

LEASE AGREEMENT

THIS LEASE AGREEMENT (this "*Lease*") is made and entered into this _____ day of _____, 2017 (the "*Effective Date*"), by and between MARY JANE FRERICKSON AS TRUSTEE OF THE S. CLARK BUTLER PROPERTIES LAND TRUST ("*Owner*"), and THE CITY OF GAINESVILLE, a Florida municipal corporation ("*Lessee*" or "*City*") jointly referred to as the Parties.

1. **Purpose and Use.** The City of Gainesville/Lessee is municipal governmental entity that provides fire service within Gainesville city limits. Lessee intends to build a fire station within the southwest area of the City. While City locates and constructs a permanent fire station, City currently has need of a temporary location to serve the southwest area of Gainesville, including Owner's properties. Lessee requires property to establish a temporary fire station, including modular units, carport, stairs, fire engine, and/or a squad truck. The temporary location will include housing of at least two personnel twenty-four hours a day. The fire station will have at least one engine or truck on the premises which will respond at all times to calls. The Owner is willing to allow the City to place the temporary fire station upon the Lease Area for the Term of this Lease and any extension thereof. Lessee shall use the Lease Area exclusively for a Fire Station, together with its customary accessory uses which include housing fire personnel while on-duty. The Parties agree that Lessee shall have the right during the Lease Term to use the Lease Area as a Fire Station and Owner shall not interfere with Lessee's use.

2. **Lease Area.** Owner, in consideration of the covenants and agreements to be performed by Lessee, and upon the terms and conditions hereinafter stated, does hereby grant a Lease unto Lessee from Owner to use approximately .73 acres of land adjacent to the RTS Transfer Station which Lease Area is depicted on the site plan attached hereto as **Exhibit "A"** and incorporated herein by reference (the "*Lease Area*"), located at the Southwest corner of SW 30th Avenue and SW 42nd Street, Gainesville, Florida 32608.

3. **Owner's Improvements.** Owner shall grade the land for the building lot and parking, curb cut and patch, and provide asphalt millings. Owner shall bring utilities to the site including but not limited to, storm pipe, storm structures / tap, sanitary sewer, domestic water and electricity. Lessee is responsible for all tap fees and any other utility charges or connection fees. Owner's construction responsibilities are more specifically detailed in the construction plans prepared by the engineering firm of Casseaux, Hewitt, and Walpole, which plans are attached as Exhibit B. Owner shall complete the improvements on or before July 31, 2017. If Owner fails to complete the improvements on or before July 31, 2017, Lessee may terminate this Lease and Lessee shall not be responsible to Owner for Construction Costs or Rent.

4. **Lessee's Improvements.** Lessee shall be responsible for signalization at the ingress/egress points to the roadway if any is determined to be required by law or ordinance. Lessee will place modular units on the property upon completion by Owner Improvements. The size and placement and types of modular units is more specifically set forth in Exhibit C to this Agreement. The Parties agree that the modular units are and will remain the property of Lessee and Lessee will remove the units, at its own expense, upon termination of this Lease Agreement.

5. **Maintenance of Property.** Upon completion of the Owner's responsibilities identified in paragraph 2 above, Owner will have no further obligations to alter or repair the Lease Area unless Owner causes the damage to the Lease Area. Lessor agrees to pay for any damages or loss it causes or allows to be caused to the Lease Area by its use or placement of its modular structure or equipment located therein or serving the Lease Area. Owner agrees to repair any damages it causes to the Lease Area. Except for the improvements listed in paragraph 4 above, Lessee shall not make, suffer or permit to be made any alterations, additions or improvements to or of the Lease Area or any part thereof without the prior written consent of Owner. The Lease Area shall be used solely for modular Gainesville Fire Rescue site, and for no other purpose, and in accordance and compliance with all applicable laws, ordinances, rules and regulations of governmental authorities and the rules and regulations imposed by Owner, as the same may be amended from time to time.

6. **Construction Costs:** Owner agrees to perform the work described in the attached Exhibit B to prepare the Lease Area for Lessee's Use. In consideration of the work performed by Owner, Lessee shall pay Owner (amount to be determined, not to exceed \$100,000), or the actual cost of the work, whichever is less. Lessee shall make payment to Owner within ten (10) days after the Commencement Date of the Lease Term.

