

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

Blue Sheet No. 20041337

1. REQUESTED MOTION:

ACTION REQUESTED: Approve and execute a Lease Agreement between Lee County Transit and the Lee County Port Authority to utilize a vacant piece of land approximately 80 by 240 feet containing .44 acres adjacent to LeeTran for parking of transit vehicles at a cost of \$336 per month.

WHY ACTION IS NECESSARY: Board approval is required for Chairman to execute the lease agreement.

WHAT ACTION ACCOMPLISHES: Provides additional parking for transit vehicles at a cost of \$336.00 per month.

2. DEPARTMENTAL CATEGORY: 06
COMMISSION DISTRICT # All

C6B

3. MEETING DATE:

11-02-2004

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 *Independent*
 - C. DIVISION *Transit*
- BY: *Steven L. Myers*

7. BACKGROUND: Until Lee County Transit relocates to a new facility, this additional space is required to park buses, ADA vehicles and staff cars. The Port Authority has agreed to lease to Lee County Transit an adjacent piece of property with dimensions of 80 feet by 240 feet containing approximately .44 acres. The lease agreement is a month-to-month lease and the start date is October 1, 2004. The cost to Lee County Transit is \$336.00 per month or \$4,032 per year beginning October 1, 2004.

Funds are available from account number: KI5440148600.504410.42 (Independent Division, Fixed Route, Transit Operating, Land, Building Parking Rental, Non- Vehicle Maintenance)

8. MANAGEMENT RECOMMENDATIONS:

9. RECOMMENDED APPROVAL:

A Department Director	B Purchasing or Contracts	C Human Resources	D Other	E County Attorney	F Budget Services				G County Manager
					OA	OM	Risk	GC	
<i>Steven L. Myers 10/14/04</i>	<i>N/A</i>	<i>N/A</i>		<i>S. Myers 10/15/04</i>	<i>10/18/04</i>	<i>10/18/04</i>	<i>10/18/04</i>	<i>10/18/04</i>	<i>M. H. HS 10/20/04</i>

10. COMMISSION ACTION:

- APPROVED
- DENIED
- DEFERRED
- OTHER

Rec. by CoAtty
Date: *10/15/04*
Time: *11:10*
Forwarded To:
Co. Attorney
10/15/04

RECEIVED BY
COUNTY ADMIN.
10/15/04
COUNTY
FORWARD
10/20
10:30 AM SWZ

MONTH TO MONTH LAND LEASE
AT PAGE FIELD GENERAL AVIATION AIRPORT

THIS AGREEMENT is made and entered into this _____ day of _____, 2004, by and between **LEE COUNTY PORT AUTHORITY**, a special district and political subdivision of the State of Florida with offices at 16000 Chamberlin Parkway, Suite 8671, Fort Myers, Florida, 33913 (herein referred to as "Authority") and **LEE COUNTY**, a political subdivision of the State of Florida with offices at 6035 Landing View Rd, Fort Myers, Florida, 33907 (herein referred to as "Lessee").

Background

Lee County, a political subdivision of the State of Florida, owns the Page Field General Aviation Airport, in Lee County, Florida (the "Airport"). Pursuant to Chapter 63-1541, Laws of Florida, and Lee County Ordinance 01-14, as amended, Lee County has vested the Authority with the power to lease premises and facilities on the Airport and grant related rights and privileges. Lessee desires to lease certain vacant land at the Airport for use by Lee Tran. The Authority is willing to grant this lease upon the terms and conditions provided below.

NOW THEREFORE, in consideration of the mutual promises herein, the parties hereby agree as follows:

ARTICLE 1

DESCRIPTION OF LEASED PREMISES

Subject to the terms, covenants, and conditions contained herein, the Authority does hereby demise and lease to Lessee the following described real property (hereinafter the "premises" or

the "leased premises"):

A rectangular parcel of land, within the boundaries of Page Field General Aviation Airport, in the County of Lee, State of Florida, with dimensions of 80 feet by 240 feet containing approximately 0.44 acre, depicted as the "LEASED SITE" on the drawings attached hereto as "EXHIBIT A" and "EXHIBIT B."

ARTICLE 2

TERM

Section 2.1 Initial term. The term of this lease will commence on October 1, 2004, and will continue month to month thereafter until either party shall terminate it by giving at least thirty (30) days written notice to the other.

