

ORDINANCE 82 - 24

AN ORDINANCE OF THE MAYOR AND CITY COUNCIL OF THE CITY OF CAPE CORAL, FLORIDA, AUTHORIZING AND DIRECTING THE CITY MANAGER OR THEIR DESIGNEE TO ENTER INTO A GROUND LEASE WITH LEE COUNTY, A POLITICAL SUBDIVISION OF THE STATE OF FLORIDA, FOR THE LEASE OF PROPERTY OWNED BY THE CITY OF CAPE CORAL LOCATED AT 101 NW DOUGLAS PARKWAY TO PROVIDE EMERGENCY MEDICAL SERVICES; AUTHORIZING THE CITY MANAGER OR THEIR DESIGNEE TO EXECUTE THE GROUND LEASE AND ANY RELATED DOCUMENTS; PROVIDING FOR SEVERABILITY AND AN EFFECTIVE DATE.

WHEREAS, the City of Cape Coral owns the property located at 101 NW Douglas Parkway; and

WHEREAS, Lee County desires to construct an EMS facility to provide emergency medical services, for the benefit of the general public; and

WHEREAS, the term of the Lease shall commence on the effective date for a period of fifty (50) years, with the option to renew for two additional ten-year periods upon mutual agreement of the parties; and

WHEREAS, the City Manager recommends that the Mayor and City Council approve the Ground Lease with Lee County, a Political Subdivision of the State of Florida, for Lee County to construct an emergency medical service facility to provide emergency medical services.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF CAPE CORAL, FLORIDA, AS FOLLOWS:

SECTION 1. The City Manager is hereby authorized and directed to enter into a Ground Lease between the City of Cape Coral, Florida, and Lee County, a Political Subdivision of the State of Florida, for the lease of property located at 101 NW Douglas Parkway for Lee County to construct and emergency medical service facility and provide emergency medical services for the benefit of the general public. A copy of the Ground Lease is attached hereto as Exhibit 1.

SECTION 2. Severability. In the event that any portion or Section of this ordinance is determined to be invalid, illegal or unconstitutional by a court of competent jurisdiction, such decision shall in no manner affect the remaining portions or Sections of this ordinance which shall remain in full force and effect.

SECTION 3. Effective Date. This ordinance shall become effective immediately after its adoption by the Cape Coral City Council.

ADOPTED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF CAPE CORAL, FLORIDA, AT THEIR REGULAR SESSION THIS _____ DAY OF _____, 2024.

JOHN GUNTER, MAYOR

VOTE OF MAYOR AND COUNCILMEMBERS:

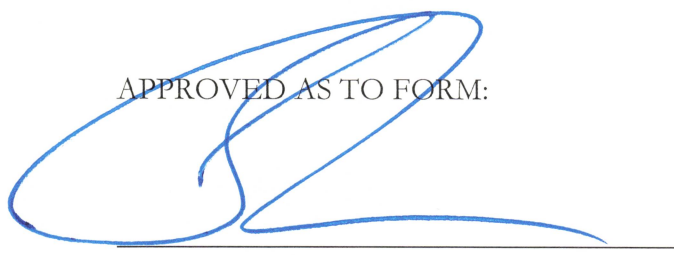
GUNTER _____
STEINKE _____
LEHMANN _____
DONNELL _____

NELSON _____
KILRAINE _____
LONG _____
KADUK _____

ATTESTED TO AND FILED IN MY OFFICE THIS _____ DAY OF _____,
2024.

KIMBERLY BRUNS,
CITY CLERK

APPROVED AS TO FORM:



ALEKSANDR BOKSNER
CITY ATTORNEY
Ord/ Ground Lease-Lee County EMS

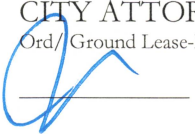


EXHIBIT 1

This instrument prepared by:
Lee County, Dept of County Lands
1500 Monroe St, 4th Floor
Fort Myers, FL 33901

LEASE NO. 4022

Project: County EMS – 101 NW Douglas Pkwy, Cape Coral

STRAP No: 26-43-23-C3-02785.0000

GROUND LEASE

THIS LEASE is made and entered into this ____ day of _____, 2024 (the “**Effective Date**”) by and between the **CITY OF CAPE CORAL**, a Florida municipal corporation, whose mailing address is P.O. Box 150027, Attention: Real Estate Division, Cape Coral, FL 33915-0027 (the “**City**”), and **LEE COUNTY**, a political subdivision of the State of Florida, whose mailing address for purposes of this Lease is Dept of County Lands, 1500 Monroe Street, 4th floor, Fort Myers, FL 33901 (the “**County**”).

Recitals:

A. The City owns property located at 101 NW Douglas Parkway, Cape Coral, FL 33993, consisting of approximately 3.86 acres of vacant land, as more particularly depicted and/or described on the attached Exhibit A (the “**Property**”).

