

## **MEMORANDUM**

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March 25, 2013

TO: Honorable Mayor and City Commission

VIA: Terry Leary, City Manager

FROM: Jerry Brown, Fire Chief  
Tom Moran, Utility Director  
Dorothy Pendergrass, Finance Director

RE: Fire Substation – Land Lease Agreement

SYNOPSIS: Lease agreement for the land use relating to the fire substation located at 1965 Thompson Nursery Road Lake Wales Florida.

### **RECOMMENDATION**

It is recommended that City Commission approve the land use lease agreement relating to the fire substation located at 1965 Thompson Nursery Road Lake Wales Florida.

### **BACKGROUND**

After the hurricane season of 2004, many insurance underwriters changed their premium schedules as they relate to fire coverage and distances to staffed fire stations. This created the need for a fire station to provide coverage to the northern area of the city. In May of 2005, Florida Food Tankers, Inc. (“FFT”) agreed to allow the placement of a trailer on their property at 1965 Thompson Nursery Road to be utilized as a fire station until a permanent location could be established.

One of the financial benefits of the substation is its ability to provide coverage to northern areas of the county. As a result of this location, the City receives over \$100,000 from Polk County directly related to services provided by this northern substation. If the City lost this northern location, the City would lose \$100,000 in general fund revenue per year. Another financial benefit realized is that citizens, within the northern section of the City, have lower annual insurance premiums relating to fire coverage.

On March 31, 2011, the City received notification from FFT that rent would be required in the amount of \$3,000 to continue occupying the site. On June 21, 2011, the City Commission approved a lease agreement with FFT for a term of July 1, 2011 through June 30, 2012. The agreement included an extension clause extending the lease for one additional one year term, which ends June 30, 2013. In late 2012, FFT no longer owned the property and the land lease was transferred to 1965 TNLW, LLC. Both FFT and 1965 TNLW, LLC have similar officers/managing members.

On August 21, 2012, the City Commission approved the acquisition of the proposed fire substation site, 3.76 acres of real estate, at 600 Chalet Suzanne Road. Staff believes the planning

and construction phase for the new fire substation will require twelve months before the City will be able to occupy the new station. This estimated construction period for the new substation will exceed the current lease term with 1965 TNLW, LLC.

Staff recommends that the City Commission approve an additional land use lease agreement with 1965 TNLW, LLC relating to the fire substation located at 1965 Thompson Nursery Road Lake Wales Florida. The new lease terms would lower the monthly rental payment from \$3,000 to \$1,500 per month. In exchange for this reduction in rent, the 2008 Fleetwood Trailer, carport/awning and A/C unit located at this site would become the property of 1965 TNLW, LLC at the termination of the lease agreement. The proposed lease agreements offered the following pros/cons compared to the existing contract:

Pros:

- The reduction in the monthly rental payments (\$1,500 per month) represents \$18,000 in savings to the City compared to the current terms of the existing contract.
- If the existing assets remain on site, the City would avoid costs relating to the relocation of the trailer (\$7,000) and costs relating to repairing 1965 TNLW, LLC site – fill, sod, carport removal, etc. (\$1,440). Estimated cost saving of \$8,440.

Cons:

- The estimated market values of the assets to be transferred at the termination of the lease agreement are projected between \$8,000 to \$10,000.

The City currently has the following assets located at the 1965 TNLW, LLC lease site:

Description	Purchase Date	Asset Cost	Estimated Market Value
2008 Fleetwood Trailer	2007	29,500	8,000
Carport/Awning	2005	3,413	1,000
A/C Unit	2007	2,615	1,000
Septic Tank (1000 gallon)	2007	1,170	-
		36,698	10,000

## OTHER OPTION

Move the existing fire substation (the trailer) from 1965 Thompson Nursery Road to 600 Chalet Suzanne Road prior to the termination of the existing lease (June 30, 2013)

The cost for site work and to relocation of the trailer would include the following:

