

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

**Blue Sheet No. 20050755**

**1. ACTION REQUESTED/PURPOSE:**

Allow LeeTran to access \$3,000,000 in 0% financing from the State Infrastructure Bank Loan Program for the development of a new transit facility and allow for the execution of the necessary documents related to the loan program, loan disbursement schedule and repayment terms.

**2. WHAT ACTION ACCOMPLISHES:**

This action allows LeeTran to access \$3,000,000 in financing for the development of a new transit facility, loan disbursement schedule, establishes terms of repayment and provides authorization to the Board Chair to execute the necessary documents and agreements related to the State Infrastructure Bank Loan Program.

**3. MANAGEMENT RECOMMENDATION:**

Recommend approving the SIB Loan, repayment schedule and granting authorization to the Chair to execute the loan agreement.

<b>4. Departmental Category:</b> <i>Cbe</i>		<b>5. Meeting Date:</b> <i>6-14-05</i>	
<b>6. Agenda:</b>		<b>7. Requirement/Purpose: (specify)</b>	
<input checked="" type="checkbox"/> Consent	<input checked="" type="checkbox"/> Statute	<i>20.205</i>	
<input type="checkbox"/> Administrative	<input type="checkbox"/> Ordinance		
<input type="checkbox"/> Appeals	<input type="checkbox"/> Admin. Code		
<input type="checkbox"/> Public	<input type="checkbox"/> Other		
<input type="checkbox"/> Walk-On			
		<b>8. Request Initiated:</b>	
		Commissioner _____	
		Department <u>Independent</u>	
		Division <u>Transit</u>	
		By: <u>Steve Myers</u>	

**9. Background:**

The State of Florida Department of Transportation has granted LeeTran a \$3,000,000 SIB Loan for the development of a new transit facility to house maintenance, administration and transit operations. This loan advances funds which will be used for site acquisition as provided in "Exhibit B" of the Loan Agreement. The proposed loan disbursement and repayment schedule is shown as "Exhibit C". Repayment of this interest-free loan will be done with Urbanized Area Grant funds over a five-year period.

The SIB Loan is budgeted in FY 2006 Revenue Account KI5440148640.334420.9008  
(Independent Division, Fixed Route Transit Capital, FDOT Infrastructure Bank)

**10. Review for Scheduling:**

Department Director	Purchasing or Contracts	Human Resources	Other	County Attorney	Budget Services				County Manager/P.W. Director
					Analyst	Risk	Grants	Mgr.	
<i>Steve Myers</i> <i>5/25/05</i>					<i>P.M.</i> <i>5/27/05</i>	<i>AS</i> <i>5/27/05</i>	<i>AS</i> <i>5/27/05</i>	<i>AS</i> <i>6/1/05</i>	<i>HS</i> <i>6/2/05</i>

**11. Commission Action:**

- Approved
- Deferred
- Denied
- Other

<b>Rec. by CoAtty</b>
Date: _____
Time: _____
Forwarded To: _____

*CS. N. M.*  
*5/27/05*

RECEIVED BY COUNTY ADMIN: <i>MM</i>
<i>5-27-05</i>
<i>10:15</i>
COUNTY ADMIN FORWARDED TO: <i>fil</i>
<i>6-2-05</i>
<i>4136741</i>

# STATE INFRASTRUCTURE BANK LOAN AGREEMENT

Financial Project Number: 418445-1-58-01	Fund: SIB1	Budget Appropriation Code:
CFDA Number: 20.205	Function:	Object Code:
DUNS: 80-939-7102	Federal Number: N/A	Organization Code: 55130000938
	Contract Number:	Vendor ID Number: F596000702017

THIS AGREEMENT, made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2005 by and between the **STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION**, an agency of the State of Florida, hereinafter referred to as the Department, and **Lee County Board of County Commissioners, Lee County Transit** hereinafter referred to as the Agency.