ARTICLE 3

RENT

Section 3.1 Amount of Payments. Lessee agrees to pay the Authority, for and during the terms hereof, "base rent" of \$336.00 per month, payable in advance on or before the first day of each calendar month.

Section 3.2 Escalation. Beginning May 1, 2007, and every three (3) years thereafter while the lease is in force, the "base rent" will be adjusted for proportionate increases and decreases in CPI but will never be less than the "base rent" specified above. The adjusted base rent will be the product of the initial base rent multiplied by a fraction, the numerator of which is the comparison index and the denominator of which is the base index. The term "base index" means the CPI in effect for the calendar month of March 2004. The term "comparison index" means the CPI

in effect for the second calendar month (i.e., March) before the applicable adjustment date.

The term CPI means the Consumer Price Index for All Urban Consumers (CPI-U), U.S. City Average, All Items, (1982-84 = 100), published by the Bureau of Labor Statistics of the U.S. Department of Labor. If the CPI ceases to use 1982-84 = 100 as a base, or if the CPI is altered, modified, converted, or revised in any way, the CPI will be adjusted to the figure that would have resulted had the change not occurred. If the CPI ceases to be published, any substitute or successor equivalent index published by any agency of the U.S. government will be used.

Section 3.3 Payment. All payments must be paid, without demand, setoff, or deduction, on or before the first day of each calendar month, to Lee County Port Authority, Finance Department, 16000 Chamberlin Parkway, Suite 8671, Fort Myers, Florida, 33913, or such other place as the Authority may direct in writing.

ARTICLE 4

USE OF LEASED PREMISES

Lessee shall have the right to use the leased premises solely for: (1) storage of equipment used in the construction and repair of roads; (2) for storage of non-toxic, non-hazardous materials; and (3) parking of buses, vans, and cars.

Lessee shall not use or permit the use of the leased premises, or any part thereof, for any other purpose, or by any other party, except upon prior written consent of the Authority's Executive Director or his designee.

Lessee agrees to refrain from and prevent any use of the leased premises or the Airport which would interfere with or adversely affect the operation or maintenance of the Airport, or otherwise constitute an Airport hazard. Lessee shall make no unlawful, improper, or offensive use of the premises.

ARTICLE 5

CONDITION AND MAINTENANCE OF PREMISES

Section 5.1 Condition of premises. Lessee accepts the premises in "as is" condition. No representation has been made to Lessee concerning the condition of the site or the suitability thereof for Lessee's planned use.

Section 5.2 Maintenance. Lessee must keep the premises and any improvements thereon in a clean and orderly condition and good state of repair at all times. Lessee agrees to provide at its own expense such maintenance, custodial, trash removal, and cleaning services and supplies as may be necessary or required in the operation and maintenance of the leased premises.

ARTICLE 6

UTILITIES

The Authority does not make any representation as to whether any utilities are available at the leased premises. Lessee must pay for all gas, electric, water, telephone, sewage, and any other utilities consumed within the leased premises.

Lessee agrees not to disturb, damage, or interfere with, in any way, any existing utility lines or F.A.A. cables, and agrees not to pave over, or otherwise impair or impede the Authority's

or F.A.A.'s access to any utilities or F.A.A. cables, except as may be approved in writing by the Authority.

ARTICLE 7

ASSIGNMENT AND SUBLEASING

Lessee will not assign this lease, or any interest therein, or sublease all or part of the premises, and any such attempted assignment or sublease shall be voidable by the Authority, unless Lessee first obtains written consent of the Authority's Executive Director or Board of Port Commissioners, which may be withheld for any reason or no reason.

ARTICLE 8

RIGHT OF ENTRY

Authority's agents or employees will have the right to enter the leased premises at any time to view and inspect the premises, make repairs or improvements, or show the premises to prospective tenants.

ARTICLE 9

COMPLIANCE WITH LAWS

Lessee (including its officers, agents, servants, employees, contractors, suboperators, and any other person over which Lessee has the right to control) shall comply at all times with all present and future laws, including the Airport Rules and Regulations Ordinance (Lee Co. Ord. 94-09, as amended) as may be further amended or superseded, and all other statutes, ordinances, orders, directives, rules, and regulations, of the federal, state, and local governments, including the Authority

and the Federal Aviation Administration ("FAA"), which may be applicable to its operations at the Airport.

ARTICLE 10

RELEASE, INDEMNITY, AND HOLD HARMLESS

Lessee agrees to release the Authority (and its respective Commissioners, officers, agents, and employees) from any and all injury, loss, or damage, of any nature whatsoever, to any person or property in connection with Lessee's use of the leased premises or the Airport.

