

MEMORANDUM

TO: **Real Estate & Transportation Committee**
Commissioner Bill Read, Chairman
Commissioner Phillip Walker
Commissioner Scott Franklin

FROM: City Attorney's Office

DATE: October 5, 2020

RE: **Ground Lease Agreement with Polk County for Property Located at 3241 Lakeland Hills Boulevard**

Attached hereto for your consideration is a proposed Lease Agreement with Polk County to lease City-owned property located at 3241 Lakeland Hills Boulevard for use as a public health department and clinic by the Florida Department of Health.

This Agreement is an updated version of a previous ground lease agreement between the City and Polk County that has been in effect since January of 1991 and which is set to expire at the end of October this year. The County constructed the current building on the property housing the Florida Department of Health during the previous lease term. The attached Agreement would establish a new lease term through October of 2050.

In consideration for the property being provided to Polk County, public health services will be provided by the Florida Department of Health. No rent will be paid under the Agreement, but Polk County will be responsible for all utilities, maintenance costs, and any improvements or alterations to the property. The improvements will stay with the property and belong to the City upon the expiration or termination of the lease.

It is recommended that the appropriate City officials be authorized to execute this Agreement with Polk County to lease 3241 Lakeland Hills Boulevard to the County for the operations of the Florida Department of Health.

Attachment

**GROUND LEASE AGREEMENT BETWEEN
POLK COUNTY
AND
THE CITY OF LAKELAND**

This Ground Lease Agreement (the "Agreement") is hereby entered into as of the Effective Date defined in Section 21, below, by and between Polk County, a political subdivision of the State of Florida, its successors and assigns (the "COUNTY") and the City of Lakeland, a municipal corporation (the "CITY"). The COUNTY and the CITY may hereinafter be collectively referred to as the "PARTIES."

W I T N E S S E T H:

WHEREAS, the CITY owns certain real property (hereinafter referred to as the "LEASED PREMISES"), more particularly described in Section 2 below, which is located at 3241 Lakeland Hills Blvd, Lakeland, FL 33805; and

WHEREAS, the COUNTY leases the LEASED PREMISES from the CITY per that certain lease agreement dated January 15, 1991, as amended by the Parties on January 10, 2007, which lease agreement expires on October 31, 2020 (the "Original Lease"); and

WHEREAS, during the term of the Original Lease, the COUNTY constructed a building on the LEASED PREMISES which has been used by the Florida Department of Health in Polk County for the duration of the Original Lease; and

WHEREAS, the COUNTY has requested, and the CITY has agreed, to continue to lease the LEASED PREMISES for said use to the COUNTY, upon the expiration of the Original Lease, and upon the terms and conditions stated in this Agreement.

NOW THEREFORE, IN CONSIDERATION of the mutual promises, covenants and conditions hereinafter contained, the parties agree as follows:

SECTION 1. RECITALS / EFFECT OF ORIGINAL LEASE.

The above recitals are true and correct and incorporated herein. Without limiting the generality of the foregoing, the Original Lease shall be replaced in its entirety effective as of the Lease Commencement Date (as defined in Section 5 below), and shall have no further force or effect as of such date.

SECTION 2. LEASED PREMISES.

The CITY, for and in consideration of the terms and conditions hereinafter contained to be kept, performed and observed by the COUNTY, does hereby lease to the COUNTY, and the COUNTY does hereby lease and accept from the CITY, the LEASED PREMISES which is described as follows:

Commencing at the Northwest corner of Section 6, Township 28 South, Range 24 East, Polk County, Florida, run Easterly 1319.05 feet along the north boundary of Section 6 to the centerline of State Road 33 (Lakeland Hills Boulevard); thence continue along said north boundary of Section 6 a distance of 751. 98 feet; thence S 00°13'00' W a distance of 536.25 feet for the Point of Beginning.

Thence continue S 00°13'00" W a distance of 120.0 feet to the north right-of-way line of a 100.0 foot drainage canal; thence S 74°30'00" W along the north right-of-way line of said drainage canal a distance of 737.57 feet to the east right-of-way line of State Road 33 (Lakeland Hills Boulevard); thence N 00°13'00" E along said right-of-way line a distance of 317.05 feet; thence N 89°59'42" E a distance of 710.0 feet to the Point of Beginning, LESS AND EXCEPT the west 10.0 feet for right-of-way reservation.

Containing 3.50 acres, more or less.

SECTION 3. USE OF THE LEASED PREMISES.

The Parties acknowledge and agree that as of the Effective Date, the LEASED PREMISES is used by the Florida Department of Health in Polk County ("FDOH") as a public health department and clinic. The Parties further agree that the LEASED PREMISES shall continue to be utilized by FDOH or the COUNTY on a continuous basis during the term of this Agreement for the purpose of operating and maintaining a public health department and clinic. In the event that the LEASED PREMISES are used for purposes inconsistent with this Agreement, then the COUNTY shall be deemed in default of this Agreement, and the CITY shall have the right to terminate this Agreement, subject to the notice requirements and cure period set forth in Section 8.a, below.