## WITNESSETH:

**WHEREAS**, the Federal-funded State Infrastructure Bank pilot program was authorized by the Transportation Equity Act for the 21st Century Act of 1999 and the State of Florida was designated as a pilot state for the program; and

**WHEREAS**, by and in accordance with the provisions of Sections 339.08(2)(d),(g),(h) and 339.55 Florida Statutes, the Department is authorized, upon the request of an agency or agencies that desire to undertake highway or public transportation projects in a county or combination of contiguous counties, to advance from the State Infrastructure Bank, hereinafter referred to as "SIB," such moneys necessary and desirable in the judgment of the Department to conduct highway or public transportation projects; and

**WHEREAS**, the Agency has made an application for a SIB loan and has provided a detailed Finance Plan for the Project, and the Department has determined that such Project meets all the requirements for the loan.

**NOW, THEREFORE**, in consideration of the Department loaning money to the Agency from the SIB account, in the principal amount and pursuant to the covenants hereinafter set forth, it is agreed as follows:

**1.00 Purpose of Loan Agreement:** The purpose of this Agreement is to state the terms and conditions upon which a loan from the SIB account will be made to the Agency; establish an amount of the SIB loan, not to exceed **\$3,000,000**; establish a loan disbursement schedule; establish a schedule for repayments to the SIB account; and identify revenue sources pledged for the repayment to the SIB.

### **2.00 Accomplishment of the Project:**

**2.10 General Requirements:** The Agency shall commence, and complete the project as described in Exhibit "A" attached hereto and by this reference made a part hereof, with all practical dispatch, in a sound, economical, and efficient manner, and in accordance with the provisions herein, and all applicable laws.

**2.20 Pursuant to Federal, State, and Local Law:** In the event that any election, referendum, approval, permit, notice, or other proceeding or authorization is required under applicable law to enable the Agency to enter into this Agreement or to undertake the project hereunder, or to observe, assume or carry out any of the provisions of the Agreement, the Agency will initiate and consummate, all such actions prior to disbursement of funds.

**2.30 Funds of the Agency:** The Agency shall initiate and prosecute to completion all proceedings necessary, including SIB program requirements, to enable the Agency to provide the funds for repayment to the Department.

**2.40 Submission of Proceedings, Contracts and Other Documents:** The Agency shall submit to the Department such data, reports, records, contracts and other documents relating to the project as the Department may require.

**3.00 State Infrastructure Bank Funding:** The Agency has requested the Department to loan to the Agency an amount not to exceed ~~\$5,000,000~~ from the SIB to be used for the project as identified in Exhibit "A." The loan will be made in accordance with the terms of the note attached hereto as Exhibit "B." The terms and conditions of said note are incorporated herein and shall be considered as a part hereof.

**4.00 Pledge and Assignment of Funding Source:** The source of funds for repayment of the money loaned to Agency, in accord with the terms of this Agreement and of the note (Exhibit "B"), shall be ~~allocated Federal Transit Administrative Section 5307 Urban Formula Grant Funds~~ (Dedicated Funds). The Agency hereby dedicates said funds for the purpose of payment of the funds due the Department. The Agency shall not take any action with respect to the dedicated source of funds that would be inconsistent with this dedication. Additionally, in the event of a material default by the Agency, the Agency hereby assigns to the Department the right to receive the dedicated funds to the extent necessary to pay the full monetary obligation imposed by the note (Exhibit "B").

**5.00 Loan Disbursements and Repayment Provisions:**

**5.10 Loan Disbursements:** Disbursements from the SIB shall not exceed ~~\$3,000,000~~ and shall be made in accordance with the terms of the note (Exhibit "B") and as described in Exhibit "C."

**5.20 Repayment Provisions:** Repayments to the Department shall be consistent with the terms of the note, Exhibit "B," hereto.

**5.30 Committed Funds for Repayment:** The Agency commits to use the following funding sources to fund the payment obligations of the note: ~~(1) allocated Federal Transit Administrative Section 5307 Urban Formula Grant Funds and/or (2) revenues received by the local option tax.~~ If any of the sources included herein are funded through a bond issue, then said bonds shall maintain a BBB or higher bond rating (from a nationally recognized bond rating agency.) If additional indebtedness is anticipated, with any of the moneys or revenues dedicated for SIB repayments pledged as security for such indebtedness requirements, provisions as to the lien in favor of the Department shall be included in the flow of funds of the Trust Indenture or Bond Resolution as follows:

"The balance of moneys or revenue pledged as security after the payment of debt service requirements, administrative, operation and maintenance expenses, and normal preservation costs shall be transferred to the Department as repayment of the SIB loan on a mutually agreeable schedule. Prior to the issuance of additional indebtedness the Agency (Loan Recipient) will provide the Department with revenue estimates from a nationally recognized independent consultant that supports the funding to meet the existing and

planned obligations in the flow of funds including repayments to the SIB in accordance with the schedule defined by the SIB loan agreement. The Department shall provide a certificate of compliance and agreement necessary to issue future indebtedness based on estimated revenues meeting the SIB repayment schedule.”

