

# ARKANSAS BUILDING

## AUTHORITY

MIKE BEEBE, GOVERNOR

•

ANNE W. LAIDLAW, DIRECTOR

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501 WOODLANE • SUITE 101N • LITTLE ROCK, AR • 72201 • (501) 682-1833 • FAX (501) 682-5589 • TDD (501) 682-1487

May 13, 2010

David Ferguson, Director  
Bureau of Legislative Research  
State Capitol, Room 315  
Little Rock, AR 72201

Re: Lease Agreement #04-630-P2047/DFA Revenue

Dear Mr. Ferguson:

Please find enclosed a copy of the lease agreement between Jonathan Barnett, as Lessor, and the DFA-Revenue as Lessee. Since Representative Barnett is currently serving a term as the Representative for District 97, the following law is applicable.

Ark. Code Ann. § 21-1-403 provides certain restrictions on state agency leases, agreements, contracts, and grants. Subsection (a)(2) mandates that:

(a) No constitutional officer may enter into any lease agreement, contract, or grant with any state agency unless:

(2) If competitive bidding or a request for proposal was not required by law, it has received the prior approval of the Joint Budget Committee during legislative sessions, the Legislative Council between legislative sessions, and the Governor.

This document is being presented to you for placement on the agenda for review and approval by Legislative Council. Additionally, a similar request has been provided to the Office of the Governor. As you know, real estate lease transactions are exempt from state procurement competitive bid laws. Additionally, no mandate exists in law or regulation that leases such as the one referenced above must competitively bid or placed out for proposals. In fact, negotiations for such transactions are clearly contemplated in Ark. Code Ann. §22-2-114. The initial lease was transacted prior to Representative Barnett becoming a member of the House of Representative. The lease renewal term is to begin on June 1, 2010 and expire on May 31, 2012. Once the requisite approvals have been provided, I will execute the lease amendment.

Should you have any questions please do not hesitate to contact me.

Sincerely,

A handwritten signature in blue ink, appearing to read "Anne Laidlaw". The signature is fluid and cursive, with a large initial "A".

Anne Laidlaw, Director

Attachment (1)

Cc: Honorable Governor Beebe  
Representative Barnett

Arkansas Building Authority  
STATE OF ARKANSAS  
COUNTY OF PULASKI  
Standard Lease Form 1  
Approved by Attorney General  
August 2008

Lease Term: 06/01/10 to 05/31/12  
Annual Rent: \$34,320.00  
Square Feet: 2,400 Rate: \$14.30  
Type: Renewal  
Worked By: Danny R. Lewis  
County: 04 Agency: 630  
Lease #: P2047



## STATE OF ARKANSAS LEASE AGREEMENT

This Lease is made this 13<sup>th</sup> day of April, 2010, by which Lessor leases the PREMISES to Lessee through ABA, Lessee's Leasing Agent.

For the purposes of this Lease Agreement the following definitions apply:

"LESSOR" means: JONATHAN BARNETT ENTERPRISES, INC., an Arkansas for profit corporation.

"LESSEE" means: DEPARTMENT OF FINANCE AND ADMINISTRATION – REVENUE DIVISION, P. O. Box 1272, Little Rock, Arkansas, 72203, an agency of the State of Arkansas.

"ABA" means the Real Estate Services Section of Arkansas Building Authority. By law ABA is the leasing agency for LESSEE. Arkansas Code Annotated §22-2-114. ABA is not an additional LESSEE and therefore shall not owe any rent.

"PREMISES" means the property which is the subject of this Lease which is further described in paragraph #1.

### 1. DESCRIPTION OF PREMISES:

Approximately 2,400 square feet of office space and adequate automobile parking spaces located at 707 South Lincoln; all situated in the City of Siloam Springs, County of Benton, Arkansas.

### 2. TERM:

The initial term will begin on June 1, 2010 and end on May 31, 2012. The LESSEE may elect to extend the term not more than ninety (90) days upon the same terms by written notice to LESSOR, not less than thirty (30) days before the end of the initial term.

### 3. RENT:

The LESSEE agrees to pay \$2,860.00 per calendar month on or before the tenth (10) day of each such period, upon invoice from the LESSOR, apportionable on a daily basis at \$94.03, such amount to be paid to LESSOR at: 1980 West U.S. 412, Siloam Springs, Arkansas, 72761.

