

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

Blue Sheet No. 20060314

**1. ACTION REQUESTED/PURPOSE:** Approve lease with DTFM Investments, Inc. for 4 acres of land located at 2374 Union Street, 2351 Liberty Street, 2105 Jackson Street, 2322 Liberty Street and 2129 Jackson Street in downtown Ft. Myers, to be utilized as temporary parking area for county employees. Lease cost will be \$150,000 per year. Initial term of the lease will be two years with an option to renew for an additional six months period. Lease can be terminated by giving Lessor three months advance written notice. Approve transfer of funds from General Fund Reserves in the amount of \$700,000 to establish budget for one time improvements to the Downtown Shuttle Parking Lot, amend budget for FY 05/06 and an additional transfer of \$175,000 for recurring operating costs for the balance of FY 05/06.

**2. WHAT ACTION ACCOMPLISHES:** Provides temporary parking spaces for employees while parking garage is being built on county owned property known as the "West Lot".

**3. MANAGEMENT RECOMMENDATION:** Approve

<b>4. Departmental Category:</b> <u>a</u> <b>C2B</b>		<b>5. Meeting Date:</b> <b>03-28-2006</b>
<b>6. Agenda:</b> <input checked="" type="checkbox"/> Consent <input type="checkbox"/> Administrative <input type="checkbox"/> Appeals <input type="checkbox"/> Public <input type="checkbox"/> Walk-On	<b>7. Requirement/Purpose: (specify)</b>	
	Statute _____	
	Ordinance _____	
	<input checked="" type="checkbox"/> Admin. Code <u>AC-4-1</u>	
	Other _____	
		<b>8. Request Initiated:</b> Commissioner _____ Department <u>Construction &amp; Design</u> Division <u>Facilities Management</u> By: <u>Richard Beck, Director</u> <i>[Signature]</i>

**9. Background:**  
 Facilities Management was asked to locate land near the downtown area that could be utilized as a temporary parking area for employees while a multi story parking garage, for county use, was being built on what is now the county's Juror/Public lot. A four acre site was located near the Ft. Myers Library and Library Administration building on Union and Liberty Streets. One of the areas is already set up as a paved parking lot and could be ready to be used in a short period of time. The other areas will require some site preparation. The owner of the property was located and a lease negotiated for a 2 year term with the option of renewing for an additional six months period.

**UPON TRANSFERS, FUNDING WILL BE AVAILABLE IN THE FOLLOWING ACCOUNT STRINGS:**

40341300100.503490 – Lot Improvements  
 QC 5121200100.503490 – Lot Lease/Operating Costs

Attachments: Lease Agreements (3 originals)  
 Budget Transfer Sheet

**10. Review for Scheduling:**

Department Director	Purchasing or Contracts	Human Resources	Other	County Attorney	Budget Services			County Manager/P.W. Director
					Analyst	Risk	Grants	
<i>[Signature]</i> 3-15-06				<i>[Signature]</i> 3/15/06	<i>[Signature]</i> 3/15/06	<i>[Signature]</i> 3/15/06	<i>[Signature]</i> 3/15/06	<i>[Signature]</i> 3-15-06

**11. Commission Action:**

- Approved
- Deferred
- Denied
- Other

RECEIVED BY COUNTY ADMIN:
3-15-06
3:00
COUNTY ADMIN FORWARDED TO:
<i>[Signature]</i>

Rec. by CoAtty
Date: 3/15/06
Time: 11:00 AM
Forwarded To:

# REQUEST FOR TRANSFER OF FUNDS

FUND NAME: General DATE: 03/14/06 BATCH NO. \_\_\_\_\_

FISCAL YEAR: 05/06 FUND #: 00100 DOC TYPE: YB LEDGER TYPE: BA

TO: Various Various  
 (DIVISION NAME) (PROGRAM NAME)

NOTE: PLEASE LIST THE ACCOUNT NUMBER BELOW IN THE FOLLOWING ORDER:  
 FUND #-DEPT/DIV #-PROGRAM #-OBJECT CODE #-SUBFUND #-PROJECT#-COST CENTER #.  
 (EXAMPLE: BB5120100100.503450)

ACCOUNT NUMBER	OBJECT NAME	DEBIT
40341300100.503490	Other professional services	\$700,000
QC5121200100.503490	Other professional services	175,000

TOTAL TO: \$ 875,000

TO: Non departmental Reserves  
 (DIVISION NAME) (PROGRAM NAME)

ACCOUNT NUMBER	OBJECT NAME	CREDIT
GC5890100100.509910	Reserves for contingency	\$ 875,000

TOTAL FROM: \$ 875,000

EXPLANATION: Budget to allow for renovations and operating costs for new leased temporary parking lot in downtown.

