

Lee County Board Of County Commissioners  
Agenda Item Summary

Blue Sheet No. **20040084**

**1. REQUESTED MOTION:**

**ACTION REQUESTED:** Approve agreement with Englewood Community Hospital governing use of their helipad.

**WHY ACTION IS NECESSARY:** Board must approve all agreements.

**WHAT ACTION ACCOMPLISHES:** Formalizes procedures for the use of Englewood Community Hospital's helipad by Lee County EMS.

**2. DEPARTMENTAL CATEGORY:**  
COMMISSION DISTRICT #:

C7A

**3. MEETING DATE:**

02-10-2004

**4. AGENDA:**

- CONSENT
- ADMINISTRATIVE
- APPEALS
- PUBLIC
- WALK ON
- TIME REQUIRED:

**5. REQUIREMENT/PURPOSE:**  
(Specify)

- STATUTE
- ORDINANCE
- ADMIN. CODE
- OTHER

**6. REQUESTOR OF INFORMATION:**

- A. COMMISSIONER
- B. DEPARTMENT
- C. DIVISION Public Safety
- BY: John D. Wilson

**7. BACKGROUND:**

Lee County EMS would like to use the helicopter pad located on the premises of Englewood Community Hospital to serve the residents of Boca Grande. The attached agreement would allow county access to this facility. The hospital is not requesting landing fees or any other compensation for the use of their helipad.

Attachment—Three Agreements

**8. MANAGEMENT RECOMMENDATIONS:**

**9. RECOMMENDED APPROVAL:**

A Department Director	B Purchasing or Contracts	C Human Resources	D Other	E County Attorney	F Budget Services 1/28/04				G County Manager
					OA	OM	Risk	GC	
<i>[Signature]</i> 1/28/04	<i>[Signature]</i> 1/27/04	N/A		<i>[Signature]</i>	<i>[Signature]</i> 1/28/04	<i>[Signature]</i> 1/28/04	<i>[Signature]</i> 1/28/04	<i>[Signature]</i> 1/28/04	<i>[Signature]</i>

**10. COMMISSION ACTION:**

- APPROVED
- DENIED
- DEFERRED
- OTHER

RECEIVED BY COUNTY ADMIN: <i>PM</i>
1/28/04
9:10am sct
COUNTY ADMIN
FORWARDED TO: <i>PM</i>
1/29/04
10 AM

Rec. by CoAtty
Date: 1-27-04
Time: 4:30
Forwarded To: Budget 1/28/04 9:00am

## AGREEMENT REGARDING USE OF HELICOPTER PAD

This Agreement Regarding Use of Helicopter Pad (the "Agreement") is made as of this \_\_\_\_\_ day of \_\_\_\_\_, 2004 by and between Englewood Community Hospital, Inc. d/b/a Englewood Community Hospital (the "Hospital"), and Lee County, a political subdivision of the State of Florida, ("Lee County") (collectively, the "Parties").

### WITNESSETH:

Whereas, the Parties recognize that there may be certain circumstances where Lee County desires to use the helicopter pad located on the premises of the Hospital (the "Helicopter Pad");

Whereas, the Parties acknowledge that the Hospital does not own or operate an ambulance, helicopter, or any other vehicle capable of providing emergency medical transportation to patients;

Whereas, the Parties desire to enter into this Agreement governing the use of the Helicopter Pad; and,

Whereas, the Parties desire to enter into this Agreement in order to specify the rights and duties of each of the Parties and to specify the procedure regarding the use of the Hospital's Helicopter Pad;

Now, therefore, the Parties agree as follows:

**1. Transfer of Patients where the Hospital is not requested to provide medical care or treatment.**

In the event Lee County is required to utilize the Helicopter Pad but is not requesting that the Hospital provide medical care or treatment to the patient, the Parties agree as follows:

- (a) Lee County agrees to contact the Hospital and advise the Hospital of its estimated time of arrival at the Helicopter Pad. Lee County, during that contact, shall confirm that neither the patient nor Lee County is requesting the Hospital to provide medical screening, treatment or care. Lee County shall advise the Hospital of the medical facility other than the Hospital to which the patient will be transported (the "Receiving Facility").
- (b) The Hospital shall not be responsible for conducting any screening and/or treatment of the patient.
- (c) If Lee County remains on the Hospital Property for more than 15 minutes, Lee County will contact the Hospital and either (1) confirm that neither the patient nor Lee County is requesting the Hospital to provide medical screening or treatment and indicate the estimated time of departure from the Hospital's property, or (2) request medical screening or treatment from the Hospital.
- (d) Lee County agrees that the Hospital is not responsible for providing medical screening, care or treatment to the patient, unless such screening, care or treatment is requested by either the patient or Lee County.
- (e) The Hospital shall have no responsibility for arranging for the appropriate transportation service (whether ambulance, helicopter, or other transportation service provider) to be

present at the Hospital's premises to continue the transfer of the patient to the Receiving Facility.

(f) The Hospital shall have no responsibility for arranging for the Receiving Facility to consent to the admission of the patient.