7. **Term/Extension.** This Lease is for a term of two years. The term of this Lease (the "***Lease Term***") shall commence on the earlier of the date 60 days after Owner delivers the Lease Area to Lessee with Owner's work completed or the date the fire station is opened for service (the "***Commencement Date***"). The Lease terminates on the last day of the 24th month (the "***Termination Date***") after Commencement Date, unless sooner terminated in accordance with this Lease. Lessee shall have the right to extend the Lease for two additional one year terms upon providing Owner with six months' prior notice of Lessee's intent to extend. In the event the lease is extended at the option of Lessee, rent shall be as set forth in paragraph 8(e) below.

8. **Rent; Additional Charges.**

(a) Commencing on the Commencement Date and continuing thereafter on the first (1st) day of each month without demand, counterclaim or set-off, Lessee shall pay to Owner Rent in the amount of One Thousand Two Hundred and 00/100 Dollars (\$1,200.00) per month.

(b) In the event that Owner elects to accept a payment of any Rent, due and payable under this Lease which is not received by Owner within five (15) days following the date the same became due, then Lessee shall pay to Owner a late charge in the amount of five percent (5%) of the past due amount in order to compensate Owner for its administrative expenses in processing overdue payments.

(d) Lessee hereby agrees to pay such Rent by electronic fund transfer to S. Clark Butler Properties, Ltd. on or before the first of each month as specified above. The Rent for any fractional month shall be prorated on a per diem basis.

(e) In the event the Lease is extended pursuant to paragraph 7, Rent shall increase by the Consumer Price Index – Urban Area, for the preceding quarter.

9. **Sales Tax.** Lessee is a governmental agency and as such is not required to pay sales tax. None Required

10. **Utilities.** Lessee shall pay for all water, electricity, sewage, heat, ventilation and air conditioning charges, used on or from the Lease Area (the "*Utilities*"). Owner shall in no event be liable for any interruption or failure of the Utilities on or to the Lease Area unless caused by Owner. If interruption is caused by Owner, Owner shall take all steps necessary to make the necessary repairs in a timely manner.

11. **Maintenance.** As part of its obligations hereunder, Lessee shall maintain and repair the Lease Area and shall keep the Lease Area in a clean and sanitary condition, free of waste. Lessee shall also be responsible for maintenance of parking areas, parking area lighting and all repairs and maintenance to the entire modular structure and any other temporary structures installed in and exclusively serving the Lease Area which shall be operated and maintained by Lessee at its own expense.

12. **Right of Entry.** Owner and its agents, employees and independent contractors shall have the right to enter the Lease Area at all times in the event of an emergency, and at reasonable hours in a non-emergency to exhibit the Lease Area to prospective purchasers, lenders, tenants or Leases. Owner shall, except in case of emergency, afford Lessee such prior notification of an entry into the Lease Area as shall be reasonably practicable under the circumstances.

13. **Default.** In the event

(i) Lessee shall fail to pay Rent and/or any other charge due and payable under this Lease by Lessee within thirty (30) days after the due date thereof; and/or

(ii) Lessee shall fail to comply with any other term, provision, covenant or warranty made under this Lease by Lessee

Owner shall give Lessee notice and an opportunity to cure the default. If Lessee fails to cure such default within thirty (30) days after notice thereof to Lessee, then in either such event Owner shall have the option to immediately and without further notice terminate this Lease. In the event Owner terminates the Lease, Lessee shall immediately surrender the Lease Area to Owner, provided however, Lessee shall have reasonable opportunity (a minimum of two months) to remove the modular units, fire equipment and all other property owned by Lessee. Pursuit of the foregoing remedy shall not preclude pursuit of any other remedy herein provided or any other remedy provided by law or at equity, nor shall pursuit of any remedy herein provided constitute an election of remedies thereby excluding the later election of an alternate remedy.

14. **Right to Personal Property.** All personal property brought into the Lease Area by Lessee, or Lessee's employees, agents, clients, customers, students and/or invitees, shall be the property of Lessee and not subject to lien by Owner. Property brought into the Lease Area shall be at the risk of Lessee only, and Owner shall not be liable for theft, mysterious disappearance or loss thereof or any damage thereto.

15. **Insurance.** Lessee is self-insured and will provide a certificate of self-insurance, if required. Lessee's program of self-insurance will cover claims and judgements for it is

liability pursuant to section 768.28, Florida Statutes, up to the sum of \$200,000 per person or \$300,000 arising out of the same occurrence. Nothing herein shall be interpreted as a waiver of the City's sovereign immunity granted under section 768.28, Florida Statutes.