Bertin  
3/14/07

[Signature] 3-15-06  
 DIVISION DIRECTOR SIGNATURE DATE

DBS: APPROVAL  DENIAL

APPROVAL  DENIAL

CO. ADMIN.: APPROVAL  DENIAL

BCC APPROVAL DATE \_\_\_\_\_

[Signature] 3-15-06  
 DEPARTMENT DIRECTOR SIGNATURE DATE

[Signature] 3-16-06  
 OPERATIONS ANALYST SIGNATURE DATE

[Signature] 3/14/06  
 BUDGET OPERATIONS MANAGER SIGNATURE DATE

CO. ADMIN. SIGNATURE DATE \_\_\_\_\_

BCC CHAIRMAN SIGNATURE \_\_\_\_\_

BA NO: \_\_\_\_\_ AUTH CODE: \_\_\_\_\_ TRANS DATE: \_\_\_\_\_

REV. 05/93

LEE COUNTY BOARD OF COUNTY COMMISSIONERS  
P.O. BOX 398  
FT. MYERS, FL 33902-0398

**THIS LEASE AGREEMENT**, entered into this \_\_\_\_\_, day of \_\_\_\_\_, 20\_\_\_\_, between DTFM Investments, Inc., hereinafter called the Lessor, and Lee County, acting by and through the Board of County Commissioners for Lee County, a political subdivision and Charter County of the State of Florida, hereinafter called the Lessee.

WITNESSETH:

That the Lessor, for and in consideration of the covenants and agreements hereinafter mentioned to be kept and performed by the Lessee, has demised and leased to the Lessee, for the term and under the conditions hereinafter set out, those certain premises in LEE COUNTY, FLORIDA, described as follows:

**2374 Union Street, Ft. Myers, FL**  
**2351 Liberty Street, Ft. Myers, FL**  
**2105 Jackson Street, Ft. Myers, FL**  
**2322 Liberty Street, Ft. Myers, FL**  
**2129 Jackson Street, Ft. Myers, FL**

which shall constitute an aggregate area of 168,000 square feet of land at a rate of \$150,000 per year. The Lessor shall provide parking spaces at the exclusive use of the Lessee as part of this Lease Agreement.

**I. TERM**

**TO HAVE AND TO HOLD** the above described premises for a term commencing on the 1st day of May, 2006 to and including the 30th day of April, 2008.

**II. RENT**

The Lessor hereby leases to the Lessee and the Lessee hereby leases from the Lessor the above described premises for the term set out in this lease and the Lessee agrees to pay the Lessor the sum of twelve thousand five hundred dollars and no cents (\$12,500) per month for the first year of the rental period described in Article I of this lease. The rent for any fractional part of the first month shall be prorated. Beginning the second year of the initial term, and annually thereafter, the base rental cost will increase by the latest increase, to the annual lease date, of the Consumer Price Index, U.S. City Average, All Items, Wage Earners and Clerical Workers as published by the Bureau of Labor Statistics, Southeastern Regional Office, Atlanta, Georgia. Rent shall be paid to the Lessor on the first day of each month of occupancy by the Lessee, for the term of the lease. The rent shall be paid to the Lessor at: 2970 Luckie Road, Weston, Florida 33331.

### **III. ON-SITE LIGHTING**

Lessee will be responsible for payment of electricity usage from any on-site lighting.

Lessee must request to Lessor, in writing, for approval of any alteration to the existing on-site lighting of said premises.

### **IV. MAINTENANCE AND REPAIRS**

The Lessee shall maintain and keep in repair the exterior of the stated premises, during the term of this Lease including, but not limited to, the lot maintenance, landscaping, fencing, and parking surfaces. Lessor shall not be responsible for any damages to vehicles or structures on the stated premises during the term of this lease.