(g) It is the understanding of the Parties that, in those circumstances where neither the patient nor Lee County expressly requests the Hospital to provide medical screening, care, or treatment, that 42 USC §1395dd (EMTALA) does not apply to the Hospital.

2. **Use of the Helicopter Pad.** The Hospital agrees to maintain the Helicopter Pad in good, usable condition, however, Lee County will be responsible for any damage caused to the Helicopter Pad by Lee County's equipment, employees, or as a result of its use, to the extent such damage does not constitute reasonable wear and tear. To the extent any such damage is caused to the Helicopter Pad by Lee County, Lee County agrees to indemnify and/or reimburse the Hospital in accordance with section 5, below. Lee County acknowledges that, from time to time, the Hospital will be required to close the Helicopter Pad due to damage and/or for maintenance of the Helicopter Pad and that during such times, the Helicopter Pad will be inoperable. The Hospital shall provide three (3) days' notice to Lee County of any such Helicopter Pad closures due to scheduled maintenance. In the event closure of the Helicopter Pad is due to an emergency situation beyond the control of Hospital, hospital shall provide Lee County with notice of the closure as soon as practicable. Lee County will be responsible for diverting patients to an alternative location or facility at any time that the Helicopter Pad is inoperable.

3. **Billing.** All claims or charges incurred with respect to any services performed by either Party to this Agreement shall be billed and collected by the party providing such services directly from the patient, third party payer, Medicare or Medicaid, or other sources appropriately billed by that party, unless applicable law and regulations provide otherwise. Each Party to this Agreement agrees to provide information in its possession to the other party and such physicians or professional providers sufficient to enable them to bill the patient, responsible party, or appropriate third party payer, subject to applicable federal and state law.

4. **Compliance with Law.** Both parties shall comply with all applicable federal and state laws, rules and regulations, as well as with all standards promulgated by any relevant accrediting agency. Notwithstanding any other provision of this Agreement, if any federal, state or local government or agency passes, issues or promulgates any law, rule, regulation, standard or interpretation, or if any court of competent jurisdiction renders any decision or issues any order, at any time while this Agreement is in effect, which prohibits, restricts, limits or in any way significantly affects the parties' rights or obligations hereunder, either party may give the other notice of intent to amend this Agreement, to the satisfaction of both parties, to address such prohibition, restriction, limitation or change in accordance with Section 14 of this Agreement.

5. **Indemnification; Insurance.** Each party shall be responsible for its own acts and omissions in the performance of its duties hereunder, and the acts and omissions of its own employees and agents., to the extent allowed by Section 768.28, Florida Statutes.

6. **Term of Agreement.** The term of this Agreement shall be one (1) year, unless sooner terminated as provided herein, commencing on the effective date of this Agreement, and will renew for successive one-year terms, upon the mutual written consent of the Parties, unless otherwise terminated as provided in this section 7.

7. **Termination.**

7.1 **Termination Without Cause.** Either party may terminate this Agreement without cause at any time by providing to the other party at least thirty (30) days' prior written notice of termination.

7.2 **Termination for Cause.**

(a) The Hospital may terminate this Agreement in the event Lee County fails in any material respect to provide transportation services in accordance with this Agreement and that failure is not cured to the Hospital's reasonable satisfaction within five (5) days after written notice from the Hospital to Lee County.

(b) Lee County may terminate this Agreement in the event the Hospital fails in any material respect to provide services in accordance with this Agreement and that failure is not cured to Lee County's reasonable satisfaction within five (5) days after written notice from Lee County to the Hospital.

(c) Either party may terminate this Agreement anytime after receiving actual notice of the occurrence of any of the following events:

(i) If any license, certification or accreditation of the other party which is material to the performance of the Agreement is suspended or revoked;

(ii) If a final judgment by a court or administrative agency is entered against the other party for violation of federal or state laws or regulations or for professional malpractice;

(iii) If the other party ceases to have any of the insurance required in section 6; or

(iv) If either party closes or discontinues operation to such an extent that patient care cannot be carried out adequately.

Each party will promptly notify the other party in writing of the occurrence of any of the events specified in this subsection 7.2(c). Any termination under this subsection 7.2(c) will be effective immediately upon written notice of the termination to the other party.

(d) The Hospital may terminate this Agreement if it determines, in its sole discretion, that continuation of this Agreement would jeopardize the health or welfare of any patient. Any termination under this subsection 7.2(d) will be effective immediately upon written notice of the termination to Lee County.

8. **Arbitration.** Any dispute or controversy arising under, out of or in connection with, or in relation to this Agreement, or any amendment hereof, or the breach hereof shall be determined and settled by arbitration in Sarasota County, Florida, in accordance with the rules of the American Health Lawyers Association Alternative Dispute Resolution Services and applying the laws of the state specified in section 10 below. Any award rendered by the arbitrator shall be final and binding upon each of the

Parties, and judgment thereof may be entered in any court having jurisdiction thereof. The costs shall be borne equally by both Parties. During the pendency of any such arbitration and until final judgment thereon has been entered, this Agreement shall remain in full force and effect unless otherwise terminated as provided hereunder.