Site Work	Unit of Issue	Unit Cost	Quantity	Cost
Mobilization	LS	15,000	1	15,000
clearing and grubbing	CY	20	200	4,000
survey staking	LS	1,500	1	1,500
water tie-in	LS	500	1	500
sewer tie-in	LS	500	1	500
lift station	EA	45,000	1	45,000
8" PVC water line	FT	15	115	1,725
6" PVC force main	FT	14	100	1,390
8" gate valve and box	EA	1,200	1	1,200
6" gate valve and box	EA	750	1	750
6" check valve and box	EA	700	1	700
2" blow off	EA	100	1	100
driveway apron 6" concrete	SY	42	250	10,375
stabilization grade 10" LBR 40	SY	15	600	9,000
Lime rock base 8"	SF	20	600	12,000
asphalt 1 1/2 "	SY	30	600	18,000
storm culvert - 18"	FT	34	60	2,040
mitered end 18"	EA	878	2	1,755
electric to lift station	LS	4,000	1	4,000
electric to trailer	LS	500	1	500
<b>Total Site Work</b>				130,035

Trailer Relocation Cost	
Cost to install the trailer at the new location	2,000
Cost to transport trailer and set it up on the new site	5,000
Cost to repair FFT site(fill, sod, carport removal, etc.)	1,440
<b>Total Trailer Relocation Cost</b>	
	8,440

<b>Total Site Work and Trailer Relocation Cost</b>	138,475
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Less the proposed twelve month lease extension	(18,000)
Estimated sale of assets (trailer, car port/awning, A/C unit)	(8,000)
Net cost	<u>112,475</u>

Tom Moran, Director of Utilities, has concerns that if the construction project is accelerated to move the trailer by the June 30, 2013 costs would be higher as there would not be sufficient time for the normal bid progress to be completed.

## FISCAL IMPACT

Lease Agreement with 1965 TNLW, LLC –

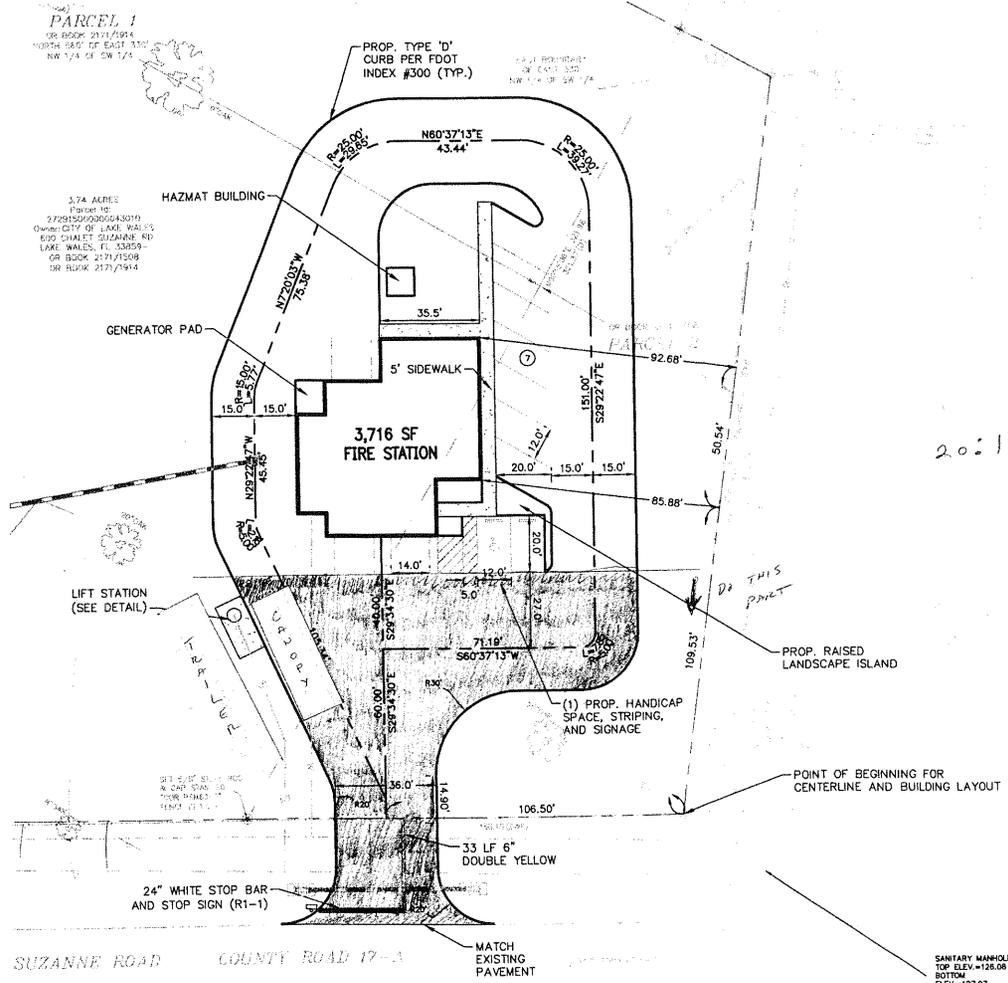
- Rental payments of \$18,000
- The estimated cost of the market value of assets transferred within the lease agreement (projected between \$8,000 to \$10,000). Cost saving of \$8,440 if the City is able to avoid moving the trailer to a different location.