In the event that anticipated committed revenues are shown by the Agency’s annual budget to be insufficient to make the required loan payment(s) identified in Exhibit “C,” the Agency shall include in such budget other legally available funds which will be sufficient, together with the committed revenues, to make the loan payment(s).

#### **6.00 Accounting Records:**

**6.10 Establishment and Maintenance of Accounting Records:** The Agency shall establish for the project, in conformity with requirements established by Department's program guidelines/procedures and "Principles for State and Local Governments," separate accounts to be maintained within its existing accounting system or establish independent accounts. Such accounts are referred to herein collectively as the "project account." Documentation of the project account shall be made available to the Department upon request any time during the period of the Agreement and for five years after final payment is made.

**6.20 Funds Received Or Made Available for The Project:** The Agency shall appropriately record in the project account, and deposit in a bank or trust company which is a member of the Federal Deposit Insurance Corporation, all disbursements received from the Department’s SIB account pursuant to this Agreement and all other funds provided for or otherwise received on account of the project herein collectively referred to as "project funds." The Agency shall require depositories of project funds to secure continuously and fully all project funds in excess of the amounts insured under federal plans, or under State plans which have been approved for the deposit of project funds by the Department, by the deposit or setting aside of collateral of the types and in the manner as prescribed by State Law for the security of public funds, or as approved by the Department.

**6.30 Costs Incurred for the Project:** The Agency shall utilize the SIB disbursements to support all eligible costs of the project. Costs in excess of the latest approved budget or attributable to actions which have not received the required approval of the Department shall not be considered eligible costs.

**6.40 Documentation of Project Costs:** All costs charged to the project, including any approved services contributed by the Agency or others, shall be supported by properly executed payrolls, time records, invoices, contracts, or vouchers evidencing in proper detail the nature and propriety of the charges.

**6.50 Checks, Orders, and Vouchers:** Any check or order drawn by the Agency with respect to any item which is or will be supported by the SIB loan must be supported with a properly signed voucher on file in the office of the Agency stating in proper detail the purpose for which such check or order is drawn. All checks, payrolls, invoices, contracts, vouchers, orders, or other accounting documents pertaining in whole or in part to the project shall be clearly identified, readily accessible, and, to the extent feasible, kept separate and apart from all other such documents.

**6.60 Audit Reports:** The administration of resources awarded by the Department to the Agency may be subject to audits and/or monitoring by the Department, as described in this section. For further guidance, see the Executive Office of the Governor website, which can be found at: [www.fssa.state.fl.us](http://www.fssa.state.fl.us). Recipients of federal funds (i.e. state, local government, or non-profit organizations as defined in OMB Circular A-133, as revised) are to have audits done annually using the following criteria:

In the event that the recipient expends \$500,000 or more in Federal awards in its fiscal year, the recipient must have a single or program-specific audit conducted in accordance with the provisions of OMB Circular A-133, as revised. In determining the Federal awards expended in its fiscal year, the recipient shall consider all sources of Federal awards, including Federal resources received from the Department. The determination of amounts of Federal awards expended should be in accordance with the guidelines established by OMB Circular A-133, as revised. An audit of the recipient conducted by the Auditor General in accordance with the provisions OMB Circular A-133, as revised, will meet these requirements.

The recipient shall fulfill the requirements relative to auditee responsibilities as provided in Subpart C of OMB Circular A-133, as revised.

If the recipient expends less than \$500,000 in Federal awards in its fiscal year, an audit conducted in accordance with the provisions of OMB Circular A-133, as revised, is not required. In the event that the recipient expends less than \$500,000 in Federal awards in its fiscal year and elects to have an audit conducted in accordance with the provisions of OMB Circular A-133, as revised, the cost of the audit must be paid from non-Federal resources (i.e., the cost of such an audit must be paid from recipient resources obtained from other than Federal entities).