### **V. UTILITIES**

Unless otherwise indicated, the Lessee will bear the full cost of the water service, garbage pick up and sewer service used by the Lessee. Lessee shall also bear the full cost of telephone services, data services, pest control services, fire extinguisher service, and any other services provided to the leased space, at its own expense.

### **VI. HANDICAPPED STANDARDS AND ALTERATIONS**

1. The Lessor agrees that the stated premises now conform, or that prior to Lessee's occupancy, the said premises shall, at Lessor's expense, be brought into conformance with the requirements of Sections 255.21 and 255.211, Florida Statutes and ADA requirements, as they may be revised from time to time.

2. The Lessee shall have the right to make reasonable alterations in and to the stated premises during the term of this lease upon first having obtained the written consent from the Lessor. The Lessor shall not unreasonably withhold consent to any such alterations.

### **VII. INJURY OR DAMAGE TO PROPERTY ON PREMISES**

Lessee's property of any kind that may be placed on the premises during the continuancy of this Lease shall be at the sole risk of the Lessee. Except for the negligence of the Lessor, the Lessor shall not be liable to the Lessee or any other person for any injury, loss or damage to property or to any person on the premises.

### **VIII. FIRE AND OTHER HAZARDS**

1. In the event that the stated premises, or the major part thereof, are destroyed by fire, lightning, storm or other casualty, the Lessor at its option may forthwith repair the damage to stated premises at its own cost and expense. As the result, the rent shall cease until the completion of such repairs and the Lessor will immediately refund the pro rata part of any rent paid in advance by the Lessee prior to such destruction; should the

premises be only partly destroyed so that the major part thereof is usable by the Lessee, then the rent shall abate to the extent that the injured or damaged part bears to the whole of such premises and such injury or damage shall be restored by the Lessor as rapidly as is practicable and upon the completion of such repairs, the full rent shall commence and the Lease shall then continue the balance of the term.

2. The Lessor certifies no asbestos was used in the construction of the stated premises or that if asbestos was used, actions have been completed to correct the hazards caused by the use of asbestos.

#### **IX. SUITABILITY FOR USE**

The Lessor warrants that the premises are fit for the conduct of the governmental business of the Lessee. The Lessor further warrants that the stated premises are in compliance with all statutes and laws, either federal, state, or local, applicable to the intended use of the premises. The legal interpretation of any such existing statute or law, or the enactment of any new statutes or laws that, in the opinion of the Lessee, result in a material interference with the peaceful entry or occupation of the stated premises, or any portion thereof by the Lessee, at the option of the Lessee, shall automatically void this lease prior to entry and occupation, or entitle the Lessee, after entry and occupation, to wholly terminate this lease by giving seven (7) calendar days notice to the Lessor of its intention to do so.

Lessor represents that no known or suspected environmental contamination exists on the site or beneath the property. Lessee will not be responsible for any unknown environmental or hazardous conditions, contamination or waste existing prior to commencement of the lease. The Lessor is responsible for the clean up or remediation of any hazardous or unknown conditions or environmental contamination existing prior to the commencement of the lease.

Lessee acknowledges that the stated premises is a vacant lot.

#### **X. EXPIRATION OF TERM**

At the expiration of the Term, the Lessee will peaceably yield up the stated premises in good and tenantable repair. It is understood and agreed between the parties that the Lessee shall have the right to remove from the premises, all personal property of the Lessee and all fixtures, machinery, equipment, appurtenances and appliances placed or installed on the premises by it, provided the Lessee restores the premises to as good a state of repair as they were prior to the removal.

#### **XI. SUBLETTING AND ASSIGNMENT**

The Lessee, upon the obtaining of the written consent of the Lessor, which written consent shall not unreasonably be withheld, shall have the right to sublet all or any part of the stated premises, or to assign all or any part of the stated premises.

## **XII. WAIVER OF DEFAULTS**

The waiver by the Lessor of any breach of this lease by the Lessee shall not be construed as a waiver of any subsequent breach of any duty or covenant imposed by this lease.

## **XIII. RIGHT OF LESSOR TO INSPECT**

The Lessor, at reasonable times, may enter into and upon the stated premises for the purpose of viewing the same and for the purpose of making repairs as required under the terms of this lease.

