II - Lobbying Prohibitions**

None of the funds provided under an award may be expended by the recipient to pay any person to influence, or attempt to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any Federal action concerning the award or renewal of any Federal contract, rant, loan, cooperative agreement. These lobbying prohibitions can be found at 31 U.S.C. § 1352.

#### **Article III - Financial Reporting**

Recipients will be required to submit a semi-annual Federal Financial Report (FFR), Standard Form (SF-425) through the AFG online e-grant system. The FFR is intended to provide Federal agencies and grant recipients with a standard format and consistent reporting requirements throughout the government. The FFR is due semi-annually based on the calendar year beginning with the period after the award is made. Recipients are required to submit an FFR throughout the entire period of performance of the grant. The reporting periods for the FFR are January 1 through June 30 (report due by July 31), and July 1 through December 31 (report due by January 31). At the end of the grant's period of performance, all recipients are required to produce a final report on how the grant funding was used and the benefits realized from the award. Recipients must submit a final financial report and a final performance report within 90 days after the end of the period of performance.

#### **Article IV - GPD - Trafficking Victims Protection Act of 2000**

All recipients of financial assistance will comply with the requirements of the government-wide award term which implements Section 106 (g) of the Trafficking Victims Protection Act (TVPA) of 2000, as amended (22 U.S.C. § 7104), located at 2 CFR Part 175. This is implemented in accordance with OMB Interim Final Guidance, Federal Register, Volume 72, No. 218, November 13, 2007. In accordance with the statutory requirement, in each agency award under which funding is provided to a private entity, Section 106(g) of the TVPA, as amended, requires the agency to include a condition that authorizes the agency to terminate the award, without penalty, if the recipient or a subrecipient - (a) Engages in severe forms of trafficking in persons during the period of time that the award is in effect; (b) Procures a commercial sex act during the period of time that the award is in effect; or (c) Uses forced labor in the performance of the award or subawards under the award. Full text of the award term is provided at 2 CFR § 175.15.

#### **Article V - GPD - Drug-Free Workplace Regulations**

All recipients of financial assistance will comply with the requirements of the Drug-Free Workplace Act of 1988 (41 U.S.C. §701 et seq.), which requires that all organizations receiving grants from any Federal agency agree to maintain a drug-free workplace. The recipient must notify the awarding office if an employee of the recipient is convicted of violating a criminal drug statute. Failure to comply with these requirements may be cause for debarment. These regulations are codified at 2 CFR3001.

#### **Article VI - Fly America Act of 1974**

All recipients of financial assistance will comply with the requirements of the Preference for U.S. Flag Air Carriers: Travel supported by U.S. Government funds requirement, which states preference for the use of U.S. flag air carriers (air carriers holding certificates under 49 U.S.C. § 41102) for international air transportation of people and property to the extent that such service is available, in accordance with the International Air Transportation Fair Competitive Practices Act of 1974 (49 U.S.C. - 4 -§ 40118) and the interpretative guidelines issued by the Comptroller General of the United States in the March 31, 1981, amendment to Comptroller General Decision B138942.

#### **Article VII - Activities Conducted Abroad**

All recipients of financial assistance will comply with the requirements that project activities carried on outside the United States are coordinated as necessary with appropriate government authorities and that appropriate licenses, permits, or approvals are obtained.

#### **Article VIII - Acknowledgement of Federal Funding from DHS**

All recipients of financial assistance will comply with requirements to acknowledge Federal funding when issuing statements, press releases, requests for proposals, bid invitations, and other documents describing projects or programs funded in whole or in part with Federal funds.

#### **Article IX - Copyright**

All recipients of financial assistance will comply with requirements that publications or other exercise of copyright for any work first produced under Federal financial assistance awards hereto related unless the work includes any information that is otherwise controlled by the Government (e.g., classified information or other information subject to national security or export control laws or regulations). For any scientific, technical, or other copyright work based on or containing data first produced under this award, including those works published in academic, technical or professional journals, symposia proceedings, or similar works, the recipient grants the Government a royalty-free, nonexclusive and irrevocable license to reproduce, display, distribute copies, perform, disseminate, or prepare derivative works, and to authorize others to do so, for Government purposes in all such copyrighted works. The recipient shall affix the applicable copyright notices of 17 U.S.C. § 401 or 402 and an acknowledgement of Government sponsorship (including award number) to any work first produced under an award.



