

MEMORANDUM

TO: **Real Estate & Transportation Committee**
Commissioner Bill Read, Chairman
Commissioner Justin Troller
Commissioner Phillip Walker

FROM: City Attorney's Office

DATE: April 16, 2018

RE: **Lease Agreement between Community Redevelopment Agency
and Polk County Tax Collector for 922 N. Kentucky Avenue**

Attached for your consideration is a Lease Agreement between the Community Redevelopment Agency (CRA) and the Polk County Tax Collector for the lease by the Tax Collector of 922 N. Kentucky Avenue. Tax Collector Joe Tedder originally approached the CRA and the City of Lakeland in 2016 requesting assistance in obtaining additional parking for his employees at the Tax Collector's Lakeland branch office located at 916 N. Massachusetts Avenue. The CRA analyzed CRA and City-owned property in the vicinity for this purpose, but the construction cost estimates for a paved parking lot came in at more than \$600,000, which was deemed cost-prohibitive.

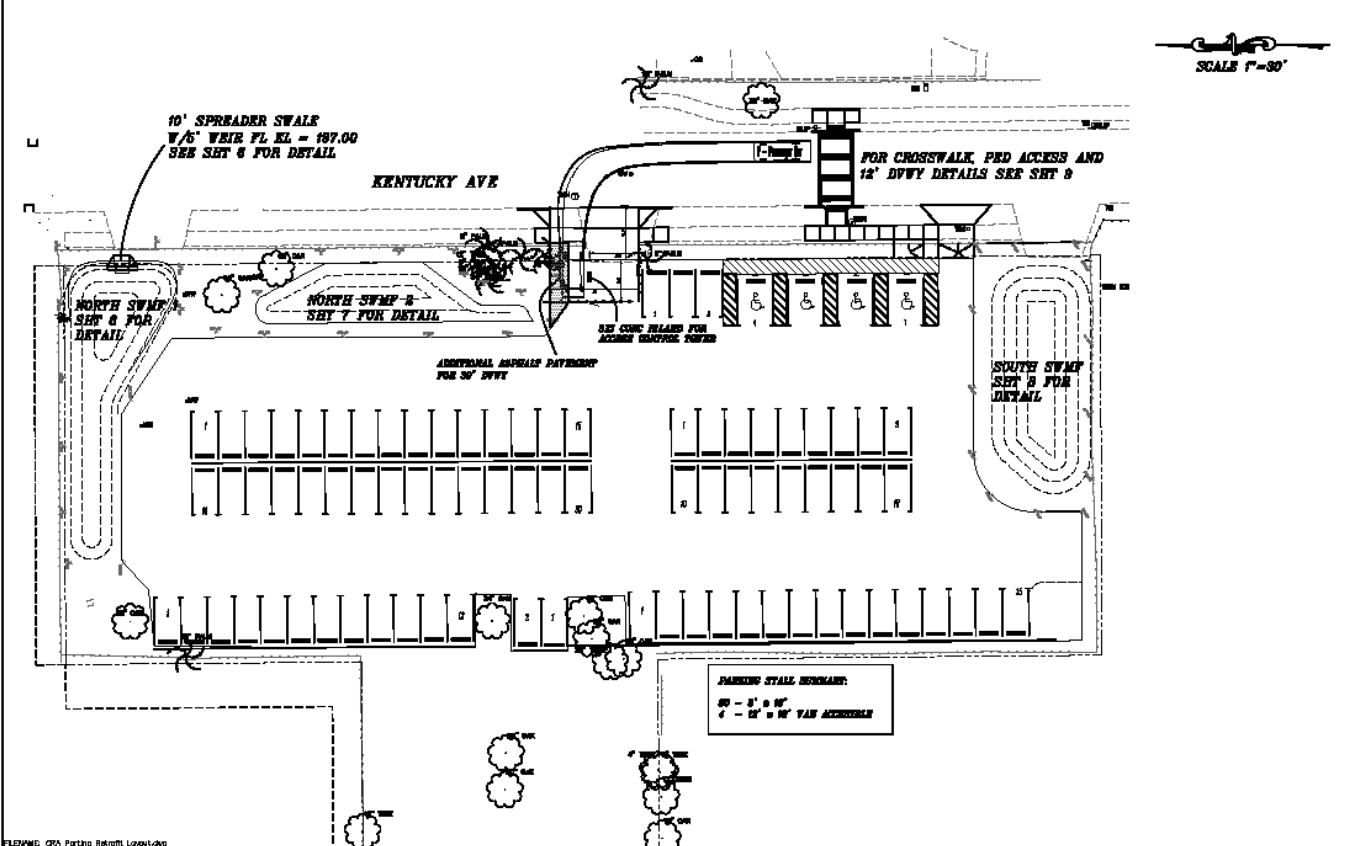
Recently, however, the owner of 922 N. Kentucky Avenue, located almost directly across Kentucky Avenue from the Tax Collector's Office, reduced their asking price from \$349,900, which was previously rejected by the CRA, to \$230,000. Because the property is paved, the costs of constructing a parking lot on the property are substantially less. The CRA purchased 922 N. Kentucky Avenue in February 2018 and entered into discussions with the Tax Collector for the construction and lease of a secured parking lot on the property.