Federal awards are to be identified using the Catalog of Federal Domestic Assistance (CFDA) title and number, award number and year, and name of the awarding federal agency.

The recipient shall follow up and take corrective action on audit findings. Preparation of a summary schedule of prior year audit findings, including corrective action and current status of the audit findings is required. Current year audit findings require corrective action and status of findings.

Records related to unresolved audit findings, appeals, or litigation shall be retained until the action is completed or the dispute is resolved. Access to project records and independent audit work papers shall be given to the Department, the Comptroller, and the Auditor General. This section does not limit the authority of the Department to conduct or arrange for the conduct of additional audits or evaluations of state financial assistance or limit the authority of any other state official.

Copies of reporting packages for audits conducted in accordance with OMB Circular A-133, as revised, shall be submitted, when required by Section .320 (d), OMB Circular A-133, as revised, by or on behalf of the recipient directly to each of the following:

The Department at the following addresses:

Florida Department of Transportation  
SIB Program Manager  
Office of Financial Development  
605 Suwannee Street, MS #7  
Tallahassee, FL 32399-0450

The Federal Audit Clearinghouse designated in OMB Circular A-133, as revised (the number of copies required by Sections .320 (d)(1) and (2), OMB Circular A-133, as revised, should be submitted to the Federal Audit Clearinghouse), at the following address:

Federal Audit Clearinghouse  
Bureau of the Census  
1201 East 10<sup>th</sup> Street  
Jeffersonville, IN 47132

Other Federal agencies and pass-through entities in accordance with Sections .320 (e) and (f), OMB Circular A-133, as revised.

In the event that a copy of the reporting package for an audit required by this agreement and conducted in accordance with OMB Circular A-133, as revised, is not required to be submitted to the Department for reasons pursuant to section .320 (e)(2), OMB Circular A-133, as revised, the recipient shall submit the required written notification pursuant to Section .320 (e)(2) and a copy of the recipient's audited schedule of expenditures of Federal awards. In addition, pursuant to Section .320 (f), OMB Circular A-133, as revised, the recipient shall submit a copy of the reporting package described in Section .320 (c), OMB Circular A-133, as revised, and any management letters issued by the auditor, to the Department at the following addresses:

Florida Department of Transportation  
SIB Program Manager  
Office of Financial Development  
605 Suwannee Street, MS #7  
Tallahassee, FL 32399-0450

Any reports, management letter, or other information required to be submitted to the Department pursuant to this agreement shall be submitted timely in accordance with OMB Circular A-133, Florida Statutes, and Chapters 10.550 (local governmental entities) or 10.650 (nonprofit and for-profit organizations), Rules of the Auditor General, as applicable.

Recipients, when submitting financial reporting packages to the Department for audits done in accordance with OMB Circular A-133 or Chapters 10.550 (local governmental entities) or 10.650 (nonprofit and for-profit organizations), Rules of the Auditor General, should indicate the date that the reporting package was delivered to the recipient in correspondence accompanying the reporting package.

**6.70 Progress Reports:** The Agency shall provide to the Department's Office of Financial Development semi-annual progress reports on "program and financial activities" that occur each year. The report will be signed or submitted electronically in accordance with Chapter 668, Florida Statutes, by an individual authorized by the governing board of the Agency. The following program information shall be included: program accomplishments (specific action taken to implement approved objectives/activities) and percent of accomplishments for each in terms of percentage completed; problems delaying implementation; and revised project schedule if activities are not conforming to approved project schedules as contained in the application. The following financial information shall be included: beginning fund balance; amount of expenditures; ending fund balance; interest earned to date; and the amount and percent of funds being contributed to the Project from other sources. The semi-annual progress report is on the SIB website at [www.dot.state.fl.us/financialplanning/finance/sib.htm](http://www.dot.state.fl.us/financialplanning/finance/sib.htm).

**6.80 Monitoring:** In addition to reviews of audits conducted in accordance with OMB Circular A-133 and Section 215.97, F.S., as revised, monitoring procedures may include, but not be limited to, on-site visits by Department staff, limited scope audits as defined by OMB Circular A-133, as revised, and/or other procedures. By entering into this agreement, the recipient agrees to comply and cooperate fully with any monitoring procedures/processes deemed appropriate by the Department. In the event the Department determines that a limited scope audit of the recipient is appropriate, the recipient agrees to comply with any additional instructions provided by the Department regarding such audit. The Agency further agrees to comply and cooperate with any inspections, reviews, investigations, or audits deemed necessary by the Chief Financial Officer (CFO) or Auditor General.