## ATTACHMENTS

Land Lease Agreement  
Fire Substation Drawing

**PARCEL 1**  
 TR BOOK 2171/1914  
 NORTH 58° OF EAST 330'  
 NW 1/4 OF SW 1/4

3.74 ACRES  
 Parcel ID:  
 2729125/0005643010  
 Owner: CITY OF LAKE WALDS  
 800 CHALET SUZANNE RD  
 LAKE WALDS, FL 33559  
 OR BOOK 2171/1209  
 OR BOOK 2171/1914



## **FIRE STATION SITE LEASE AGREEMENT**

This Lease is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2013 by and between 1965 TNLW, LLC, a Florida corporation, hereinafter referred to as the "Lessor" and the CITY OF LAKE WALES, a Florida municipal corporation, its successors and assigns, hereinafter referred to as "Lessee".

**LEASED PREMISES.** The Lessor hereby leases to the Lessee and the Lessee hereby leases from the Lessor the property depicted in Exhibit 1 appended hereto, together with sufficient access for use of the premises as contemplated by this Lease. The site is 50' x 100' and lies approximately 725' South of Thompson Nursery Road. The access is an asphalt roadway approximately 20' in width and 750' in length.

**TERM.** The initial term of this lease shall be from July 1, 2013 through June 30, 2014.

**EXTENSION OF THIS LEASE** This lease may be extended for six additional months, from July 1, 2014, through December 31, 2014, if Lessee notifies the Lessor, in writing, not later than March 15, 2014, of its intention to extend the lease term. The rental payment from July 1, 2014 through December 31, 2014 shall be \$3,000.00 per month.

**EQUIPMENT REMOVAL.** At the end of the Term hereof, ownership of the building structure (a 2008 Fleetwood Trailer), the carport/awning, and A/C unit, shall be transferred to the Lessor in "as is condition". The Lessee shall have the right to remove all other personal property owned by Lessee. Lessee shall not be responsible for any land restoration.

**RENTAL.** Lessee agrees to pay Lessor as rent for the above described Leased Premises the sum of \$1,500.00 per month, from July 1, 2013 through June 30, 2014, due on the first day of each month. Lease payments shall be made payable to 1965 TNLW, LLC, at 1965 Thompson Nursery Road, Lake Wales, FL 33859. Mailing address (P.O. Box 1427, Lake Wales, FL 33859).

**INSURANCE.** Lessee shall obtain and maintain in force during the term of this Lease general liability insurance against claims for personal injury or property damage, with limits of at least \$2,000,000 combined single limit.

Lessor shall maintain adequate fire and extended coverage insurance on the Leased Premises in its entirety, including improvements thereto placed thereon by Lessee, at levels of coverage customary in the community in which the Leased Premises are located.

Lessee shall not carry on any activity that will invalidate any policy of insurance on the Leased Premises or any premises of which it is a part. Lessee shall maintain fire and extended coverage and hazard insurance on personal property of the Lessee located in or on the Leased Premises.

Certificates of all foregoing coverage in this paragraph shall be provided by each party to the other, with ten (10) days notice from the carrier of any change or termination.

**UTILITIES.** Lessee will pay for, when due, all bills relating to utilities used by Lessee during the Term of this Lease, including without limitation, heat, electricity, water, sewer, gas and any other utilities.