ARTICLE 11

LICENSES AND TAXES

Lessee shall have and maintain in current status all federal, state, and local licenses and permits required for the operation of the business conducted by Lessee. Lessee agrees to bear, pay, and discharge, on or before their respective due dates, all federal, state, and local taxes, fees, assessments, and levies which are now or may hereafter be levied upon the premises, or upon Lessee, or upon the business conducted on the premises, or upon any of Lessee's property used in connection therewith.

ARTICLE 12

COMPLIANCE WITH ENVIRONMENTAL LAWS

As a material inducement to Authority to lease the premises to Lessee, Lessee covenants and warrants that Lessee and Lessee's use of the premises will at all times comply with and conform to all Environmental Laws, and that Lessee will be responsible for

correcting and remediating any damage resulting from its violations of same.

"Environmental Law" shall include any and all federal, state, and local statutes, laws, regulations, ordinances, rules, judgments, orders, decrees, permits, concessions, grants, franchises, licenses, agreements or other governmental restrictions relating to the environment or to emissions, discharges, releases or threatened releases of pollutants, contaminants, chemicals, or industrial, toxic or hazardous substances, materials, or wastes into the environment including, without limitation, ambient air, surface water, ground water, or land, or otherwise relating to the Handling (as hereinafter defined) of pollutants, contaminants, chemicals, or industrial, toxic or hazardous substances or wastes.

"Handling" shall include use, treatment, storage, manufacture, processing, distribution, transport, placement, handling, discharge, generation, production, or disposal.

ARTICLE 13

STORM WATER COMPLIANCE

Section 13.1 Acknowledgments.

- (a) Notwithstanding any other provisions of this agreement, Lessee acknowledges that the Airport is subject to federal storm water regulations (40 CFR Part 122) and state storm water regulations (Chapter 373, Part IV, and Chapter 403, Florida Statutes).
- (b) Authority has obtained a storm water discharge permit for the Airport from the Florida D.E.P. (Multi-Sector Generic Permit #FLR05A513). Lessee will observe and comply with, and agrees not to cause any violation of, the Authority's Storm Water Pollution Prevention Plan (SWPPP), Best Management Practices (BMPs), and any

Multi-Sector Generic Permit that has been, or in the future is, issued for the Airport by the Florida Department of Environmental Protection. The Authority's permit does not cover Lessee or Lessee's activities. If Lessee desires to perform any vehicle maintenance (including vehicle rehabilitation, mechanical repairs, painting, fueling, and lubrication), equipment cleaning operations, or deicing/anti-icing operations), or to perform any construction work impacting one acre or more, then Lessee will first obtain its own from the Florida D.E.P.

- (c) Notwithstanding any other provision or terms of this Lease, Authority and Lessee acknowledge that close cooperation is necessary to ensure compliance with any storm water discharge permit terms and conditions, as well as to ensure safety and to minimize costs. Lessee acknowledges that the Authority may require Lessee to undertake to minimize the exposure of storm water to "significant materials" generated, stored, handled or otherwise used by the Lessee, as defined in the federal storm water regulations, by implementing and maintaining "Best Management Practices."

For purposes of this Article, the following definitions apply:

"Storm water" - Storm water runoff and surface water runoff and drainage.

"Significant materials" - Includes, but is not limited to - raw materials; fuels; materials such as solvents, detergents, and plastic pellets; finished materials such as metallic products, raw materials used in food processing or production; hazardous substances designated under Section 181(14) of the CERCLA; any chemical the facility is required to report pursuant to Section 313 of Title III of SARA; fertilizers; pesticides; and waste products such as ashes, slag, and sludge that have a potential to be released with storm water discharges. (See 40 CFR 122.26(b)(12).)

"Best Management Practices (BMP)" - Practices employed to prevent or reduce source water pollution, such as the construction of runoff-retention basins and replanting eroding surfaces.

Section 13.2 Permit compliance.

- (a) In the event that, due to Lessee's use or occupancy of the leased premises, Lessee's assistance is required in keeping the Airport compliant with the Authority's

storm water discharge permit, Lessee will be obligated to perform such tasks as notified by the Authority from time to time, which may include, but not necessarily be limited to: certification of non-storm water discharges; collection of storm water samples; preparation of storm water pollution prevention or similar plans; implementation of good housekeeping measures of Best Management Practices; and maintenance of necessary records. Such written notice shall include any applicable deadlines.