The result of those discussions is the attached Lease Agreement. Under the Lease Agreement, the Tax Collector will lease 922 N. Kentucky Avenue from the CRA for an initial term of ten (10) years. The Tax Collector will pay the sum of \$200,000, representing full rent for the entire initial term of the lease, upon execution of the Lease Agreement. The CRA will construct most of the improvements needed for the parking lot, which total approximately \$200,000. The parking lot will be fenced, with a gated entry, and will have a total of 84 parking spaces. The Tax Collector will have exclusive use of the parking lot Monday through Friday from 6:30 a.m. to 6:30 p.m. If the Tax Collector is open to the public on Saturdays, they will also have exclusive use of the lot on Saturdays from 9:00 a.m. to 2:00 p.m. The CRA will have the right to use the parking lot at all other times. This will help alleviate parking shortages at the CRA's Mass Market facility on evenings and weekends. The Tax Collector will have the option to renew the lease for up to eight (8) additional five (5) year terms. Rent during the renewal terms will be as mutually agreed to by the parties or as determined by an MAI appraiser if the parties are unable to agree on rent.

It is recommended that the City Commission, acting as the City's Community Redevelopment Agency, approve the attached Lease Agreement with the Polk County Tax Collector and authorize the appropriate CRA officials to execute the Agreement.

Attachments





FLEMING CRA Parking Retrofit Layout REVISIONS		CITY OF LAKELAND DEPARTMENT OF PUBLIC WORKS COUNTY CITY PROJECT NO. POLK 408.241.7001.017413.983	CRA TEMPORARY PARKING RETROFIT SITE LAYOUT PLAN	THESE PLANS HAVE BEEN PREPARED UNDER MY DIRECT SUPERVISION AS AN EMPLOYEE OF THE CITY OF LAKELAND. PLANS MUST BE STAMPED "APPROVED FOR CONSTRUCTION" AND MUST BE SIGNED AND SEALED TO BE CONSIDERED FINAL. ALL PLANS NOT STAMPED, SIGNED AND SEALED ARE PRELIMINARY, NOT FOR CONSTRUCTION.	TERRY A. YELLET P.E., LICENSE NO. 68194 CITY OF LAKELAND, PUBLIC WORKS ENGINEERING 238 S. MASSACHUSETTS AVE LAKELAND, FLORIDA 33801	DATE SHEET NO. 5
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LEASE AGREEMENT