**Article X - Use of DHS Seal, Logo and Flags**

All recipients of financial assistance must obtain DHS's approval prior to using the DHS seal(s), logos, crests or reproductions of flags or likenesses of DHS agency officials, including use of the United States Coast Guard seal, logo, crests or reproductions of flags or likenesses of Coast Guard officials.

**Article XI - DHS Specific Acknowledgements and Assurances**

All recipients of financial assistance must acknowledge and agree-and require any subrecipients, contractors, successors, transferees, and assignees acknowledge and agree-to comply with applicable provisions governing DHS access to records, accounts, documents, information, facilities, and staff. 1. Recipients must cooperate with any compliance review or complaint investigation conducted by DHS. 2. Recipients must give DHS access to and the right to examine and copy records, accounts, and other documents and sources of information related to the grant and permit access to facilities, personnel, and other individuals and information as may be necessary, as required by DHS regulations and other applicable laws or program guidance. 3. Recipients must submit timely, complete, and accurate reports to the appropriate DHS officials and maintain appropriate backup documentation to support the reports. 4. Recipients must comply with all other special reporting, data collection, and evaluation requirements, as prescribed by law or detailed in program guidance. 5. If, during the past three years, the recipient has been accused of discrimination on the grounds of race, color, national origin (including limited English proficiency), sex, age, disability, religion, or familial status, the recipient must provide a list of all such proceedings, pending or completed, including outcome and copies of settlement agreements to the DHS awarding office and the DHS Office of Civil Rights and Civil Liberties. 6. In the event any court or administrative agency makes a finding of discrimination on grounds of race, color, national origin (including limited English proficiency), sex, age, disability, religion, or familial status against the recipient, or the recipient settles a case or matter alleging such discrimination, recipients must forward a copy of the complaint and findings to the DHS Component and/or awarding office. The United States has the right to seek judicial enforcement of these obligations.

**Article XII - Civil Rights Act of 1964**

Recipients of financial assistance will comply with the requirements of Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d et seq.), which provides that no person in the United States will, on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.

**Article XIII - Civil Right Act of 1968**

All recipients of financial assistance will comply with Title VIII of the Civil Rights Act of 1968, which prohibits recipients from discriminating in the sale, rental, financing, and advertising of dwellings, or in the provision of services in connection therewith, on the basis of race, color, national origin, religion, disability, familial status, and sex (42 U.S.C. § 3601 et seq.), as implemented by the Department of Housing and Urban Development at 24 CFR Part 100. The prohibition on disability discrimination includes the requirement that new multifamily housing with four or more dwelling units-i.e., the public and common use areas and individual apartment units (all units in buildings with elevators and ground-floor units in buildings without elevators)-be designed and constructed with certain accessible features (see 24 CFR § 100.201).

**Article XIV - Americans with Disabilities Act of 1990**

All recipients of financial assistance will comply with the requirements of Titles I, II, and III of the Americans with Disabilities Act, which prohibits recipients from discriminating on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 U.S.C. §§ 12101-12213).

**Article XV - Age Discrimination Act of 1975**

All recipients of financial assistance will comply with the requirements of the Age Discrimination Act of 1975 (42 U.S.C. § 6101 et seq.), which prohibits discrimination on the basis of age in any program or activity receiving Federal financial assistance.

**Article XVI - Title IX of the Education Amendments of 1972**

All recipients of financial assistance will comply with the requirements of Title IX of the Education Amendments of 1972 (20 U.S.C. § 1681 et seq.), which provides that no person in the United States will, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any educational program or activity receiving Federal financial assistance. These regulations are codified at 44 CFR Part 19.

**Article XVII - Rehabilitation Act of 1973**

All recipients of financial assistance will comply with the requirements of Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794, as amended, which provides that no otherwise qualified handicapped individual in the United States will, solely by reason of the handicap, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance. These requirements pertain to the provision of benefits or services as well as to employment.