B. The County desires to construct an EMS facility in this area to provide EMS services, for the benefit of the general public.

C. In the spirit of governmental cooperation and in order to accommodate the County in providing valuable EMS services in this area, the City is agreeable to granting the County a long-term leasehold interest in the Property, for the County’s construction and operation of an EMS facility (the “**Facility**”).

NOW THEREFORE, the parties hereby agree as follows:

1. **GRANT.** The City hereby leases the Property to the County, and the County hereby leases the Property from the City, on the terms and conditions set forth herein. This Lease is expressly contingent upon approval by the Cape Coral City Council and the Board of County Commissioners.

2. TERM AND USE.

(A) Term. The term (“**Term**”) of this Lease shall be for **50 years**, commencing on the Effective Date. This Lease may be extended by mutual agreement by the parties for up to two (2) additional 10-year periods of time provided the County is not in default or breach of any term or provision of this Lease. The City shall deliver exclusive possession of the Property to the County on the Effective Date pursuant to the terms herein.

(B) County’s Right to Terminate. Notwithstanding the Term provided for under section 2(A) above, if, prior to the County’s commencement of construction, the County determines that, for any reason, the County will be unable to secure all necessary permits and other approvals for the construction and operation of the Facility, or if for any other reason the County determines that the construction and operation of the Facility on the Property is not feasible, the County shall have the right

to terminate this Lease by written notice to the City, whereupon neither party shall thereafter have any rights or obligations under this Lease. Further, the County shall have the right to terminate this Lease if the County is not satisfied with its due diligence investigations, including without limitation title, survey, environmental assessment, and engineering studies.

(C) City's Right to Terminate. Notwithstanding the Term provided for under section 2(A) above, the City shall have the right to terminate this Lease if County violates any provisions of this Agreement and such violation is not cured within 30 days from the County's receipt of written notice by the City.

(D) **USE OF PROPERTY**. County shall only occupy and use the Property for the primary purpose of operating an EMS Facility.

3. **RENT**. In consideration of the value of the EMS services to be provided by the County to the general public in the area, and the costs to be incurred by the County in designing, constructing, operating, maintaining and repairing the Facility, the County shall pay base rent to the City in the amount of \$1.00 per year. Annual payments of base rent shall be made on or about the Effective Date and on or about each anniversary thereof.

4. **CONSTRUCTION**. Following the parties' execution of this Lease and the completion of the County's due diligence investigations, the County shall take the necessary steps to design and construct the Facility. The City shall cooperate with the County in obtaining all permits and other approvals, to the extent the participation of the property owner is required. Throughout the Term, the County shall, for all purposes, be deemed to be the owner of the Facility (but not the underlying fee in the land, which is and shall be owned by the City). Unless otherwise agreed to by the parties in writing, if the construction of the EMS Facility has not commenced within four (4) years of the Effective Date of this Lease, the Lease shall be deemed void and of no further effect and neither party shall have any further obligation or liability under this Lease except as otherwise expressly provided hereunder.

5. **OPERATING COSTS**. The County shall bear all costs incurred by the County in designing, constructing, operating, maintaining and repairing the Facility.

6. **CASUALTY**. If the Facility is damaged or destroyed by fire or other casualty, the County shall have the right to (i) repair the Facility, (ii) demolish and rebuild the Facility, or (iii) in the event of substantial damage, to demolish the Facility and terminate this Lease.

7. **NOTICES**. All notices required or permitted to be given under this Lease shall be in writing and shall be deemed sufficiently given if personally delivered, or delivered by Federal Express or other recognized courier, or mailed by U.S. registered or certified mail, postage prepaid, return receipt requested, addressed to the parties at their addresses set forth below, or to such other addresses as they may specify from time to time.

To the County: Lee County, Department of County Lands
Attention: Director
1500 Monroe Street, 4th floor
Fort Myers, FL 33901
Email: clemenrg@leegov.com
Phone: (239) 533-8833

To the City: City of Cape Coral
Attention: Real Estate Division, Property Broker
P.O. Box 150027
Cape Coral, FL 33915-0027
Email: dandrews@capecoral.gov

Phone: (239) 574-0735

8. **DEFAULT.** If either party breaches the terms of this Lease, the parties shall be entitled to pursue all rights and remedies available at law or in equity.

9. **SURRENDER.** Provided this Lease is not terminated on account of the County's purchase of the Property under section 10 (*Option to Purchase*) below, at the end of the Term the County shall surrender possession of the Property and Facility to the City and the Facility shall become the property of the City.