- (b) Lessee agrees to timely undertake, at its sole expense unless otherwise agreed to in writing between Authority and Lessee, those storm water discharge permit requirements for which it has received written notice from the Authority. Lessee acknowledges that time is of the essence.
- (c) Authority agrees to provide Lessee, at its request, with any non-privileged information collected and submitted to any governmental entity pursuant to applicable storm water regulations.
- (d) Authority will give Lessee written notice of any violation by Lessee of the Authority's storm water discharge permit or the provisions of this section. Such a violation will be considered a material breach of this lease. Lessee will promptly cure any such violation regardless of whether this lease has been terminated or has expired.

ARTICLE 14

WASTE; SURRENDER OF POSSESSION

Lessee will not commit or permit waste of the premises and must quit and voluntarily deliver up possession of the leased premises at the end of the term in as good condition as at the beginning of this lease (environmentally and otherwise), and any fixed improvements in as good condition as when installed or constructed, excepting only ordinary wear and tear.

ARTICLE 15

GENERAL PROVISIONS

Section 15.1 Notices. Notice to Authority will be

sufficient if sent by a nationally-recognized overnight courier service, or by certified or registered mail, postage prepaid, to: Executive Director, Lee County Port Authority, 16000 Chamberlin Parkway, Suite 8671, Fort Myers, Florida 33913. Notice to Lessee will be sufficient if sent in the same manner, addressed to Lessee at the address set forth on page 1. The parties may designate in writing other addresses for notice. Notice shall be deemed given when delivered (if sent by a delivery company such as Federal Express) or when postmarked (if sent by mail).

Section 15.2 Captions. The captions within this agreement are inserted for convenience only, and are not intended to define, limit, or describe the scope or intent of any provisions, and shall not be construed to affect in any manner the terms and provisions hereof or the interpretation or construction thereof.

Section 15.3 Incorporation of exhibits. All exhibits referred to in this agreement are intended to be and hereby are specifically made a part of this agreement.

Section 15.4 Time. Time is of the essence in the performance of this agreement.

Section 15.5 Governing law and venue. This agreement shall become valid when executed and accepted by the Authority in Lee County, Florida; it will be deemed made and entered into in the State of Florida and will be governed by and construed in accordance with the laws of Florida. In the event of a dispute between the parties, suit will be brought only in the federal or state courts of Florida, and venue shall be in Lee County,

Florida.

Section 15.6 Attorneys' fees. Should any action or proceeding be commenced to enforce any of the provisions of this agreement or in connection with its meaning, the prevailing party in such action shall be awarded, in addition to any other relief it may obtain, its reasonable costs and expenses, not limited to taxable costs, and reasonable attorneys' fees.

Section 15.7 Nonwaiver of rights. No waiver of breach by either party of any of the terms, covenants, and conditions hereof to be performed, kept, and observed by the other party shall be construed as, or shall operate as, a waiver of any subsequent breach of any of the terms, covenants, or conditions herein contained, to be performed, kept, and observed by the other party.

Section 15.8 Administration of lease. Whenever in this agreement, Lessee is required or permitted to obtain the approval of, consult with, give notice to, receive notice from, or otherwise deal with Authority, Lessee shall deal with Authority's authorized representative; and unless and until Authority gives Lessee written notice to the contrary, Authority's authorized representative shall be the Authority's Executive Director or his designee.

Section 15.9 Airport development. Authority reserves the right to further develop, change, or improve the Airport and its routes and landing areas as Authority sees fit, without Lessee's interference or hindrance and regardless of Lessee's views and

desires, but if such development or change to the Airport renders Lessee's use of the leased premises impossible, or if the Airport totally closes to all aeronautical traffic for a period in excess of ninety (90) days, Lessee may terminate this lease by advance written notice to Authority.

Section 15.10 Lessee's use and construction to conform with Federal Aviation Regulations. Lessee agrees to conform to all applicable Federal Aviation Regulations in any operation or construction on the premises. Lessee agrees to comply with the notification and review requirements covered in Part 77 of the Federal Aviation Regulations (which may be amended or replaced by other regulations from time to time) before constructing any improvements or modifying or altering any structure on the premises.

Section 15.11 Lessee's noninterference with aircraft. Lessee and its successors, assigns, and sublessees will not use the premises or any part of the Airport in any manner, or act in any manner, that might interfere with any aircraft landing, taxiing, or taking off from the Airport or otherwise create a hazard. If this covenant is breached in any way, Authority reserves the right to enter the premises and abate or eliminate the interference at the expense of Lessee.