This LEASE AGREEMENT (the "Lease") is made and entered into this ___ day of _____, 2018, by and between the Lakeland Community Redevelopment Agency, a public body corporate and politic created pursuant to Part III, Chapter 163, Florida Statutes, whose address is 228 S. Massachusetts Avenue, Lakeland, Florida 33801 ("LESSOR"), and the Honorable Joe G. Tedder, State Constitutional Tax Collector in and for Polk County, a political subdivision of the State of Florida, whose address is Polk County Tax Collector's Office, P.O. Box 1189, Bartow, Florida 33831-1189 ("LESSEE"). For and in consideration of the lease payments to be made hereunder, the mutual covenants and agreements of the parties, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, LESSOR and LESSEE agree as follows:

1. Leased Property. LESSOR agrees to lease to LESSEE and LESSEE agrees to lease from LESSOR that certain real property (the "Property") located at 922 N. Kentucky Avenue, Lakeland, Florida 33805, more particularly described as follows:

The North ½ of Lot 6 (North 50 feet) and all of Lots 8, 9, 10 and 12, Block 23, SCHIPMAN'S SURVEY, a subdivision according to the plat thereof recorded at Deed Book "G", Pages 360 and 361, in the Public Records of Polk County, Florida.

2. Lease Term. This Lease shall commence upon full execution of the Lease by LESSOR and LESSEE. The initial term of the Lease shall be for a period of ten (10) years (the "Initial Term").

3. Rent. Rent for the Initial Term will be Two Hundred Thousand and No/100 Dollars (\$200,000.00), which will be due and payable upon execution of the Lease.

4. Renewal Terms. This Lease may be renewed for eight (8) additional five (5) year terms (each a "Renewal Term") upon written notice by LESSEE of its intention to renew prior to the expiration of the then current term. Upon written notice of intention to renew, the applicable Renewal Term will commence immediately upon the expiration of the then current term. The rent to be paid by LESSEE during any Renewal Term shall be mutually agreed to by the parties. If the parties are unable to agree on the rent for a Renewal Term, the parties shall retain an MAI appraiser, to be mutually agreed upon by the parties, to determine the rent for the applicable Renewal Term. If the parties are unable to agree upon an appraiser, they shall each retain an MAI appraiser, who shall select a third MAI appraiser. The determination of the third MAI appraiser regarding the rent for the applicable Renewal Term shall be binding upon the parties. All other terms and conditions of this Lease shall continue in full force and effect during all Renewal Terms.

5. Late Payment. In the event that any payment of rent or any other charge required to be paid by LESSEE under the provisions of this Lease shall not be paid within ten (10) days of the due date, LESSEE shall pay to LESSOR a late charge of five (5%) percent of such past due payment.

6. Construction of Improvements. LESSOR will, at LESSOR's sole expense, construct an approximately 84-space paved and gated surface parking lot on the Property. LESSOR will use its best efforts to construct 84 parking spaces on the Property, but makes no warranty that 84 spaces can be constructed on the Property. LESSOR shall have no obligation to provide alternative parking spaces in

the event that 84 spaces cannot be constructed on the Property or in the event that changes dictated by the Americans with Disabilities Act or other federal, state or local regulations have the effect of reducing the number of parking spaces available for LESSEE's use.

7. Use of Property. LESSEE shall use the Property solely for surface parking for LESSEE's employees and customers. LESSEE shall have the exclusive right to use the Property between 6:30am and 6:30pm Monday through Friday of each week and, in the event LESSEE is open to the public on Saturdays, 9:00am to 2:00pm on Saturdays. LESSOR shall have the right to utilize the Property at all other times for event parking or other uses as determined by LESSOR.