## **XIV. BREACH OF COVENANT**

These presents are made upon the condition that, except as provided in this lease, if the Lessee shall neglect or fail to perform or observe any covenant herein contained, which on the Lessee's part is to be performed, and such default shall continue for a period of thirty (30) days after written notice thereof from the Lessor to the Lessee, then the Lessor lawfully may, immediately, or at any time thereafter, without further notice or demand, enter into and upon the stated premises, or any part thereof, and repossess the same as of their former estate and expel the Lessee and remove its effects forcefully, if necessary, without being taken or deemed to be guilty of any manner of trespass and thereupon this demise shall terminate but without prejudice to any remedy which might otherwise be used by the Lessor for arrears of rent or for any breach of the Lessee's covenants herein contained.

## **XV. ACKNOWLEDGMENT OF ASSIGNMENT**

The Lessee, upon the request of the Lessor, shall execute such acknowledgment(s) or any assignment(s), of rentals and profits made by the Lessor to any third person, firm or corporation, provided that the Lessor will not make such request unless required to do so by the Mortgagee under a mortgage(s), executed by the Lessor.

## **XVI. TAXES, INSURANCE, AND COMMISSIONS**

1. Lessor will pay all real estate taxes on the stated premises. Lessee shall not be liable to carry fire insurance on the premises or property of the Lessor or any other personal property of Lessor which may now or thereafter be placed on the stated premises. The Lessor shall not be liable for damages or theft to the personal property or fixtures belonging to the Lessee which are located on the rental property.

2. The Lessee will 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 omissions (s) of any official or employee of the County while acting within the scope of the official's or employee's office or employment under circumstances in which a private person would be held to be 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 revised or amended from time to time.

3. Lessor agrees, covenants, certifies and warrants to Lessee that no portion of the rent payable pursuant to Article II of this Lease Agreement includes, represents, is based on or is attributable to any commission or fee which is paid or is payable by Lessor as the result of Lessor's having utilized or contracted for the services of any real estate broker, salesman, agent or firm in any aspect of Lessor's dealings or any dealings involving the leasing of the stated premises to Lessee. Lessee acknowledges that it has not engaged a broker, salesman, agent or firm in any aspect of the leasing of the stated premises from Lessor.

4. The Lessor shall purchase and maintain Commercial General Liability insurance in the amount of \$500,000 Per Person, \$1,000,000 Per Occurrence Bodily Injury and \$100,000 Per Occurrence Property Damage, or \$1,000,000 Per Occurrence Combined Single Limit of Bodily Injury and Property Damage. Coverage shall include Contractual Liability as pertaining to this contract with insurers approved by the County Risk Manager.

The Lessor must furnish an appropriate certificate of insurance naming Lee County Board of County Commissioners as Certificate Holder and Additional Insured. The Lessor agrees that the coverage granted to the Additional Insured applies on a primary basis, with the Additional Insured's coverage being excess.

The Lessor agrees that these insurance requirements shall not relieve or limit Lessor's liability and that the Lessee does not in any way represent that the insurance required is sufficient or adequate to protect the Lessor's interest or liabilities, but are merely minimums.

#### **XVII. AVAILABILITY OF FUNDS**

The obligations of the Lessee under this lease agreement are subject to the availability of funds lawfully appropriated annually for its purposes by the Board of County Commissioners and/or the availability of funds through contract or grant programs.

#### **XVIII. USE OF PREMISES**

The Lessee will use the stated premises for the purpose of a gated employee parking lot and will not make or suffer any unlawful, improper or offensive use of the premises or make any use or occupancy thereof contrary to the laws of the State of Florida, or to Ordinances of the City, as applicable and/or County in which the stated premises are located, now or hereinafter made, as may be applicable to the Lessee.

#### **XIV. RENEWAL**

The Lessee is hereby granted the option to renew this Lease for one additional six months renewal period upon the same terms and conditions. If the Lessee desires to renew this lease under the provisions of this Article, it shall give the Lessor written notice thereof three (3) months prior to the expiration of the term provided in Article I of this lease or any applicable renewal period.

