

**Lee County Board Of County Commissioners
Agenda Item Summary**

Blue Sheet No. 20031446

1. REQUESTED MOTION:

ACTION REQUESTED: Enter into Lease Agreement at \$1.00 per year for an EMS Station site on Treeline Avenue, approximately 1/4 mile north of Daniels Parkway.

WHY ACTION IS NECESSARY: Board must authorize and execute lease agreement.

WHAT ACTION ACCOMPLISHES: Provides opportunity for County to have an EMS Station along north Treeline Avenue for nominal consideration.

2. DEPARTMENTAL CATEGORY: 06
COMMISSION DISTRICT # 5 **C6D**

3. MEETING DATE: 12-16-2003

4. AGENDA:
 CONSENT
 ADMINISTRATIVE
 APPEALS
 PUBLIC
 WALK ON
 TIME REQUIRED:

5. REQUIREMENT/PURPOSE:
(Specify)
 STATUTE 125
 ORDINANCE
 ADMIN. CODE
 OTHER

6. REQUESTOR OF INFORMATION:
 A. COMMISSIONER
 B. DEPARTMENT Independent
 C. DIVISION County Lands
 BY: *[Signature]*
 Karen L.W. Forsyth, Director

7. BACKGROUND: County Lands, in cooperation with EMS Administration, has negotiated a lease with Worthington Holdings Southwest, LLC for 1.34 acres of vacant land along north Treeline Avenue. The property will be utilized for the future construction of a much needed EMS Station.

Once Worthington has met certain conditions of the lease, the property will be conveyed in fee simple to the County for \$1.00.

Worthington is essentially gifting the property to the County, in exchange for the County not pursuing a lease with FDOT for an EMS Station at the Daniels Parkway Rest Area just east of I-75.

The subject Treeline property is better located for a future station than at the rest area.

As the consideration is \$1.00 per year, no specific project funding source is required.

Staff recommends approval of requested motion.

8. MANAGEMENT RECOMMENDATIONS:

9. RECOMMENDED APPROVAL:

A Department Director	B Purchasing or Contracts	C Human Resources	D Other Public Safety	E County Attorney	F Budget Services				G County Manager
					OA	OM	Risk	GC	
<i>K. Forsyth</i>			<i>[Signature]</i>	<i>John J. [Signature]</i>	<i>[Signature]</i>	<i>[Signature]</i>	<i>[Signature]</i>	<i>[Signature]</i>	<i>[Signature]</i>

10. COMMISSION ACTION:

- APPROVED
- DENIED
- DEFERRED
- OTHER

Rec. by CoAtty
 Date: 12/4/03
 Time: 8:30 AM
 Forwarded To:
 Co. Adm.
 12/4/03 2PM

RECEIVED BY
 COUNTY ADMIN: *[Signature]*
 12/4/03
 1:45 PM SGT
 COUNTY ADMIN
 FORWARDED TO: *[Signature]*
 12/4/03

LEASE AGREEMENT

THIS LEASE AGREEMENT ("Agreement") made, entered and effective as of the ____ day of December, 2003, by and between **WORTHINGTON HOLDINGS SOUTHWEST, LLC**, a Florida limited liability company ("Owner"), and **LEE COUNTY**, a political subdivision of the State of Florida ("Tenant").

WITNESSETH:

The Owner does hereby lease and demise unto the Tenant the property described on attached Exhibit "A" (hereinafter referred to as "Leased Premises"). During the term of this Lease, Tenant will have the non-exclusive right to use the property described on attached Exhibit "B" for access until such time as Owner conveys title to this property to Lee County for road right-of-way purposes.

TO HAVE AND TO HOLD the above described Leased Premises hereby leased to the Tenant for the initial annual term beginning on December ____, 2003, the Tenant yielding and paying therefore to the Owner the following sums:

The rent shall be \$1.00 per year, payable within 30 days of the beginning of each rental period.

Upon the expiration of the initial one-year lease term, this agreement will automatically renew for successive one-year terms, subject to the original terms and conditions, unless the Tenant gives Owner notice of its intention not to renew the lease at least fourteen (14) days before the expiration date. This agreement will continue to automatically renew for successive one-year terms, subject to the aforementioned notice provision, for a total rental period of 10 years. In 2013, at the end of 10 years, Tenant will have the option to purchase fee simple title to the Leased Premises for \$1.00, or, subject to Paragraph 26 and upon the mutual agreement of Owner and Tenant, the Tenant may purchase the Leased Premises at a date prior to the end of the 10-year term of this Agreement.

IT IS UNDERSTOOD AND AGREED that the above described Leased Premises are hereby leased as aforesaid to the Tenant as mutually agreed to by the Owner and Tenant upon the following terms, covenants, agreements and conditions:

1. The Tenant promises and agrees to pay the rent during the term herein reserved at the time and in the manner heretofore provided.

2. It is acknowledged by the Owner the Tenant will be constructing a building with related structural improvements and fixtures on the Leased Premises for the purpose of operating an EMS Public Safety Facility. The facility will include both permanent and temporary improvements and fixtures necessary to operate the EMS Public Safety Facility.