**USE OF LEASED PREMISES.** It is understood and agreed that the Lessee contemplates using the Leased Premises for a temporary fire station and for such other lawful activities as may be reasonably incidental thereto. Lessee shall not use, or permit said premises or any part thereof, to be used for any purpose or purposes for which said premises are not hereby leased; nor shall Lessee sell or permit to be kept, used or sold, in or about said premises, any articles which may be prohibited by the standard form of fire insurance policies. Lessee shall, at its sole cost and expense, comply with any and all requirements of any insurance organization or company pertaining to said premises, which requirements are necessary for the maintenance of reasonable fire and public liability insurance covering said building and appurtenances.

Lessee shall not commit, or suffer to be committed, any waste upon said premises, or any nuisance or other act or thing which may disturb the quiet enjoyment of neighboring property.

**REPRESENTATIONS.** Lessee agrees that in entering into this Lease, it is governed by its own inspection of the premises and its own judgment of its desirability for its purposes, and has not been governed or influenced by any representation of Lessor as to the condition and character of the premises; that no agreements, stipulations, reservations, exceptions, or conditions whatsoever have been made or entered into in regard to said premises or this Lease, which will in any way vary, contradict or impair the validity of this Lease or of any of its terms and conditions, and that no modification of this Lease shall be binding unless it be in writing and executed and acknowledged in form for recording by all of the parties hereto. Furthermore, Lessee takes this Lease and the demised premises subject to all recorded easements and restrictions affecting the occupation and use thereof, and subject to all statutes, ordinances and regulations of competent governmental authority affecting the occupancy and use thereof, the construction and maintenance of improvements thereon, and the businesses and occupations to be engaged in by Lessee, in force now and subsequently during the term of this Lease.

Lessee warrants and represents that Lessee and/or Lessee's operations validly comply with all State and Federal ordinances, statutes, and regulations. This includes but is not limited to licensing.

**MODIFICATION CONSTRUCTION.** Lessor acknowledges and agrees that Lessee has placed, or will place, a temporary building structure on the Leased Premises.

The temporary building structure is the property of the Lessee. Lessor acknowledges that the structure shall not be considered to be realty or a part of the Leased Premises. Lessee shall have the right to perform modifications and/or improvements to the building. Any modification and/or improvement necessary to enable the Lessee to continue to provide fire rescue services from said location shall be considered "reasonable". Lessee shall be solely responsible for all modifications and/or improvements.

Lessee must obtain the prior written consent of Lessor prior to any modifications and/or improvements to the real estate portion of the Leased Premises.

**COMPLIANCE WITH GOVERNMENTAL REGULATIONS.** Lessee shall, at its sole cost and expense, comply with all of the requirements of all Municipal, State, and Federal Authorities now in force, or which may hereafter be in force, pertaining to the use of the premises, and shall faithfully observe in the use of the premises all Municipal ordinances and State and Federal Statutes now in force or which may hereafter be in force.

**INDEMNITY CLAUSE.** The Lessee will defend, save harmless and indemnify the Lessor from and against all claims, injury (including death, loss, liability, environmental claims or expense that may arise under this Lease and/or use of the Leased Premises by Lessee or by reason of any accident, or from any damage, neglect, or misadventure arising on the Leased Premises on account of any act or omission of the Lessee.

**PROPERTY AND PERSONS ON PREMISES AT LESSEE' S RISK.** All property of any kind that may be on the Leased Premises during the continuance of this Lease shall be at the sole risk of the Lessee, and the Lessor shall not be liable to the Lessee or any other person for any injury (including death), loss, or damage to property or to any person on the Leased Premises whether an invitee, guest or trespasser. Lessee hereby agrees to maintain and provide to Lessor, once a month, the log information required by the Public Health Security and Bioterrorism Preparedness and Response Act for 2002, as set forth in Exhibit 2.

**ASSIGNMENT OR SUB-LEASE.** The Lessee shall not have the right to assign or sublet any portion of the Leased Premises.

**SUCCESSORS AND ASSIGNS.** The covenants and conditions herein contained shall, subject to the provisions as to assignment, apply to and bind the successors and assigns of Lessee; and Lessee shall be jointly and severally liable hereunder with any such successors and assigns.

**ENTRY BY LESSOR.** Lessor and its designees shall have the right to enter the premises at all reasonable hours and in emergencies (1) to inspect the premises; (2) to make repairs, additions, or alterations to any property owned by Lessor; and (3) for any lawful purpose.