4. UTILITIES AND SERVICES:

The LESSOR will furnish the following utilities and services:

Yes - Electricity	N/A - Elevator Service
Yes - Gas	Yes - Trash Removal
Yes - Water and Sewer	No - Janitorial Services and Supplies
Yes – Ballast and replacements	

5. MAINTENANCE, REPAIR AND REPLACEMENT:

The LESSOR shall maintain the leased PREMISES, including the building and all equipment, fixtures, and appurtenances furnished by the LESSOR under this Lease, in good repair and tenantable condition, except in case of damages arising from the acts of the LESSEE'S agents or employees. For the purpose of so maintaining said PREMISES and property, the LESSOR may at reasonable times, and with the approval of the authorized LESSEE representative in charge, enter and inspect the same and make any necessary repairs hereto. The LESSOR shall be responsible for maintaining all structural supports and exterior walls of the building, including windows, doors, and passageways from the lobby, street and parking areas leading to the leased property, and the adjacent sidewalks and entrance lobby, in good order and repair, and free of snow, ice, rubbish and other obstructions. LESSOR shall provide lawn and plant maintenance and shall provide monthly pest control service. LESSOR shall maintain in good working order and repair all plumbing, toilet facilities and other fixtures and equipment installed for the general supply of hot and cold water, heat, air-conditioning (including monthly maintenance and filters).

6. FAILURE TO PERFORM:

The covenant to pay rent and the covenant to provide any service, utility, maintenance, or repair required under this Lease are dependent. If the LESSOR shall breach any of the conditions required to be performed by it under this Lease, LESSEE may cure such breach and deduct the cost thereof from rent subsequently becoming due hereunder. If LESSOR fails to correct a deficiency within thirty (30) days after written notice from ABA and LESSEE, or within an appropriate shorter period stated in the notice, in the event of a deficiency constituting a hazard to the health and safety of the LESSEE'S employees, property, or any other person, ABA and LESSEE may elect to terminate this Lease.

7. DAMAGE BY FIRE OR OTHER CASUALTY:

LESSOR shall bear the risk of loss by fire or other casualty and shall maintain fire and extended coverage insurance to the full replacement value of the PREMISES. If the PREMISES are destroyed by fire or other casualty, this Lease will immediately terminate. In case of partial destruction or damage, so as to render the PREMISES unsuitable for the purposes for which they are leased, as determined by LESSEE and ABA, the LESSEE, may terminate the Lease by giving written notice to the LESSOR through ABA, within fifteen (15) calendar days thereafter; if so terminated, no rent will accrue to the LESSOR after such partial destruction or damage; and if not so terminated, the rent will be reduced proportionately by supplemental agreement hereto effective from the date of such partial destruction or damage.

8. ALTERATIONS:

The LESSEE may attach fixtures and install signs in or to the PREMISES with LESSOR'S approval, which shall not be unreasonably withheld. Such fixtures and signs shall remain the property of LESSEE and may be removed from the PREMISES within a reasonable time after the termination of this Lease provided the LESSEE shall restore the PREMISES to a condition as good as at the beginning of this Lease, ordinary wear and tear excepted.

ABA, acting as agent for LESSEE, may during the course of this Lease negotiate with LESSOR for other improvements to be made in the PREMISES. No additional cost or fee for services or work will be charged by LESSOR without the prior written authorization of ABA.

9. TERMINATION:

In addition to other remedies provided herein, the LESSEE may terminate this Lease by thirty (30) days written notice to LESSOR by ABA if the LESSEE'S funds are insufficient for it to continue the operations for which the PREMISES are being used.

10. SPECIAL PROVISIONS:

(a) LESSOR shall be responsible that this facility conforms to the Arkansas Fire Prevention Code, as amended, Arkansas State Plumbing Code, The National Electrical Code, and any other state and local laws, codes, authorities, etc., applicable to the leased facility including the Arkansas adopted Americans with Disabilities Act Accessibility Guidelines for Buildings and Facilities (ADAAG).

(b) Failure to make any disclosure required by Governor's Executive Order 98-04, or any violation of any rule, regulation, or policy adopted pursuant to that Order, shall be a material breach of terms of this contract. Any LESSOR, whether an individual or entity, who fails to make the required disclosure or who violates any rule, regulation, or policy shall be subject to all legal remedies available to the LESSEE.