**Article XVIII - Limited English Proficiency**

All recipients of financial assistance will comply with the requirements of Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin and resulting agency guidance, national origin discrimination includes discrimination on the basis of limited English proficiency (LEP). To ensure compliance with Title VI, recipients must

take reasonable steps to ensure that LEP persons have meaningful access to your programs. Meaningful access may entail providing language assistance services, including oral and written translation, where necessary. Recipients are encouraged to consider the need for language services for LEP persons served or encountered both in developing budgets and in conducting programs and activities. For assistance and information regarding LEP obligations, go to <http://www.lep.gov>.

#### **Article XIX - Animal Welfare Act of 1966**

All recipients of financial assistance will comply with the requirements of the Animal Welfare Act, as amended (7 U.S.C. §2131 et seq.), which requires that minimum standards of care and treatment be provided for vertebrate animals bred for commercial sale, used in research, transported commercially, or exhibited to the public. Recipients must establish appropriate policies and procedures for the humane care and use of animals based on the Guide for the Care and Use of Laboratory Animals and comply with the Public Health Service Policy and Government Principles Regarding the Care and Use of Animals.

#### **Article XX - Clean Air Act of 1970 and Clean Water Act of 1977**

All recipients of financial assistance will comply with the requirements of 42 U.S.C. § 7401 et seq. and Executive Order 11738, which provides for the protection and enhancement of the quality of the nation's air resources to promote public health and welfare and for restoring and maintaining the chemical, physical, and biological integrity of the nation's waters is considered research for other purposes.

#### **Article XXI - Protection of Human Subjects**

All recipients of financial assistance will comply with the requirements of the Federal regulations at 45 CFR Part 46, which requires that recipients comply with applicable provisions/law for the protection of human subjects for purposes of research. Recipients must also comply with the requirements in DHS Management Directive 026-04, Protection of Human Subjects, prior to implementing any work with human subjects. For purposes of 45 CFR Part 46, research means a systematic investigation, including research, development, testing, and evaluation, designed to develop or contribute to general knowledge. Activities that meet this definition constitute research for purposes of this policy, whether or not they are conducted or supported under a program that is considered research for other purposes. The regulations specify additional protections for research involving human fetuses, pregnant women, and neonates (Subpart B); prisoners (Subpart C); and children (Subpart D). The use of autopsy materials is governed by applicable State and local law and is not directly regulated by 45 CFR Part 46.

#### **Article XXII - National Environmental Policy Act (NEPA) of 1969**

All recipients of financial assistance will comply with the requirements of the National Environmental Policy Act (NEPA), as amended, 42 U.S.C. § 4331 et seq., which establishes national policy goals and procedures to protect and enhance the environment, including protection against natural disasters. To comply with NEPA for its grant-supported activities, DHS requires the environmental aspects of construction grants (and certain non-construction projects as specified by the Component and awarding office) to be reviewed and evaluated before final action on the application.

#### **Article XXIII - National Flood Insurance Act of 1968**

All recipients of financial assistance will comply with the requirements of Section 1306(c) of the National Flood Insurance Act, as amended, which provides for benefit payments under the Standard Flood Insurance Policy for demolition or relocation of a structure insured under the Act that is located along the shore of a lake or other body of water and that is certified by an appropriate State or local land use authority to be subject to imminent collapse or subsidence as a result of erosion or undermining caused by waves or currents of water exceeding anticipated cyclical levels. These regulations are codified at 44CFR Part 63.

#### **Article XXIV - Flood Disaster Protection Act of 1973**

All recipients of financial assistance will comply with the requirements of the Flood Disaster Protection Act of 1973, as amended (42 U.S.C. § 4001 et seq.), which provides that no Federal financial assistance to acquire, modernize, or construct property may be provided in identified flood-prone communities in the United States, unless the community participates in the National Flood Insurance Program and flood insurance is purchased within one year of the identification. The flood insurance purchase requirement applies to both public and private applicants for DHS support. Lists of flood prone areas that are eligible for flood insurance are published in the Federal Register by FEMA.