**6.90 Record Retention:** The recipient shall retain sufficient records demonstrating its compliance with the terms of this agreement for a period of at least five years from the date the audit report is issued, and shall allow the Department, or its designee, the state CFO or Auditor General access to such records upon request. The recipient shall ensure that the independent audit working papers are made available to the Department, or its designee, the state CFO, or Auditor General upon request for a period of at least five years from the date the audit report is issued, unless extended in writing by the Department.

**7.00 Insurance:** Execution of this Agreement constitutes a certification that the Agency has and will maintain the ability to repair or replace any project equipment or facilities in the event of loss or damage due to any accident or casualty at least until the note has been paid in full. In the event of the loss of such equipment or facilities, the Agency shall either replace the equipment or facilities or reimburse the Department to the extent of its interest in the lost equipment or facility.

**8.00 The Department's Obligations:** Subject to the other provisions contained herein, the Department will provide a loan to the Agency from the SIB to support the project in Exhibit "A

**8.10 Payment Offset:** If, after project completion, any claim is made by the Department resulting from an audit or for work or services performed pursuant to this agreement, the Department may offset such amount from payments due for work or services done under any public transportation joint participation agreement which it has with the Agency owing such amount if, upon demand, payment of the amount is not made within sixty (60) days to the Department. Offsetting amounts shall not be considered a breach of contract by the Department.

#### **9.00 Termination or Suspension of Project:**

**9.10 Termination or Suspension Generally:** If the Agency abandons or, before completion, finally discontinues the project; or if, by reason of any of the events or conditions set forth in paragraphs 9.10 (a)-(f) inclusive, or for any other reason, the commencement, prosecution, or timely completion of the project by the Agency is rendered improbable, infeasible, impossible, or illegal, the Department will, by written notice to the Agency, suspend any or all of its obligations under this Agreement until such time as the event or condition resulting in such suspension has ceased or been corrected, or the Department may terminate any or all of its obligations under this Agreement. The Department may elect, by written notice, to terminate this agreement if:

**(a) Misrepresentation:** The Agency shall have made misrepresentation of a material nature in its application, or any supplement thereto or amendment thereof, or in or with respect to any document or data furnished therewith or pursuant hereto;

**(b) Litigation:** There is pending litigation with respect to the performance by the Agency of any of its duties or obligations which may jeopardize or adversely affect the project, the Agreement,

or payments to the project;

**(c) Approval by Department:** The Agency shall have taken any action pertaining to the project which, under this agreement, requires the approval of the Department or has made related expenditures or incurred related obligations without having been advised in writing by the Department that same are approved;

**(d) Conflict of Interests:** There has been any violation of the conflict of interest provisions contained herein;

**(e) Default:** The Agency has been determined by the Department to be in default under any of the provisions of the Agreement; or

**(f) Federal Participation:** Any federal agency providing federal financial assistance to the project suspends or terminates federal financial assistance to the project. In the event of suspension or termination of federal financial assistance, the Agency shall have contingency plans if the federal funds were pledged for reimbursement to the SIB account.

**9.11 Action Subsequent to Notice of Termination or Suspension.** Upon receipt of a termination or suspension notice under this paragraph, the Agency shall proceed promptly to carry out the actions required therein which may include any or all of the following: (1) necessary action to terminate or suspend, as the case may be; project activities and contracts and such other action as may be required or desirable to keep to the minimum the costs upon the basis of which the loan is based; (2) furnish a statement of the project activities and contracts and other undertakings the cost of which are otherwise includable as project costs; and (3) continue to repay the Department according to the provisions of the Note. The termination or suspension shall be carried out or upon the basis of terms and conditions imposed by the Department. The closing out of federal financial participation in the project or the reduction or elimination of local support for this project shall not constitute a waiver of the repayment obligation of the Note.

**9.12 Public Access.** The Department reserves the right to unilaterally cancel this Agreement for refusal by the contractor or Agency to allow public access to all documents, papers, letters, or other material subject to the provisions of Chapter 119, Florida Statutes and made or received in conjunction with this Agreement.