3. Tenant accepts the Leased Premises, which is vacant land, in "as is" condition. Tenant promises and agrees that it will not make or suffer any unlawful or improper use of said Leased Premises or allow any use or occupancy thereof contrary to any law of the United States or any law of this State, or ordinance of Lee County or any other governmental entity, now or hereafter made, in which said Leased Premises are situated, nor will Tenant allow any use or occupancy of the Leased Premises which may be injurious to any person or persons or property or which may be liable to endanger or affect the insurance on the said Leased Premises.

4. Tenant will be responsible for obtaining all permits, licenses, development orders, zoning and other governmental approvals necessary to operate an EMS Public Safety Facility on the Leased Premises. However, when requested by Tenant, Owner will assist Tenant in obtaining any necessary zoning, building permit or necessary approvals by signing applications and appropriate authorizations.

5. Tenant agrees to keep the Leased Premises and all structures thereon in conformance with all building and zoning codes and further agrees not to make any use of the Leased Premises which would result in a notification of code violation by any federal, state or local governmental entity.

6. The Tenant may not sublease all or any part of the Leased Premises hereby leased to anyone without the prior written consent of the Owner, and Tenant shall not assign this Lease or any rights of the Tenant hereunder without the prior written consent of the Owner. Consent of Owner to any assignment or subletting will not be unreasonably withheld.

7. In the event Tenant fails to perform any nonmonetary covenant of this Lease Agreement with 30 days after written notice is given by Owner to Tenant, Tenant will be in default under this Lease Agreement, and Owner will be entitled to seek any and all remedies against Tenant as may be provided by law or equity.

8. It is agreed between the parties hereto that at the termination of this Lease, the Tenant will have the right to remove any and all fixtures and improvements from the Leased Premises that were constructed or installed by the Tenant, and may return the Leased Premises to its previously unimproved condition. Removal of such fixtures and improvements must be done in a workmanlike manner and must be completed within 60 days of the date of termination of the Lease Agreement, unless extended by mutual agreement of the Owner and Tenant.

9. In connection with any work performed on the Leased Premises by, or for the benefit of Tenant, Tenant will keep the Leased Premises free from all mechanic's liens and other encumbrances. In the event any mechanic's lien or other encumbrance should arise in connection with work performed by Tenant upon the Leased Premises, Tenant will, within 30 days after notification by Owner, provide a bond releasing the Leased Premises from any and all mechanic's liens or other encumbrances which may have arisen as a result of Tenant's work upon the Leased Premises.

10. Tenant agrees to be liable for money damages in tort for any injuries to or losses of property, personal injury, or death caused by the negligent or wrongful act(s) or omission(s) of any official or employee of the Tenant while acting within the scope or the official's or employee's office or employment under circumstances under which a private person would be held liable in accordance with the general laws of the State of Florida, subject to the limitations as set out in Section 768.28 Florida Statutes, as it may be amended or revised from time to time.

11. Tenant acknowledges that it will be Tenant's sole responsibility to acquire insurance coverage upon all of Tenant's personal property located upon the Leased Premises.

12. The Tenant promises and agrees that it will peacefully quit and deliver up the Leased Premises to the Owner upon the expiration or termination of this Lease, in good order and condition, as same are now in or may be put into by the parties.

13. Tenant agrees that Tenant will look solely to Owner's interest in the Leased Premises for the satisfaction of any claim, judgment or decree requiring the payment of money by Owner based upon any default by Owner hereunder, and no other property or assets of Owner, its heirs, successors or assigns, will be subject to levy, execution or other enforcement procedure for the satisfaction of any such claim, judgment, injunction or decree.

14. It is the intention of the parties hereto that the relationship between them is and will at all times during the term of this Lease be and remain that of Lessor and Lessee.

15. During the original and subsequent renewal terms of this Lease, Owner agrees to pay all annual ad valorem real property taxes due upon the Leased Premises. Additionally, in the event any special assessment, charge, impact fee or other governmental exaction shall be levied against the Leased Premises during the original or subsequent renewal terms of this Lease Agreement, Owner shall pay said assessment or impact fee. However, once Owner has obtained Governmental Approvals - as defined in Paragraph 26 - for Arborwood, Tenant agrees to pay all subsequent annual ad valorem real property taxes, and any other special assessments due upon the Leased Premises.

16. All remedies under this Lease Agreement will be cumulative, and exercise of said remedies shall be at the sole choice and discretion of Owner. The undertakings and obligations of Tenant under this Lease shall survive the expiration or earlier termination of this Lease.

17. Tenant will be responsible for all utility charges incident to the use of the Leased Premises, if any.

18. All of the provisions of this Lease will apply and be binding on the parties hereto, their respective heirs, executors, administrators, successors and assigns. The Owner must provide Tenant with written notice of any assignment of its rights or obligations under the terms of this Agreement prior to any such assignment or conveyance.