SECTION 4. CONSIDERATION.

In consideration of the lease of the LEASED PREMISES to the COUNTY, the COUNTY will occupy the LEASED PREMISES on a continuous basis during the Agreement to fulfill its duties and responsibilities for providing public health services. The COUNTY shall be responsible for any and all utility costs associated with its habitation of the LEASED PREMISES.

SECTION 5. LEASE TERM.

Unless sooner terminated as stated in Section 8, below, the term of the lease under this Agreement shall be for the continuous period of thirty (30) years beginning on November 1, 2020 (the "Lease Commencement Date") and terminating on October 31, 2050.

SECTION 6. CONDITION OF LEASED PREMISES.

The COUNTY accepts the LEASED PREMISES in the condition that the premises are in as of the Effective Date of this Agreement. The COUNTY shall be responsible, at its sole cost, for all maintenance and repairs associated with the LEASED PREMISES and any improvements located thereon.

SECTION 7. IMPROVEMENTS AND ALTERATIONS.

All improvements or alterations to the LEASED PREMISES made by the COUNTY shall be at the expense of the COUNTY. Upon expiration or earlier termination of the lease, all improvements made to the LEASED PREMISES shall become the property of the CITY.

SECTION 8. TERMINATION OF AGREEMENT.

This Agreement may be terminated as follows:

a. Termination for Default: If either party gives written notice to the other party that such other party has materially breached or defaulted in the performance of any of its obligations herein, and such breach has not been cured within sixty (60) days following the giving of such notice, or if the breach is one which previously occurred and has now reoccurred, the non-breaching party shall have the right to immediately provide notice for the termination of this Agreement and the COUNTY shall have one hundred twenty (120) days to vacate the LEASED PREMISES.

b. The COUNTY may terminate this Agreement at any time, with or without cause, upon providing the CITY at least ninety (90) days prior written notice.

SECTION 9. LIABILITY.

a. To the extent specified under Section 768.28, Florida Statutes, and without waiving any statutory or constitutional sovereign immunity protections, the COUNTY shall be responsible for (i) monetary damages for bodily injury or death to any person, and (ii) monetary damages for the injury or loss of personal property, that are caused by the negligent or wrongful act or omission of an employee of the COUNTY who is acting within the scope of the employee's office or employment while on or around the LEASED PREMISES.

b. To the extent specified under Section 768.28, Florida Statutes, and without waiving any statutory or constitutional sovereign immunity protections, the CITY shall be responsible for (i) monetary damages for bodily injury or death to any person, and (ii) monetary damages for the injury or loss of personal property, that are caused by the negligent or wrongful act or omission of an employee of the CITY who is acting within the scope of the employee's office or employment while on or around the LEASED PREMISES.

c. **LIMIT OF LIABILITY. IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER, OR TO ANYONE CLAIMING FOR, BY, OR THROUGH THE OTHER PARTY, FOR INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL, EXEMPLARY, OR PUNITIVE DAMAGES OF ANY KIND OR NATURE WHATSOEVER INCLUDING LOSS OF PROFIT, WHETHER FORESEEABLE OR NOT, ARISING OUT OF OR RESULTING FROM THE NONPERFORMANCE OR BREACH OF THIS AGREEMENT BY A PARTY WHETHER BASED IN CONTRACT, COMMON LAW, WARRANTY, TORT, STRICT LIABILITY, CONTRIBUTION, INDEMNITY OR OTHERWISE.**

SECTION 10. SOVEREIGN IMMUNITY AND EMPLOYEE STATUS.

a. Nothing herein shall be deemed a waiver, express or implied, of either parties' sovereign immunity or an increase in the limits of liability pursuant to Section 768.28, Florida Statutes, regardless of whether any such obligations are based in tort, contract, statute, strict liability, and negligence, product liability or otherwise. Nothing herein shall be construed as consent by either party to be sued by third parties in any matter arising out of any contract, act or action.

b. All of the respective privileges and immunities from liability, exemptions from laws, ordinances, and rules, and all pensions and relief, disability, worker's compensation, and other benefits, as held by each party, respectively, shall be unaffected by this Agreement.

c. All costs associated with the compensation and benefits for personnel shall be borne by the party employing said personnel unless otherwise agreed upon in an amendment to

this Agreement, which is reduced to writing and executed between the parties.

d. Persons employed by the COUNTY or CITY, in the performance of services and functions pursuant to this Agreement, shall have no claim on the other party to this Agreement for pension, worker's compensation, unemployment compensation, civil service, or any other employee rights or privileges granted by operation of law or otherwise to officers and employees of the other party to this Agreement.