8. Maintenance and Repair. Except as otherwise provided herein, LESSEE shall be responsible for the proper maintenance and repair of the Property and shall keep the Property in a clean and sanitary condition. LESSEE shall also maintain the exterior of the Property outside of the gate from the property line to the curb line. In the event that LESSEE fails to properly maintain or repair the Property, or the exterior of the Property as provided herein, after notice and a ten (10) day opportunity to cure, LESSOR may, but shall have no obligation to, perform all necessary maintenance and repairs and bill LESSEE for the costs thereof, which LESSEE shall promptly pay. LESSOR shall have the right to enter the Property at all reasonable times for the purpose of performing inspections to ensure compliance with the terms of this Lease. LESSEE shall be responsible for maintaining, repairing or replacing at LESSEE's expense curb stops, fencing, gates, automation controls, or other improvements upon the Property.

9. Utilities; Taxes. LESSEE shall be responsible for the payment of all utility charges and taxes associated with the Property, except that LESSEE shall not be responsible for the payment of any property taxes assessed against the Property due to the use of the Property by LESSOR's tenants.

10. Default; Remedies. In the event that either party is in material breach of any condition of this Lease, the non-defaulting party shall provide written notice of such breach to the defaulting party, which notice shall specify the nature of the breach and provide the defaulting party ten (10) days, or such longer period of time as is reasonable based upon the circumstances, in which to cure the breach. If the defaulting party fails to cure the breach within said ten (10)-day period of time, or within such longer reasonable period of time, then the parties agree that senior management of both parties shall first meet in person to attempt to resolve the default. If senior management is unable to resolve the default within thirty (30) days of the default, or such longer period of time as the parties may agree, then the non-defaulting party may pursue any and all remedies available to it in law or equity. Provided, however, in the event that LESSEE has fully paid rent for the Initial Term or any Renewal Term of the Lease, LESSOR may not terminate this Lease during the Initial Term, or the applicable Renewal Term for which rent has been fully paid, due to a default of another nature, but may pursue all other available legal and equitable remedies for the default.

11. Mechanic's Liens Prohibited. LESSEE shall not permit or suffer any mechanic's lien to be filed against the Property by reason of work, labor, services or materials performed or furnished to LESSEE or anyone holding the Property, or any part thereof, through or under LESSEE. If any such mechanic's lien or any notice of intention to file a mechanic's lien shall at any time be filed against the Property, LESSEE shall, at LESSEE's cost, within thirty (30) days after knowledge or notice of the filing of any mechanic's lien, cause the same to be removed or discharged of record by payment, bond, order

of a court of competent jurisdiction, or otherwise. LESSEE shall not be liable for any mechanic's liens for work done by or on behalf of LESSOR at LESSOR's expense.

12. Insurance: LESSEE acknowledges that it is self-insured. At LESSOR's request, LESSEE shall provide a Notice of Self-Insured status to LESSOR.

13. Indemnification. To the extent permitted by law, LESSEE agrees to indemnify, pay the defense costs of and hold harmless LESSOR and the City of Lakeland, as well as their officers, employees and agents (collectively, the "Indemnified Parties"), from and against any and all claims, losses, liabilities, penalties and expenses, including reasonable attorney's fees and costs at all levels, incurred by the Indemnified Parties as a result of LESSEE's use or occupancy of the Property, or the use or occupancy of the Property by LESSEE's employees, agents, invitees, or any other persons using or occupying the Property by or through LESSEE. Nothing herein shall be construed as a waiver by LESSOR, LESSEE or the City of Lakeland of the defense of sovereign immunity, to increase the limits of liability contained in Section 768.28, Florida Statutes, or to require any party to indemnify or insure another party for the other party's negligence or to assume any liability for the other party's negligence.

14. Assignment/Subleasing. LESSEE may not assign its rights, sublease the Property or delegate its duties under this Lease without the express written consent of LESSOR, which consent shall not be unreasonably withheld.

15. Waiver. The failure of either party to insist upon the strict performance of any term or condition contained in this Lease shall not be construed as a waiver of such party's right to insist upon the strict performance of such term or condition in the future or the strict performance of any other obligation contained herein. No waiver shall be effective unless acknowledged in writing by the party to be bound thereby.