10. **OPTION TO PURCHASE.**

(A) During the Lease term, the County may request to purchase the Property (specifically, the City's fee interest in the land underlying the Facility). The purchase price shall be determined as follows: the County shall obtain two appraisals from independent, qualified licensed appraisers in the State of Florida. If the higher of the two appraised values is not more than 10.0% higher than the lower of the two appraised values, the purchase price shall be the average of the two appraised values. If, however, the higher of the two appraised values is more than 10.0% higher than the lower of the two appraised values, the County shall pay for a third independent appraisal, and the purchase price shall be the average of the two closest appraised values. For clarity, the appraisals shall not include the value of improvements paid by the County.

(B) **Closing.** If the County exercises the option to purchase, the closing shall take place 120 days after the City receives the County's notice to purchase. In connection with the purchase and sale, the County shall pay for all appraisal costs, title commitment, title policy and closing costs associated with the purchase of the property.

(C) **Right of First Refusal.** If County exercises the option to purchase the Property and subsequently desires to resell the Property, the City shall have the right of first refusal to repurchase the Property from the County, at the current market value of the Property and Improvements as determined by an independent, qualified licensed appraiser in the State of Florida. In connection with the purchase and sale, the City shall pay for its appraisal costs. The County shall pay for a title commitment and owner's policy of title insurance in the amount of the purchase price and its appraisal costs, if any. Other closing costs (i.e., search fees, documentary stamps etc.) shall be split between each party.

11. **SUBLEASE AND ASSIGNMENT.** The County may not assign or sublease this Lease without the prior written consent of City.

12. **INDEMNIFICATION AND INSURANCE.**

(A) **Indemnification by County.** Both Parties have the benefit of Sovereign Immunity. As a result, to the extent allowed by law and subject to the limitations contained in Section 768.28, Florida Statutes, each party assumes responsibility for the negligent or wrongful acts or omissions of its own employees, agents or other representatives while acting within the scope of their employment or otherwise within an authorized capacity, arising from the activities under this Lease. Any claims, lawsuits, judgments, damages, losses and expenses, including attorney's fees, arising from this Lease will be governed by Florida law. However, nothing in this provision will require either party to indemnify the other for any losses, damages or injuries caused by or otherwise arising from the negligent or wrongful act or omission of its employees, agents or representatives.

The Parties agree that, by execution of this Lease, no party will be deemed to have waived its statutory defense of sovereign immunity, or to have increased its limits of liability under Section 768.28, Florida Statutes, as it may be amended from time to time.

(B) County's Insurance. The County is self-insured as authorized under Florida law and will maintain required insurance coverage for all personnel and equipment together with any additional insurance required by applicable federal, state, or local laws and regulations, continuously throughout the term of this Lease. Notwithstanding the foregoing, the County agrees to use licensed and insured contractors for construction activities conducted on the County's behalf. The City shall be named as an additional insured on any such resulting certificate of insurance.

The County's property of any kind and all personal property that may be placed within the Leased Property shall be at the sole risk of the County. Except for the negligence of the City, the City shall not be liable to the County or any other person for any injury, loss or damage to property or to any person on the Leased Property.

13. UTILITIES AND TAXES. The County shall be responsible to pay for all utility services including electricity, water, gas, sewer and solid waste (garbage) removal. In addition, County agrees to pay all ad valorem, non-ad valorem, user fees, and personal property taxes, if any, as well as all local government assessments, if any, levied or assessed against the Property during the Lease Term, or any taxes arising from the Property as a result of the improvement or other activity of County on the Property.

14. MAINTENANCE AND REPAIRS.

(A) County's Maintenance Obligations. County shall at all times during the Lease Term maintain the Property and the County's Improvements in good condition and repair, including without limitation all landscaping, parking areas, sidewalks, and driveways, the structure of the roof, all plumbing, lighting, heating, ventilation and air conditioning facilities, electrical wiring and equipment if necessary.

(B) Exterior and Grounds. County shall be responsible for all mowing of grass and lawn care, and trash and garbage removal from the Property.

(C) City's Maintenance Obligations. City shall have no obligation to maintain or repair the County's Improvements nor care for the exterior and grounds leased to the County hereunder.

[signature page follows]

This Lease is executed by the parties on the dates indicated below, effective as of the Effective Date.

ATTEST:

CITY OF CAPE CORAL

Kimberly Bruns, City Clerk

BY: _____
Michael Ilczyszyn, City Manager

Date: _____, 2024

APPROVED AS TO FORM:

Aleksandr Boksner, City Attorney

Approved and accepted for and on behalf of Lee County, Florida, this ____ day of _____, 2024.

ATTEST:
KEVIN C. KARNES
CLERK OF CIRCUIT COURT

**BOARD OF COUNTY COMMISSIONERS OF
LEE COUNTY**

BY: _____
Deputy Clerk

BY: _____
Mike Greenwell, Chairman

APPROVED AS TO FORM FOR THE
RELIANCE OF LEE COUNTY ONLY

County Attorney's Office

Exhibits:
Exhibit A – *Description and/or Depiction of Property*