16. **Surrender of Lease Area.** Upon the expiration or other termination of this Lease, Lessee shall quit and surrender to Owner the Lease Area in good condition and state of repair, reasonable wear and tear only excepted. Lessee shall have a reasonable amount of time (two months) to remove its modular units, carport, stairs, and all other equipment from the Lease Area. If Lessee remains in possession after expiration or termination of the Lease Term with or without Owner's written consent, Lessee shall become a tenant-at-sufferance. During the period of any such holding over, all provisions of this Lease shall be and remain in effect including the monthly Lease Fee of one thousand two hundred and no/100's (\$1,200.00) per month. The inclusion of the preceding sentence in this Lease shall not be construed as Owner's consent for Lessee to hold over.

17. **Notice.** All notices required or permitted to be given hereunder shall be in writing and shall be deemed to have been fully given, whether actually received or not, when delivered in person, or deposited with an overnight commercial courier, or deposited, postage prepaid, in the United States Mail, certified, return receipt requested, and addressed to Owner or Lessee at their respective address set forth herein or at such other address as either party shall have theretofore given to the other by notice as herein provided. All notice shall be sent to the following address:

Owner: Mary Jane Fredrickson as Trustee for the
S. Clark Butler Properties Land Trust
3217 SW 35th Blvd
Gainesville, Florida 32608
Attention: Property Manager

Lessee: City of Gainesville – Gainesville Fire Rescue
Office of the Fire Chief
Post Office Box 490, MS 34
Gainesville, Florida 32602

City Attorney's Office
Post Office Box 490, MS 6
Gainesville, Florida 32602

18. **Signage.** Lessee shall have the right, at its sole cost and expense, to install a sign at the Lease Area. Lessee's right to install and maintain Lessee's signage shall be subject to (a) prior written approval of Owner as to location, size, design, color, material and constructions specifications, content, and approved vendor, (b) applicable legal requirements. Lessee shall obtain and pay for all permits and Leases required in connection with a sign. Copies of all permits and Leases shall be delivered to Owner within a reasonable time after they are issued.

19. **Multi-year Contract.** The obligations of the City as to any funding required pursuant to this Contract shall be limited to an obligation in any given year to budget and appropriate from legally available funds, after monies for essential City services have been budgeted and appropriated, sufficient monies for the funding that is required during that year. Notwithstanding the foregoing, the City shall not be prohibited from pledging any legally available non-ad valorem revenues for any obligations heretofore or hereafter incurred, which pledge shall be prior and superior to any obligation of the City pursuant to this Contract.

20. **Public Records.** Florida has a very broad public records law and certain records of a contractor may be considered public records. Accordingly, by entering into an agreement with the City, contractor must:

1. Keep and maintain public records required by the public agency to perform the service.
2. Upon request from the public agency's custodian of public records, provide the public agency with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in this chapter or as otherwise provided by law.
3. Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the contract term and following completion of the contract if the contractor does not transfer the records to the public agency.
4. Upon completion of the contract, transfer, at no cost, to the public agency all public records in possession of the contractor or keep and maintain public records required by the public agency to perform the service. If the contractor transfers all public records to the public agency upon completion of the contract, the contractor shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the contractor keeps and maintains public records upon completion of the contract, the contractor shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the public agency, upon request from the public agency's custodian of public records, in a format that is compatible with the information technology systems of the public agency.

IF THE CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT (telephone number, e-mail address, and mailing address) .

21. **Applicable Law and Venue.** This Contract shall be governed by and construed in accordance with the laws of the State of Florida, notwithstanding any Florida conflict of law provision to the contrary. In the event of any legal action under this Contract, venue shall be in Alachua County, Florida.

22. **Miscellaneous.** Time is of the essence of this Lease. This Lease contains the entire agreement of the parties and no representations, inducements, promises or agreements, oral or otherwise, between the parties not embodied herein shall be of any force or effect. No

failure of Owner to exercise any power given Owner hereunder, or to insist upon strict compliance by Lessee with any obligation of Lessee hereunder, and no custom or practice of the parties at variance with the terms hereof, shall constitute a waiver of Owner's right to demand exact compliance with the terms hereof. This Lease may not be altered, waived, amended or extended except by an instrument in writing signed by Owner and Lessee.

IN WITNESS WHEREOF, the parties have hereunto set their hands and seals as of the Effective Date.

WITNESSES:

Print Name: _____

Print Name: _____

OWNER:

MARY JANE FREDRICKSON AS
TRUSTEE OF
S. CLARK BUTLER PROPERTIES LAND
TRUST

By: _____
Mary Jane Fredrickson, as Trustee

WITNESSES:

Print Name: _____

Print Name: _____

LESSEE:

City of Gainesville,

Anthony Lyons, City Manager

Exhibit "A"

LEASE AREA

DRAFT