#### **Article XXV - Coastal Wetlands Planning, Protection, and Restoration Act of 1990**

All recipients of financial assistance will comply with the requirements of Executive Order 11990, which provides that federally funded construction and improvements minimize the destruction, loss, or degradation of wetlands. The Executive Order provides that, in furtherance of Section 101(b)(3) of NEPA (42 U.S.C. § 4331(b)(3)), Federal agencies, to the extent permitted by law, must avoid undertaking or assisting with new construction located in wetlands unless the head of the agency finds that there is no practicable alternative to such construction, and that the proposed action includes all practicable measures to minimize harm to wetlands that may result from such use. In making this finding, the head of the agency may take into account economic, environmental, and other pertinent factors. The public disclosure requirement described above also pertains to early public review of any plans or proposals for new construction in wetlands. This is codified at 44 CFR Part 9.

#### **Article XXVI - USA Patriot Act of 2001**

All recipients of financial assistance will comply with the requirements of the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act (USA PATRIOT Act), which amends 18 U.S.C. §§ 175-175c. Among other things, it

prescribes criminal penalties for possession of any biological agent, toxin, or delivery system of a type or in a quantity that is not reasonably justified by a prophylactic, protective, bona fide research, or other peaceful purpose. The act also establishes restrictions on access to specified materials. "Restricted persons," as defined by the act, may not possess, ship, transport, or receive any biological agent or toxin that is listed as a select agent.

**FEDERAL EMERGENCY MANAGEMENT AGENCY  
OBLIGATING DOCUMENT FOR AWARD/AMENDMENT**

1. AGREEMENT NO. EMW-2013-FH-00547	2. AMENDMENT NO. 0	3. RECIPIENT NO. 44-6000140	4. TYPE OF ACTION AWARD	5. CONTROL NO. W497249N
6. RECIPIENT NAME AND ADDRESS Bolivar City Fire Department 312 S Springfield Ave Bolivar Missouri, 65613-2041	7. ISSUING OFFICE AND ADDRESS Grant Programs Directorate 500 C Street, S.W. Washington DC, 20472 POC: Marie Rogers 202-786-9537	8. PAYMENT OFFICE AND ADDRESS FEMA, Financial Services Branch 500 C Street, S.W., Room 723 Washington DC, 20472		
9. NAME OF RECIPIENT PROJECT OFFICER Brent Watkins	PHONE NO. 4173262489X276	10. NAME OF PROJECT COORDINATOR Catherine Patterson	PHONE NO. 1-866-274-0960	
11. EFFECTIVE DATE OF THIS ACTION 08-APR-14	12. METHOD OF PAYMENT SF-270	13. ASSISTANCE ARRANGEMENT Cost Sharing	14. PERFORMANCE PERIOD From:08-APR-14 To:07-APR-16	

Budget Period  
From:21-OCT-13 To:30-SEP-14

15. DESCRIPTION OF ACTION

a. (Indicate funding data for awards or financial changes)

PROGRAM NAME ACRONYM	CFDA NO.	ACCOUNTING DATA (ACCS CODE) XXXX-XXX-XXXXXX-XXXX-XXXX- XXXX-X	PRIOR TOTAL AWARD	AMOUNT AWARDED THIS ACTION + OR (-)	CURRENT TOTAL AWARD	CUMMULATIVE NON- FEDERAL COMMITMENT
SAFER	97.083	2014-M3-C211-P4310000-4101-D	\$0.00	\$608,400.00	\$608,400.00	\$0.00
TOTALS			\$0.00	\$608,400.00	\$608,400.00	\$0.00

b. To describe changes other than funding data or financial changes, attach schedule and check here.  
N/A

16a. FOR NON-DISASTER PROGRAMS: RECIPIENT IS REQUIRED TO SIGN AND RETURN THREE (3) COPIES OF THIS DOCUMENT TO FEMA (See Block 7 for address)

*SAFER recipients are not required to sign and return copies of this document. However, recipients should print and keep a copy of this document for their records.*

16b. FOR DISASTER PROGRAMS: RECIPIENT IS NOT REQUIRED TO SIGN

This assistance is subject to terms and conditions attached to this award notice or by incorporated reference in program legislation cited above.

17. RECIPIENT SIGNATORY OFFICIAL (Name and Title)  
N/A

DATE  
N/A

18. FEMA SIGNATORY OFFICIAL (Name and Title)  
Rosalie Vega

DATE  
06-JAN-14