19. The term "Owner" or "Owner's" and "Tenant" or "Tenant's" will be construed in the singular or plural number accordingly as it represents one or more persons.

20. Owner covenants that, upon Tenant's payment of the rent and performing the covenants contained herein, the Tenant may peacefully and quietly have and enjoy the Leased Premises for the agreed term.

21. This Lease contains the entire and only agreement between the parties concerning the Leased Premises, and no prior oral or written statements or representations, if any, of any party hereto or any representative of a party hereto, not contained in this instrument, will have any force or effect. This Lease will not be modified in any way except by a writing executed by Owner and Tenant, and no oral agreement or representation for rental will be deemed to constitute a lease other than this agreement. This agreement will not be binding until it has been executed by Tenant and Owner. Should either party retain legal counsel to enforce any provision of this Lease agreement, the prevailing party will be entitled to recover reasonable attorneys' fees and costs.

22. It is mutually agreed by and between Owner and Tenant that the parties hereby waive trial by jury in any action, proceeding or counterclaim brought by either party against the other on any matter whatsoever arising out of or in any way connected with this Lease, the relationship of Landlord and Tenant created hereby, Tenant's use or occupancy of the Leased Premises, and/or any claim for injury or damage.

23. This Lease shall be governed and construed in accordance with Florida law. The parties expressly acknowledge that in the event any provision or any part of any provision contained within this Lease will be found to be void or unenforceable by judicial determination, the remainder of this Lease will not be affected or impaired by such finding of invalidity.

24. Any notice required under this Lease Agreement may be mailed to the following addresses by certified mail, return receipt requested:

If to Owner: Worthington Holdings Southwest, LLC
9240 Marketplace Rd., Suite 2
Fort Myers, FL 33912
Attn: John Gnagey

with a copy to: Henderson, Franklin, Starnes & Holt, P.A.
1715 Monroe St.
Fort Myers, FL 33901
Attn: Thomas H. Gunderson, Esq.

If to Tenant: Lee County - Division of County Lands
P.O. Box 398
Fort Myers, FL 33902-0398
Attn: Karen Forsyth

with a copy to: Office of the County Attorney
P.O. Box 398
Fort Myers, FL 33902-0398

Any notice mailed under the provisions of this Lease will be deemed received upon actual receipt or five (5) days after posting, whichever will shall be earlier.

25. A facsimile copy of this Lease, and any signatures hereon, will be considered for all purposes as originals.

26. The Leased Premises is within Worthington's development located in Sections 11, 12, 13, 14 and 23, Township 45 South, Range 25 East, Lee County, Florida, and commonly referred to as Arborwood. Owner is in the process of seeking the following development permits for Arborwood: Comprehensive Plan Amendment, Development of Regional Impact, Environmental Resource Permit, Water Use Permit, Army Corps of Engineers Permit, Community Development District and Treeline Avenue Extension Realignment Agreement with Lee County ("Governmental Approvals"). Once Owner has obtained the Governmental Approvals for Arborwood, or no later than ten (10) years from the date of executing this Lease Agreement, Owner will convey title to the Leased Premises to Tenant, via Special Warranty Deed, without charge for the Leased Premises. Owner will be responsible for any documentary stamp tax on the Deed, the cost to record the Deed and Title Insurance.

27. At the time of Owner's conveyance of the Leased Premises to Tenant in fee simple, Tenant agrees to accept the property subject to minor changes in the dimensions of the property due to changes in circumstances, including but not limited to subsequent modifications of the Owner's development plan, as long as the changes do not substantially adversely affect Tenant's existing or proposed development plans.

28. This Lease Agreement is contingent upon Tenant notifying the Florida Department of Transportation of its intent to enter into this agreement and operate an EMS Public Safety Facility on the Leased Premises, and not on Florida Department of Transportation ("FDOT") lands located east of Interstate 75, adjacent to Owner's property.

29. Tenant will be responsible for obtaining the necessary permitting from the appropriate governmental authorities for the construction and operation of an EMS Public Safety Facility. Tenant will apply for the above referenced permits within one year after Owner has obtained the Governmental Approvals for Arborwood.

30. In the event that, despite Tenant's best efforts and reasonable diligence, Tenant is unable to obtain the necessary permitting for the aforementioned use of the Leased Premises, and is precluded from using the FDOT lands adjacent to Owner's property due to Owner's acquisition of a permit to share access through the FDOT lands, Owner agrees to provide to Tenant a suitable alternate site to be agreed upon by both parties.

IN WITNESS WHEREOF, the parties hereto have hereunto set their hands and seals the day and year first above written.

Signed, sealed and delivered
in the Presence of:

OWNER:
WORTHINGTON HOLDINGS
SOUTHWEST, LLC,
a Florida limited liability company

By: _____

Date: _____

Witness

Witness

ATTEST:

TENANT:
LEE COUNTY, a Political Subdivision of the
State of Florida

By: _____
Clerk

By: _____

Approved as to Form

By: _____
County Attorney