**TERMINATION OF LEASE OR SUSPENSION OF RENT IN CASE OF UNAVOIDABLE CAUALTY LOSS.** In case the premises or any part thereof shall at any time during the Term be destroyed or damaged by fire or other unavoidable casualty so as to be unfit for occupancy and use then this Lease shall terminate. However, if the premises can be rebuilt or restored within ninety (90) days the Lessor at its sole discretion may at its own expense rebuild or restore suitable land access and use. If the Lessor provides written notice to the Lessee within ten (10) days after a casualty loss of its intention to rebuild, the Lease rental payments shall be suspended until such time as the Lessee has the ability of occupancy within a suitable structure on the Lessor's land.

**ATTORNEY'S FEES AND VENUE.** In the event of any legal action concerning this Lease or any breach hereof, each party shall bear its own costs and attorney's fees. Venue for any action arising herefrom shall be in the 10th Judicial Circuit, in and for Polk County.

**NOTICES.** All notices, requests, demands and communications hereunder will be given by first class certified mail, return receipt requested, to be effective when properly sent and received, refused or returned undelivered. Notices will be addressed to the parties as follows:

If to Lessor:

1965 TNLW, LLC  
P.O. Box 1427  
Lake Wales, FL 33859-1427

If to Lessee:

City of Lake Wales  
Attn: City Manager  
P.O. Box 1320  
Lake Wales, FL 33859-1320

**HOLDING OVER.** Any holding over after the expiration of the said Term, with the consent of Lessor, shall be construed to be a tenancy from month to month, and shall otherwise be on the terms and conditions herein specified, so far as applicable.

**MARGINAL CAPTIONS.** The marginal captions of this Lease are for convenience only and shall not be deemed in any manner to limit, construe or interpret the terms and provisions hereof.

**SALE OR CONVEYANCE BY LESSOR.** In the event of a sale or conveyance by Lessor of the property of which the premises are a part to any purchaser, purchaser shall be made subject to the terms of this Lease.

**APPLICABLE LAW.** This Lease shall be governed and construed in accordance with the Laws of the State of Florida.

**ENTIRE AGREEMENT.** This instrument contains all of the agreements and conditions made between the parties hereto and may not be modified, changed or terminated in whole or in part, orally, or in any manner other than by an agreement in writing, signed by all parties.

Lessor: 1965 TNLW, LLC

By: \_\_\_\_\_

\_\_\_\_\_  
Printed Name of Lessor

\_\_\_\_\_  
Witness Signature

\_\_\_\_\_  
Witness Printed Name

\_\_\_\_\_  
Witness Signature

\_\_\_\_\_  
Witness Printed Name

STATE OF FLORIDA  
COUNTY OF POLK

I HEREBY CERTIFY that on this day, before me, an officer duly authorized in the State and County aforesaid to take acknowledgements, personally appeared \_\_\_\_\_, well known to me or identified by proper identification, and that s/he acknowledged executing the same in the presence of two subscribing witnesses freely and voluntarily under authority duly vested in them.

WITNESS my hand and official seal in the County and State last aforesaid this \_\_\_\_\_ day of \_\_\_\_\_, 2013.

NOTARY PUBLIC

Printed Name of Notary  
My Commission Expires:

Lessee: CITY OF LAKE WALES

By: \_\_\_\_\_

Michael S. Carter, Mayor

\_\_\_\_\_  
Witness Signature

\_\_\_\_\_  
Witness Signature

\_\_\_\_\_  
Witness Printed Name

\_\_\_\_\_  
Witness Printed Name

STATE OF FLORIDA  
COUNTY OF POLK

I HEREBY CERTIFY that on this day, before me, an officer duly authorized in the State and County aforesaid to take acknowledgements, personally appeared Michael S. Carter, Mayor of the City of Lake Wales, well known to me or identified by proper identification and that he acknowledged executing the same in the presence of two Subscribing witnesses freely and voluntarily under authority duly vested in him.

WITNESS my hand and official seal in the County and State last aforesaid this \_\_\_\_\_ day of \_\_\_\_\_, 2013.

NOTARY PUBLIC

Printed Name of Notary

My Commission Expires:

# Exhibit #1

Leased Premises for Lake Wales Fire Department Sub Station  
App. 100'X50' 