(1) The LESSOR shall prior to assigning this Lease with any person or entity, for which the total consideration is greater than \$25,000, requires the assignee to complete a Contract and Grant Disclosure and Certification Form. The LESSOR shall ensure that any contract agreement, current or future between the LESSOR and an assignee for which the total consideration is greater than \$25,000 shall contain the following:

*Failure to make any disclosure required by Governor Executive Order 98-04, or any violation of any rule, regulation or adopted pursuant to that Order, shall be a material breach of the term of this Sublease. The party who fails to make the required disclosure or who violates the rule, regulation, or policy shall be subject to all legal remedies available to the LESSEE.*

(2) The LESSOR shall transmit to the agency a copy of the Contract and Grant Disclosure and Certification Form completed and signed by the assignee and a statement containing the dollar amount of the Sublease. The LESSOR shall transmit to ABA a copy of the disclosure form within ten (10) days of entering into any agreement with assignee.

(3) The terms and conditions regarding the failure to disclose and conditions which constitutes material breach of contract and rights of termination and remedies under the Executive Order 98-04 are hereby incorporated within.

- (c) LESSOR asserts that the corporation is the true owner of the PREMISES and its rights to the PREMISES are not pursuant to a lease or sublease.
- (d) The State shall not be responsible for the payment of any taxes or assessments for the PREMISES.
- (e) The LESSOR, LESSEE and ABA agree that should the Lease expire prior to the execution of any proposed amendment agreement, the parties agree that the Lease is hereby reinstated and ratified upon the Amendment Agreement being fully executed by the parties. The provisions, terms, and conditions of any subsequent Amendment Agreement shall govern in the event of conflict or inconsistencies, or both. This paragraph should not be construed between the parties as an agreement that the Lease will be extended for additional terms, but rather as an option between the parties to enter into future negotiations for additional terms should they so desire.
- (f) LESSEE shall have the option to terminate this Lease without cause by providing ninety (90) days notice in writing to LESSOR through ABA.

11. MISCELLANEOUS:

- (a) The Lease and any modifications or amendments to it will not be valid without the written approval of ABA.
- (b) This Lease shall benefit and bind the parties hereto and their heirs, personal representatives, successors and assigns.
- (c) This Lease contains the entire agreement of the parties
- (d) The LESSEE may terminate this Lease by written notice from ABA to LESSOR upon the taking by eminent domain of any part of the PREMISES. This provision does not prevent the LESSEE from claiming or recovering from the condemning authority the value of LESSEE'S leasehold interests.
- (e) Nothing in this Lease shall be construed to waive the sovereign immunity of the STATE OF ARKANSAS or any entities thereof.

Executed by the parties who individually represent that each has the authority to enter into this Lease.

LESSOR:

JOHNATHAN BARNETT  
ENTERPRISES, INC.

By:   
Jonathan Barnett, President

Date: 4-22-2010

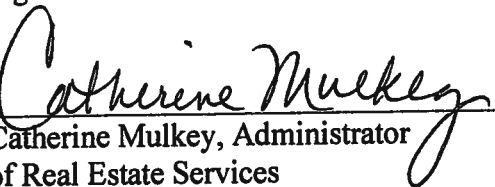
LESSEE:

DEPARTMENT OF FINANCE AND  
ADMINISTRATION – REVENUE DIVISION

By:   
Michael D. Munns, Assistant Commissioner

Date: 4/28/10

ARKANSAS BUILDING AUTHORITY  
As Agent for DF& A – Revenue

By:   
Catherine Mulkey, Administrator  
of Real Estate Services

Date: 5/10/10

By: \_\_\_\_\_  
Anne W. Laidlaw, Director

Date: \_\_\_\_\_

## CONTRACT AND GRANT DISCLOSURE AND CERTIFICATION FORM

Failure to complete all of the following information may result in a claim for obtaining a contract, lease, purchase agreement, or grant award with any Arkansas State Agency.

SOCIAL SECURITY NUMBER

FEDERAL ID NUMBER

SUBCONTRACTOR

SUBCONTRACTOR NAME

TAXPAYER ID #:

OR 71-0625172

☐ Yes ☒ No

TAXPAYER ID NAME: Jonathan Barnett Estate

IS THIS YOUR?