ARTICLE 16

FAA CLAUSES

Section 16.1 Incorporation of required provisions. The parties incorporate herein by this reference all provisions

lawfully required to be contained herein by the Federal Aviation Administration or any other governmental body or agency. In the event that the FAA or any successor requires modifications or changes in this agreement as a condition precedent to the granting of funds for the improvement of the Airport, or otherwise, Lessee agrees to consent to such amendments, modifications, revisions, supplements, or deletions of any of the terms, conditions, or requirements of this agreement as may be reasonably required.

Section 16.2 Airport protection. It shall be a condition of this lease, that the Authority reserves unto itself, its successors and assigns, for the use and benefit of the public, a right of flight for the passage of aircraft in the airspace above the surface of the leased premises, together with the right to cause in said airspace such noise as may be inherent in the operation of aircraft, now known or hereafter used, for the navigation of or flight in the said airspace, and for use of said airspace for landing on, taking off from, or operating on the Airport.

The Lessee agrees for itself, its successors, and assigns, to restrict the height of structures, objects of natural growth, and other obstructions on the premises to such a height so as to comply with Federal Aviation Regulations, Part 77.

The Lessee agrees for itself, its successors, and assigns, to prevent any use of the leased premises which would interfere with or adversely affect the operation or maintenance of the

Airport, or otherwise constitute an airport hazard.

Section 16.3 Subordination. This agreement is subject and subordinate to the provisions of any governmental restrictions of record and any existing or future agreement entered into between the Authority or Lee County and the United States, for the improvement or operation and maintenance of the Airport, the execution of which has been or may be required as a condition precedent to the transfer of federal rights or property to Authority for Airport purposes, or the expenditure of federal funds for the improvements or development of the Airport.

Section 16.4 Nonexclusivity. Notwithstanding anything herein contained that may be, or appear to be, to the contrary, it is expressly understood and agreed that the rights granted under this agreement are non-exclusive and the Authority reserves the right to grant the same or similar privileges to another lessee or other lessees on other parts of the Airport.

Section 16.5 Nondiscrimination. Lessee for itself, its successors in interest, its agents, employees, and assigns, as a part of the consideration hereof, does hereby covenant and agree that:

- (a) no person on the grounds of race, color, or national origin shall be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of the leased premises;
- (b) in the construction of any improvements on, over, or under such land and the furnishing of services thereon, no person on the grounds of race, color, or national origin shall be excluded from participation in, denied benefits of, or be otherwise subjected to discrimination; and

- (c) Lessee shall use the leased premises in compliance with all other requirements imposed by or pursuant to Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Nondiscrimination in Federally Assisted Programs of the Department of Transportation, Effectuation of Title VI of the Civil Rights Act of 1964 or as said regulations may be amended.

In the event of breach of any of the above nondiscrimination covenants, the Authority shall have the right to terminate the lease and to re-enter as if said lease had never been made or issued. This provision shall not be effective until the procedures of Title 49, Code of Federal Regulations, Part 21, are followed and completed, including exercise or expiration of appeal rights.

ARTICLE 17

QUIET ENJOYMENT

Lessee, upon paying the rent and observing and keeping all covenants, warranties, agreements, and conditions of this lease on Lessee's part to be kept, shall quietly have, hold, and enjoy the leased premises during the term, without any interruption or disturbance from the Authority, or anyone claiming by, through, or under the Authority.

ARTICLE 18

ENTIRE AGREEMENT

This contract sets out the entire agreement between the parties for the described premises. There are no implied covenants or warranties except as expressly set forth herein. No agreement to modify this contract will be effective unless in writing and executed by the party against whom the modification

is sought to be enforced.

IN WITNESS WHEREOF, the parties hereto, by their duly authorized representatives, have executed this agreement on the date first above written.

LEE COUNTY, FLORIDA
(Lessee)

WITNESSED BY:

By: _____

Print Name

Witness

Print Name

As its: _____

Date: _____

Date: _____

LEE COUNTY PORT AUTHORITY

ATTEST:
CHARLIE GREEN, CLERK

By: _____
Chairman or Vice Chairman,
Board of Port Commissioners

By: _____
Deputy Clerk

Date: _____

Date: _____

Approved As To Form:

By: _____
Port Authority Attorney

Date: _____

EXHIBIT A