**XV. RIGHT TO TERMINATE**

The Lessee shall have the right to terminate this lease upon giving three (3) months advance written notice to the Lessor by Certified Mail, Return Receipt Requested. The Lessor will not have any right to accelerate the lease payments for the remainder of the lease duration.

**XVI. NOTICES AND INVOICES**

All notices required to be served upon the Lessor shall be served by Registered or Certified Mail, Return Receipt Requested, at 2970 Luckie Road, Weston, Florida and all notices required to be served upon the Lessee shall be served by Registered or Certified Mail, Return Receipt Requested, at the address of the Lessee at P.O. Box 398, Ft. Myers, Florida 33902-0398, Attention: Facilities Management. Invoices should be submitted monthly to Lee County Finance Department, P.O. Box 2238 Fort Myers, Florida 33902.

**XVII. CONTACTS**

For purposes of this agreement, the County representative shall be Facilities Management and the Lessor's representative shall be David Kraizgrun.

**XVIII. DEFINITION OF TERMS**

(a) The terms "Lease", "Lease Agreement", or "Agreement" shall be inclusive of each other and shall also include any renewals, extensions or modifications of this Lease.

(b) The terms "Lessor" and "Lessee" shall include the heirs, successors and assigns for the parties hereto.

(c) The singular shall include the plural and the plural shall include the singular whenever the context so requires or permits.

**XIX. MISCELLANEOUS PROVISIONS**

1. Lessee acknowledges and agrees that Lessor has afforded Lessee the opportunity for full and complete examination and inspection of the stated Premises prior to executing the Lease and that Lessee is accepting the stated Premises in "as-is" condition on the date of the Lease and that Lessor shall have no obligation whatsoever to furnish, render, or supply any money, work, labor, fixture, material, decoration, or equipment in order to prepare the stated Premises for Lessee's occupancy. Any and all alterations and improvements to the stated Premises shall be at Lessee's expense (including, without limitation, any impact fees) and are subject to the provisions of the Lease applicable to alterations, including, without limitation, that the plans and specifications for any such alterations and improvements are subject to Lessor's prior written approval.



2. Lessor agrees that the Lessee may construct or place, at Lessee's expense, a security booth or other similar type structure on the stated premises, subject to Lessor's review of such plans and approval of the same. Such approval by Lessor will not be unreasonably withheld. Upon termination of the lease agreement, Lessee will remove such structure(s) from the stated premises.

**XX. WRITTEN AGREEMENT**

This lease contains the entire agreement between the parties hereto and it may be modified only by a writing, with the approval of the Board of County Commissioners and the agreement to such modification by the Lessor.

**XXI. OWNERSHIP**

Lessor covenants and warrants that they are the owner (s) of the property that is the subject of this Lease, and as such are lawfully seized and possessed of the said described real property, have good and lawful right, power and sufficient interest to convey a leasehold in same, and that the described real property is free from any other leases or encumbrances that would otherwise interfere with the direct relationship between Lessor and Lessee herein.

**THIS SPACE INTENTIONALLY LEFT BLANK**

IN WITNESS WHEREOF, the LESSOR and LESSEE have caused this Lease Agreement to be executed by their respective and duly authorized officers on the day and year first written above.

[Signature]  
LESSOR: David Kraizgrun, Pres.  
DTFM Investments, Inc.

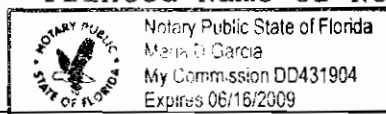
STATE OF FLORIDA

COUNTY OF LEE

The foregoing instrument was acknowledged before me this 24 day of February 2006 by David Kraizgrun, who is personally known to me or who has produced personally known as identification and did/did not take an oath.

[Signature]  
Notary

Maria D Garcia  
Printed Name of Notary



Commission Expires

ATTEST:

\_\_\_\_\_  
CHARLIE GREEN, CLERK

\_\_\_\_\_  
TAMMARA HALL, CHAIRWOMAN, LEE COUNTY  
BOARD OF COUNTY COMMISSIONERS

\_\_\_\_\_  
BY: DEPUTY CLERK

\_\_\_\_\_  
APPROVED AS TO LEGAL FORM BY  
COUNTY ATTORNEY'S OFFICE

(Lease for 4 Acres Downtown for Parking/my documents 2)