**9.13 Acceleration of Maturity in Event of Default:** If a default has occurred the Department may, by written notice delivered to the Agency, declare all repayments to the Department to become immediately due and payable as if all such amounts were originally stipulated to be paid on the accelerated payment date.

**10.00 Audit and Inspection:** The Agency shall permit, and shall require its contractors to permit, the Department's authorized representatives to inspect all work, materials, payrolls, records; and to audit the books, records and accounts pertaining to the financing and development of the project.

#### **11.00 Contracts of the Agency:**

**11.10 Third Party Agreements:** Except as otherwise authorized in writing by the Department, the Agency shall not execute any contract or obligate itself in any manner for the procurement of consultant services, or construction or purchase of commodities contracts or amendments thereto, with any third party with respect to the project without the written approval of the Department. Failure to obtain such approval shall be sufficient cause for nonpayment by the Department as provided in



paragraph 8.03. The Department specifically reserves unto itself the right to review the qualifications of any consultant or contractor and to approve or disapprove the employment of the same. The loan from the SIB does not constitute a commitment, guarantee, or obligation on the part of the United States to any third party, nor shall any third party have any right against the United States for payment solely by virtue of the contributions of Federal funds into the Florida SIB.

**11.20 Compliance with Consultants' Competitive Negotiation Act:** It is understood and agreed by the parties hereto that participation by the Department in a project with an Agency, where said project involves a consultant contract for engineering, architecture or surveying services, is contingent on the Agency complying in full with provisions of Chapter 287, Florida Statutes, Consultants Competitive Negotiation Act. The Agency's Attorney shall certify to the Department that selection has been accomplished in compliance with the Consultant's Competitive Negotiation Act.

#### **12.00 Miscellaneous Provisions:**

**12.10 Environmental Pollution:** Execution of this agreement constitutes a certification by the Agency that the project will be carried out in conformance with all applicable environmental regulations including the securing of any applicable permits. The Agency will be solely responsible for any liability in the event of non-compliance with applicable environmental regulations, including the securing of any applicable permits, and will reimburse the Department for any loss incurred in connection therewith.

**12.20 Department Not Obligated to Third Parties:** The Department shall not be obligated or liable hereunder to any party other than the Agency.

**12.30 When Rights and Remedies Not Waived:** In no event shall the making by the Department of any payment to the Agency constitute or be construed as a waiver by the Department of any breach of covenant or any default which may then exist, on the part of the Agency, and the making of such payment by the Department while any such breach or default shall exist shall in no way impair or prejudice any right or remedy available to the Department with respect to such breach or default.

**12.40 How Agreement Is Affected by Provisions Being Held Invalid:** If any provision of this agreement is held invalid, the remainder of this Agreement shall not be affected. In such an instance the remainder would then continue to conform to the terms and requirements of applicable law.

**12.50 Bonus or Commission:** By execution of the agreement the Agency represents that it has not paid and, also, agrees not to pay, any bonus or commission for the purpose of obtaining an approval of its application for the loan established hereunder.

**12.60 State or Territorial Law:** Nothing in the agreement shall require the Agency to observe or enforce compliance with any provision thereof, perform any other act or do any other thing in contravention of any applicable State law: Provided, that if any of the provisions of the Agreement violate any applicable State law, the Agency will at once notify the Department in writing in order that appropriate changes and modifications may be made by the Department and the Agency to the end that the Agency may proceed as soon as possible with the project.

**12.70 Use and Maintenance of Project Facilities and Equipment:** The Agency agrees that the project facilities and equipment will be used by the Agency to provide or support public transportation for the period of the useful life of such facilities and equipment as determined in accordance with general accounting principles and approved by the Department. The Agency further agrees to maintain the project facilities and equipment in good working order for the useful life of said facilities or equipment.

**12.71 Property Records:** The Agency agrees to maintain property records, conduct physical inventories and develop control systems as required by 49 CFR Part 18, when applicable.