9. **Entire Agreement; Modification.** This Agreement contains the entire understanding of the Parties with respect to the subject matter hereof and supersedes all prior agreements, oral or written, and all other communications between the Parties relating to such subject matter. This Agreement may not be amended or modified except by mutual written agreement.

10. **Governing Law.** This Agreement shall be construed in accordance with the laws of the State of Florida.

11. **Partial Invalidity.** If any provision of this Agreement is prohibited by law or court decree of any jurisdiction, said prohibition shall not invalidate or affect the remaining provisions of this Agreement.

12. **Waiver.** A waiver by either party of a breach or failure to perform hereunder shall not constitute a waiver of any subsequent breach or failure.

13. **Assignment; Binding Effect.** The Parties to this Agreement shall not assign or transfer, in whole or in part, this Agreement or any rights, duties or obligations under this Agreement without the prior written consent of the other party, and any assignment or transfer by either party without such consent shall be null and void. This Agreement shall inure to the benefit of and be binding upon the Parties hereto and their respective heirs, representatives, successors and permitted assigns.

14. **Change in Law.** Notwithstanding any other provision of this Agreement, if the governmental agencies (or their representatives) which administer Medicare, any other payer, or any other federal, state or local government or agency passes, issues or promulgates any law, rule, regulation, standard or interpretation, or if any court of competent jurisdiction renders any decision or issues any order, at any time while this Agreement is in effect, which prohibits, restricts, limits or in any way substantially changes the method or amount of reimbursement or payment for services rendered under this Agreement, or which otherwise significantly affects either party's rights or obligations hereunder, either party may give the other notice of intent to amend this Agreement to the satisfaction of both Parties, to compensate for such prohibition, restriction, limitation or change. If this Agreement is not so amended in writing within thirty (30) days after said notice was given, this Agreement shall terminate as of midnight on the thirtieth (30th) day after said notice was given.

15. **Warranty of Non-Exclusion.** Each party represents and warrants to the other that the party, its officers, directors and employees (i) are not currently excluded, debarred, or otherwise ineligible to participate in the federal health care programs as defined in 42 U.S.C. §1320a-7b(f) (the "federal healthcare programs"), (ii) have not been convicted of a criminal offense related to the provision of healthcare items or services but have not yet been excluded, debarred, or otherwise declared ineligible to participate in the federal healthcare programs, and (iii) are not, to the best of its knowledge, under investigation or otherwise aware of any circumstances which may result in the party or any such individual being excluded from participation in the federal healthcare programs. This shall be an ongoing representation and warranty during the term of this Agreement and each party shall immediately notify the other of any change in the status of the representations and warranty set forth in this section.

Any breach of this section shall give the other party the right to terminate this Agreement immediately for cause.

**16. HIPAA Compliance Requirements.** Each party agrees to comply with the Health Insurance Portability and Accountability Act of 1996, as codified at 42 U.S.C. § 1320d (“HIPAA”) and any current and future regulations promulgated thereunder including without limitation the federal privacy regulations contained in 45 C.F.R. Parts 160 and 164 (the “Federal Privacy Regulations”), the federal security standards contained in 45 C.F.R. Part 142 (the “Federal Security Regulations”), and the federal standards for electronic transactions contained in 45 C.F.R. Parts 160 and 162, all collectively referred to herein as “HIPAA Requirements,” to the extent applicable. Each party agrees not to use or further disclose any Protected Health Information (as defined in 45 C.F.R § 164.501) or Individually Identifiable Health Information (as defined in 42 U.S.C. § 1320d), other than as permitted by HIPAA Requirements and the terms of this Agreement. To the extent applicable under HIPAA, each party shall make its internal practices, books, and records relating to the use and disclosure of Protected Health Information available to the Secretary of Health and Human Services to the extent required for determining compliance with the Federal Privacy Regulations.

**17. Access to Records.** To the extent applicable, pursuant to the requirements of 42 C.F.R. § 420.300 et seq., each party agrees to make available to the Secretary of Health and Human Services (“HHS”), the Comptroller General of the Government Accounting Office (“GAO”) or their authorized representatives, all contracts, books, documents and records relating to the nature and extent of costs hereunder for a period of four (4) years after the furnishing of Services hereunder for any and all Services furnished under this Agreement. In addition, each party hereby agrees to make available to the HHS and GAO, or their authorized representative, all contracts, books, documents and records relating to the nature and extent of the costs thereunder for a period of four (4) years after the furnishing of Services thereunder.

**18. Execution of Agreement.** This Agreement shall not become effective or in force until all of the below named Parties have fully executed this Agreement.

**The remainder of this page intentionally left blank.**

In Witness Whereof, the Parties hereto have executed this Agreement as of the day and year first above written.

ATTEST:

BOARD OF COUNTY COMMISSION

By: \_\_\_\_\_  
Deputy Clerk

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

APPROVED AS TO FORM:

By: \_\_\_\_\_  
County Attorney's Office

ENGLEWOOD COMMUNITY HOSPITAL, INC.  
d/b/a ENGLEWOOD COMMUNITY HOSPITAL

By: \_\_\_\_\_  
Robert Meade, CEO

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Witness