SECTION 11. ENTRY FOR INSPECTION.

The CITY shall have the right to enter the LEASED PREMISES for inspection at all reasonable business hours, and whenever reasonably necessary.

SECTION 12. SIGNS.

The COUNTY shall be permitted to erect and to place any and all signs on or about the LEASED PREMISES identifying and related to the health department or clinic, including but not limited to, the identity of the department, traffic control signs and any other signs denoting general information or instructions concerning the Fire Rescue department or its services.

SECTION 13. ASSIGNMENT.

The COUNTY shall not sublet or assign all or any part of the LEASED PREMISES other than to FDOH, as described above, and the COUNTY shall not permit the use or occupancy of the LEASED PREMISES for any purposes other than those purposes specified or otherwise contemplated herein without the express, prior written consent of the CITY.

SECTION 14. NOTICES.

a. All notices, demands, or other writings required to be given or made or sent in this Agreement, or which may be given or made or sent, by either party to the other, shall be deemed to have been fully given or made or sent when in writing and addressed as follows:

POLK COUNTY:
Real Estate Services Administrator
Post Office Box 9005, Drawer RE01
Bartow, Florida 33831
863-534-2580

CITY OF LAKELAND:
City Manager
228 S. Massachusetts Avenue
Lakeland, Florida 33801

b. All notices required, or which may be given hereunder, shall be considered properly given if (i) personally delivered, (ii) sent by certified United States mail, return receipt requested, or (iii) sent by Federal Express or other equivalent overnight letter delivery company.

c. The effective date of such notices shall be the date personally delivered, or if sent by mail, the date of delivery stated on the return receipt, or if sent by overnight letter delivery company, the date the notice was picked up by the overnight letter delivery company.

d. The parties may designate other parties or addresses to which notice shall be sent by notifying, in writing, the other party in a manner designated for the filing of notice hereunder.

SECTION 15. ENTIRE AGREEMENT.

This document incorporates and includes all prior negotiations, correspondence, conversations, agreements, or understandings applicable to the matters contained herein and the PARTIES agree that there are no commitments, agreements, or understandings concerning the subject matter of this Agreement that are not contained in this document. Accordingly, it is agreed that no deviation from the terms hereof shall be predicated upon any prior representations or agreements whether oral or written. It is further agreed between the PARTIES that the COUNTY and the CITY equally contributed to and assisted in the drafting of this Agreement.

SECTION 16. WAIVER OF BREACH.

A waiver by any party of a breach or violation of any provision of this Agreement shall not operate, or be construed to be, a waiver of any subsequent breach of the same or other provisions hereof.

SECTION 17. ENFORCEMENT.

Each party shall be responsible for its own legal and attorneys' fees, costs and expenses incurred in connection with any disputes or any litigation arising out of, or related to this Agreement, including attorneys' fee, costs, and expenses incurred for any appellate or bankruptcy proceedings.

SECTION 18. AMENDMENTS TO AGREEMENT.

It is further agreed that no modification, amendment, or alteration in the terms or conditions contained herein shall be effective unless contained in a written document executed with the same formality and of equal dignity herewith.

SECTION 19. SEVERABILITY.

In the event any provision of this Agreement is held to be unenforceable for any reason, the unenforceability thereof shall not affect the remainder of the Agreement which shall remain in full force and effect and enforceable in accordance with its terms.

SECTION 20. MUTUAL INTENT.

It is agreed between the COUNTY and CITY that the aforementioned provisions represent the true intent of the PARTIES and that sufficient consideration exists for each to be bound thereby.

SECTION 21. EFFECTIVE DATE AND DISSEMINATION OF AGREEMENT.

This Agreement is entered into by and between the PARTIES pursuant to Section 163.01, Florida Statutes. The Agreement shall be effective once filed with the Clerk of the Circuit Court of Polk County (the "Effective Date"). Further, fully executed copies of this Agreement shall be kept on file with the respective clerk and/or custodian of both parties.

**THE REST OF THIS PAGE INTENTIONALLY LEFT BLANK;
THE AGREEMENT CONTINUES ON THE FOLLOWING PAGE**

WITH THE PARTIES' SIGNATURES.

IN WITNESS WHEREOF, the parties have signed this Ground Lease Agreement on the respective dates set forth below.

ATTEST:
Stacy M. Butterfield, Clerk

**POLK COUNTY, a political subdivision
of the State of Florida**

Deputy Clerk

By: _____
William D. Beasley, County Manager

Reviewed as to form and legal sufficiency:

Date Signed by Manager: _____

County Attorney's Office Date

ATTEST:

**THE CITY OF LAKELAND,
a municipal corporation of Florida**

Kelly S. Koos, City Clerk

By: _____
H. William Mutz, Mayor

Reviewed as to form and correctness:

Date Signed by CITY: _____

City Attorney's Office Date