**12.80 Contractual Indemnity:** To the extent provided by law, the Agency shall indemnify, defend, and hold harmless the Department and all of its officers, agents, and employees from any claim, loss, damage, cost, charge, or expense arising out of any act, error, omission, or negligent act by the Agency, its agents, or employees during the performance of the Agreement, except that neither the Agency, its agents, or its employees will be liable under this paragraph for any claim, loss, damage, cost, charge, or expense arising out of any act, error, omission, or negligent act by the Department or any of its officers, agents, or employees during the performance of the agreement.

**12.90 Sovereign Immunity:** Each party hereto agrees that it shall be solely responsible for the wrongful acts of its employees, contractors and agents. However, nothing contained herein shall constitute a waiver by either party of its sovereign immunity under Section 768.28, Florida Statutes.

**13.00 Project Completion, Agency Certification:** Upon completion of the project, the Agency will certify in writing that the project was completed in accordance with applicable plans and specifications and that the project is accepted by the Agency as suitable for the intended purpose.

#### **14.00 Appropriation of Funds:**

**14.10** The State of Florida's performance and obligation to pay under this Agreement is contingent upon an annual appropriation by the Legislature.

**14.20 Multi-Year Commitment:** In the event this Agreement is in excess of \$25,000 and has a term for a period of more than one year, the provisions of Chapter 339.135(6)(a), Florida Statutes, are hereby incorporated: "(a) The Department, during any fiscal year, shall not expend money, incur any liability, or enter into any contract which, by its terms involves the expenditure of money in excess of the amounts budgeted as available for expenditure during such fiscal year. Any contract, verbal or written, made in violation of this subsection is null and void, and no money may be paid on such contract. The Department shall require a statement from the comptroller of the Department that funds are available prior to entering into any such contract or other binding commitment of funds. Nothing herein contained shall prevent the making of contracts for periods exceeding 1 year, but any contract so made shall be executory only for the value of the services to be rendered or agreed to be paid for in succeeding fiscal years; and this paragraph shall be incorporated verbatim in all contracts of the Department which are for an amount in excess of 25,000 dollars and which have a term for a period of more than 1 year."

**14.30 Expiration of Agreement:** The Agency agrees to complete the project on or before \_\_\_\_\_ . If the Agency does not complete the project within this time period, this agreement will expire unless an extension of the time period is requested by the Agency and granted in writing by the District Secretary. Expiration of this agreement will be considered termination of the project.

**15.00 Department's Right to Pledge Repayments:** The Agency must submit repayments to the Department pursuant to the schedule provided in Exhibit "C." The Department retains the right to pledge such repayments to the SIB account as a security for the payment of debt service requirements of prospective bond issuance without requiring the approval of the Agency. The Department shall ensure that such pledge of repayments will have no impact on the proposed schedule of repayments attached as Exhibit "C."

**15.10 Deferral of Payments:** Due to extraordinary circumstances, the DOT may agree, by amendment to this SIB Loan Agreement, to defer a particular payment. The Agency agrees to pay interest at a rate established pursuant to Section 55.03 Florida Statutes, on any deferred payments until that payment is made.

**16.00 No Penalty for Early Repayment:** If the Agency elects to submit repayments to the Department earlier than the schedule provided in Exhibit "C," there shall be no penalty to the Agency.

**17.00 Agreement Format:** All words used herein in the singular form shall extend to and include the plural. All words used in the plural form shall extend to and include the singular. All words used in any gender shall extend to and include all genders.

**18.00 Execution of Agreement:** This agreement may be simultaneously executed in a minimum of three counterparts, each of which so executed shall be deemed to be an original and such counterparts together shall constitute one in the same instrument.

**19.00 Restrictions on Lobbying:** No funds received pursuant to this contract may be expended for lobbying the Legislature or a state agency.

**20.00 Public Entity Crime:** Pursuant to 287.133(3)(a) F.S. the following is applicable to this agreement. 287.133(2)(a) "A person or affiliate who has been placed on the convicted vendor list following a conviction for a public entity crime may not submit a bid on a contract to provide any goods or services to a public entity, may not submit a bid on a contract with a public entity for the construction or repair of a public building or public work, may not submit bids on leases of real property to a public entity, may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with any public entity, and may not transact business with any public entity in excess of the threshold amount provided in s. 287.017 for CATEGORY TWO for a period of 36 months from the date of being placed on the convicted vendor list."