16. Notices. All notices required or permitted under this Lease shall be in writing and given to the individuals designated below at the following addresses:

LESSOR:

Community Redevelopment Agency
228 S. Massachusetts Ave.
Lakeland, Florida 33801
Attn.: CRA Manager

LESSEE:

Polk County Tax Collector's Office
430 E. Main Street
Bartow, Florida 33830
Attn.: Joe G. Tedder, Tax Collector

With a copy to:

City Attorney
City of Lakeland
228 S. Massachusetts Ave.
Lakeland, Florida 33801

Notice shall be given by certified mail, return receipt requested, by hand delivery, or by recognized overnight courier service such as Federal Express or UPS. Notice shall be deemed given on the earlier of the date of the signature indicated on the return receipt or five (5) days after deposit into the U.S.

postal system in the case of certified mail, the date of actual hand delivery, or the next business day in the case of delivery by overnight courier service. The individual to receive notice and the address to which notice is to be delivered may be changed by providing notice of such change in accordance with the provisions of this paragraph.

17. Governing Law; Venue; Waiver of Jury Trial. Any dispute arising out of this Agreement shall be governed by the laws of the State of Florida. Venue for any legal action shall lie in the courts of Polk County, Florida or the United States Middle District Court of Florida, Tampa Division. LESSOR and LESSEE waive the right to a trial by jury for any issue or dispute related to this Lease.

18. Force Majeure. In the event of an occurrence beyond a party's reasonable control delaying or preventing performance hereunder, that party's performance shall be excused while such event continues, provided the affected party gives prompt notice of such event or occurrence to the other party hereto and takes all reasonable steps to eliminate the event or occurrence delaying or preventing performance. The times for performance set forth herein shall be extended for the period of time the event or occurrence delaying performance continues.

19. Interpretation. This Agreement shall not be subject to any rule requiring construction against the drafter hereof. The fact that one of the parties may have drafted or structured any provision of this Agreement or any document attached as an exhibit hereto shall not be considered in construing the particular provision either in favor of or against such party. All references to days herein shall be to calendar days unless otherwise indicated. The captions or paragraph headings herein are solely for convenience of reference and shall not be used to construe or interpret any provision of this Lease. Wherever used herein, the singular shall include the plural and the plural shall include the singular. All exhibits and attachments referenced in this Lease are fully incorporated herein and shall be deemed a part of this Lease as though fully set forth herein. The terms "shall" and "will" are mandatory; "may" is discretionary. The term "person" shall include both natural persons and artificial or other legal entities.

20. Successors and Assigns. This Lease shall be binding upon and inure to the benefit of the parties hereto and the parties' successors and assigns.

21. Survival. LESSEE's obligations under Paragraph 13, as well as the obligation to pay any sums of money due and owing under this Lease, will survive the expiration or earlier termination of this Lease.

22. Severability. In the event that any provision of this Lease is determined by a court of competent jurisdiction to be illegal or otherwise unenforceable, the parties shall in good faith negotiate a legal and enforceable substitute provision that most fully effectuates the original purpose and intention of the parties with respect to the stricken provision, and the remainder of this Lease shall otherwise continue in full force and effect.

23. Entire Agreement. This Agreement represents the entire understanding and agreement between the parties pertaining to the subject matter hereof and supersedes any previous understandings or agreements between the parties related thereto. No modification of this Agreement shall be of any binding effect unless in writing and executed by both parties hereto.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement through their duly authorized representatives as of the date first appearing above.

LAKELAND COMMUNITY REDEVELOPMENT AGENCY:

By: _____
H. William Mutz, Chairman

Attest:

By: _____
Kelly S. Koos, City Clerk

Approved as to form and correctness:

By: _____
Timothy J. McCausland, City Attorney

LESSEE:

Joe G. Tedder
Polk County Tax Collector

Attest:

By: _____
Print Name: _____
Title: _____