Services? ☐ Both? ☒ Neither ☒ Property

YOUR LAST NAME: Barnett

FIRST NAME: Jonathan

M.I.:

ADDRESS: 1980 RUBY 412 W

CITY: SILVER SPRING

STATE: MD

ZIP CODE: 72761

COUNTRY:

AS A CONDITION OF OBTAINING, EXTENDING, AMENDING, OR RENEWING A CONTRACT, LEASE, PURCHASE AGREEMENT, OR GRANT AWARD WITH ANY ARKANSAS STATE AGENCY, THE FOLLOWING INFORMATION MUST BE DISCLOSED:

## FOR INDIVIDUALS \*

Indicate below if: you, your spouse or the brother, sister, parent or child of you or your spouse is a current or former member of the General Assembly, Constitutional Officer, State Board or Commission Member, or State Employee:

Position Held	Mark (Y)		Name of Position of Job Held (business, occupation, name of board/ commission, etc., enter, etc.)	Time How Long?		What is the person(s) name and how are they related to you? (i.e. Jane Q. Public, spouse, John Q. Public, Jr., child, etc.)
	Current	Former		From MM/YY	To MM/YY	
Constitutional Assembly						Relation
Constitutional Officer						
State Board or Commission Member						
State Employee						

☐ None of the above applies

## FOR AN ENTITY (BUSINESS) \*

Indicate below if any of the following persons, current or former, hold any position of control or hold any ownership interest of 10% or greater in the entity: member of the General Assembly, Constitutional Officer, State Board or Commission Member, or State Employee. Position of control means the power to direct the purchasing policies or influence the management of the entity.

Position Held	Mark (Y)		Name of Position of Job Held (business, occupation, name of board/ commission, etc., enter, etc.)	Time How Long?		What is the person(s) name and what is his/her % of ownership interest and/or what is his/her position of control?	Ownership Interest (%)	Position of Control
	Current	Former		From MM/YY	To MM/YY			
General Assembly	✓		REPRESENTATIVE	1/09	1/11	JONATHAN BARNETT	60%	PROPERTY
Constitutional Officer								
State Board or Commission Member								
State Employee								

☐ None of the above applies



## Contract and Grant Disclosure and Certification Form

Failure to make any disclosure required by Governor's Executive Order 98-04, or any violation of any rule, regulation, or policy adopted pursuant to that Order, shall be a material breach of the terms of this contract. Any contractor, whether an individual or entity, who fails to make the required disclosure or who violates any rule, regulation, or policy shall be subject to all legal remedies available to the agency.

As an additional condition of obtaining, extending, amending, or renewing a contract with a state agency I agree as follows:

1. Prior to entering into any agreement with any subcontractor, prior or subsequent to the contract date, I will require the subcontractor to complete a CONTRACT AND GRANT DISCLOSURE AND CERTIFICATION FORM. Subcontractor shall mean any person or entity with whom I enter an agreement whereby I assign or otherwise delegate to the person or entity, for consideration, all, or any part, of the performance required of me under the terms of my contract with the state agency.

2. I will include the following language as a part of any agreement with a subcontractor:

*Failure to make any disclosure required by Governor's Executive Order 98-04, or any violation of any rule, regulation, or policy adopted pursuant to that Order, shall be a material breach of the terms of this subcontract. The party who fails to make the required disclosure or who violates any rule, regulation, or policy shall be subject to all legal remedies available to the contractor.*

3. No later than ten (10) days after entering into any agreement with a subcontractor, whether prior or subsequent to the contract date, I will mail a copy of the CONTRACT AND GRANT DISCLOSURE AND CERTIFICATION FORM completed by the subcontractor and a statement containing the dollar amount of the subcontract to the state agency.

I certify under penalty of perjury, to the best of my knowledge and belief, all of the above information is true and correct and that I agree to the subcontractor disclosure conditions stated herein.

Signature Jonathan B. Bunker Title President Date 5-7-2010  
Vendor Contact Person Art Becker Title Manager Phone No. 479-524-6254

Agency use only  
Agency Name \_\_\_\_\_ Agency \_\_\_\_\_  
Number \_\_\_\_\_ Name \_\_\_\_\_ Contact Person \_\_\_\_\_ Contract \_\_\_\_\_  
Phone No. \_\_\_\_\_ or Grant No. \_\_\_\_\_