**21.00 Discriminatory Vendor:** Pursuant to 287.134(2)(a) F.S. the following is applicable to this agreement. 287.134(2)(a) "An entity or affiliate who has been placed on the discriminatory vendor list may not submit a bid on a contract to provide any goods or services to a public entity, may not submit a bid on a contract with a public entity for the construction or repair of a public building or public work, may not submit bids on leases of real property to a public entity, may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with any public entity, and may not transact business with any public entity."

IN WITNESS WHEREOF, the parties hereto have caused these presents be executed, the day and year first above written.

STATE OF FLORIDA  
DEPARTMENT OF TRANSPORTATION

\_\_\_\_\_  
DISTRICT SECRETARY for **District 1**

\_\_\_\_\_  
LEGAL REVIEW

(AGENCY)  
LEE COUNTY, FLORIDA  
TRANSIT

\_\_\_\_\_  
(NAME AND TITLE)  
**Douglas R. St. Cerny, Chair**  
**Lee County Board of County Commissioners**

\_\_\_\_\_  
(ATTORNEY NAME AND TITLE)  
**Scott Coover, Assistant County Attorney**

ATTEST

Clerk of the Board  
  
\_\_\_\_\_

SEAL OF AGENCY

**EXHIBIT "A"**  
**PROJECT DESCRIPTION AND RESPONSIBILITIES**

PROJECT NAME:

~~LeeTran Administrative, Operations & Maintenance Facility~~

PROJECT LOCATION:

~~Lee County, Ft. Myers, Florida~~

PROJECT DESCRIPTION:

~~Site acquisition, design and construction of a new, larger LeeTran Administrative, Operations and Maintenance facility.~~

**EXHIBIT "B"**  
**SUMMARY OF PROJECT FINANCE PLAN**

**Financial Plan**

**Funding**

SIB Loan	\$ 3,000,000
Federal Grants and Awards	4,750,000
State Grant	129,459
Local Funds	<u>1,129,459</u>
<b>Total Funding</b>	<b>\$ 9,008,918</b>

SIB Loan will be used to fund site acquisition phase of the Transit Facility Project.

**EXHIBIT "C"**  
**DISBURSEMENT AND REPAYMENT SCHEDULE**

Lee County Transit LeeTran Administrative, Operations & Maintenance Facility							
Date	Beginning Balance	Interest Accrued at 0.00%	Beginning Balance Including Interest	Repayment to Principal	Repayment to Interest	Total Repayment	Ending Balance
10/1/2005	\$3,000,000.00	\$0.00	\$3,000,000.00	\$0.00	\$0.00	\$0.00	\$3,000,000.00
10/1/2006	\$3,000,000.00	\$0.00	\$3,000,000.00	\$0.00	\$0.00	\$0.00	\$3,000,000.00
10/1/2007	\$3,000,000.00	\$0.00	\$3,000,000.00	\$600,000.00	\$0.00	\$600,000.00	\$2,400,000.00
10/1/2008	\$2,400,000.00	\$0.00	\$2,400,000.00	\$600,000.00	\$0.00	\$600,000.00	\$1,800,000.00
10/1/2009	\$1,800,000.00	\$0.00	\$1,800,000.00	\$600,000.00	\$0.00	\$600,000.00	\$1,200,000.00
10/1/2010	\$1,200,000.00	\$0.00	\$1,200,000.00	\$600,000.00	\$0.00	\$600,000.00	\$600,000.00
10/1/2011	\$600,000.00	\$0.00	\$600,000.00	\$600,000.00	\$0.00	\$600,000.00	\$0.00
		\$0.00		\$3,000,000.00	\$0.00	\$3,000,000.00	

These calculations assume the following disbursement dates:  
10/1/2005     \$3,000,000.00

Total Loan Amount - \$3,000,000.00  
Total Interest Accrued - \$0.00  
Total Repayments to Loan - \$3,000,000.00

Remit Payment to:

Mailing Address:

State Board of Administration of Florida  
Post Office Box 1330  
Tallahassee, FL 32317-3300

Street Address:

State Board of Administration of Florida  
1801 Hermitage Boulevard, Suite 100  
Tallahassee, FL 32308

Wiring Instructions:

Bank of America  
ABA #0260-0959-3  
Credit: State Board of Administration  
Account #: 003660048119

Note on Payment for "FDOT SIB Loan - 418445-1"