

MEMORANDUM

TO: **Real Estate & Transportation Committee**
Commissioner Don Selvage, Chairman
Commissioner Justin Troller
Commissioner Phillip Walker

FROM: City Attorney's Office

DATE: September 6, 2016

RE: **Use Agreement with Government Employees Insurance Company (GEICO)**

Attached hereto for your consideration is a proposed Use Agreement with Government Employees Insurance Company (GEICO) for use of a vehicle parking area on the south side of the Airport to meet GEICO's staffing needs. Pursuant to this Agreement, GEICO will have temporary use of approximately 200 parking spaces on the Airport's south side parking area. The designated parking spaces are located in an area furthest south within the Airside Center complex and closest to the GEICO complex.

The term of this Agreement will have a retroactive effective date of September 1, 2016, subject to approval by the City Commission, and continue through July 30, 2017. Either party may terminate the Agreement for any reason upon thirty (30) days prior written notice. Pursuant to the Agreement, GEICO shall pay the Airport a monthly fee of \$3,000 for the use of the parking area, in addition to any applicable taxes, which equates to a monthly fee of Fifteen Dollars (\$15.00) per parking space. However, in accordance with the Agreement, the Airport has agreed to waive the monthly fee provided the parties are able to enter into an agreement for the construction of a permanent parking area on or before October 30, 2016 that GEICO would lease from the Airport. In the event the parties do not enter into such an agreement in the time specified, waiver of the monthly fee shall cease and GEICO will commence payment on November 1, 2016 for the remainder of the Use Agreement's term.

It is recommended that the City Commission approve this Use Agreement with GEICO and authorize the Airport to finalize and execute the Agreement consistent with the above-specified terms.

attachment

USE AGREEMENT

THIS USE AGREEMENT (“Agreement”), made and entered into this 6th day of September, 2016, by and between the CITY OF LAKELAND, FLORIDA, a Florida municipal corporation (hereinafter the “City”), and Government Employees Insurance Company and its Affiliates, a corporation duly authorized to conduct business in Florida (hereinafter “GEICO”).

WITNESSETH:

WHEREAS, GEICO seeks to utilize a temporary vehicle parking area located on Airport Facilities to accommodate up to two hundred (200) vehicles for employee parking; and

WHEREAS, the City agrees to provide a temporary vehicle parking area to accommodate up to two hundred (200) vehicles on a temporary basis while both parties work towards reaching an agreement to construct a permanent parking area with up to five hundred (500) parking spaces on the lot located northeast of GEICO’s current location; and

NOW THEREFORE, City and GEICO, for and in consideration of the mutual promises, agreements, and covenants hereinafter contained, do hereby mutually covenant, agree, and promise as follows:

SECTION 1. The City does hereby grant GEICO the use of property (hereinafter the “Premises”) located at and comprising a part of the Lakeland Linder Regional Airport in Polk County, Florida (hereinafter the “Airport”), more particularly described in **Exhibit “A”** attached hereto and made a part hereof. It is specifically understood and agreed that use of the Premises described in **Exhibit “A”**, is subject to the terms and conditions contained herein.

SECTION 2. The term of this Agreement shall commence on August 1, 2016 and continue until July 30, 2017, unless otherwise terminated as provided herein. The parties may extend the Agreement on a month-to-month basis thereafter upon mutual written agreement of the parties if the permanent parking area is not completed. Either party may terminate this Agreement for any reason upon thirty (30) days prior written notice.

The City reserves the right to provide an alternative parking area located at the Airport in the event the Premises specified in **Exhibit "A"** is required by the Airport to support its own needs at which time the City shall provide ninety (90) days written notice to GEICO of its intent to provide an alternative parking area.

SECTION 3.

(a) It is mutually understood and agreed to by both parties hereto that the Premises provided to GEICO shall be used exclusively for vehicle parking for its employees between the hours of 7:00 a.m. and midnight Monday through Friday ("GEICO Hours of Use") , during the term of this Agreement.

(b) All necessary security, temporary signage, temporary fencing and any other support related items are to be provided and paid for by GEICO and shall be in compliance with all regulations set forth in Section 7 of this Agreement. Any proposed signage, fencing or other related items shall be approved by the Airport, in writing, prior to installation.

SECTION 4. GEICO's monthly fee of Three Thousand Dollars and 00/100 (\$3,000.00), plus any applicable taxes for use of the Premises pursuant to this Agreement, shall be waived, provided the parties execute a separate agreement for the construction of a permanent parking area on or before October 30, 2016. In the event the parties do not reach an agreement for the construction of a permanent parking area in accordance with the date specified above, then the waiver of the monthly fee shall cease and payment of the monthly fee by GEICO will commence on November 1, 2016 or GEICO may elect to terminate this Agreement as provided in Section 2.

SECTION 5.

(a) GEICO agrees to indemnify, save harmless and defend the City's officers, employees, or agents from all claims, suits, and actions of any kind brought against it for, or on account of, any injuries or damages received or sustained by any person or property (including any aircraft stored in the hangar facilities) by, from, or on account of any negligent acts or willful misconduct of its officers, employees, agents, servants, or invitees arising out of GEICO's use of

the Premises or Airport facilities. GEICO agrees to indemnify, save harmless, and defend the City its officers, employees, or agents against any claim or liability arising from, or based upon, the violation of any federal, state, county or city law, ordinance, or regulation by the other party, its officers, employees, agents, servants or invitees.

(b) During the term of this Agreement, GEICO shall obtain and keep in effect insurance in at least the amount specified in **Exhibit "B"**. The City shall be named as an additional insured on such insurance policy. Such insurance coverage shall be obtained from an insurer authorized to do such business in the State of Florida. Such coverage may not be canceled, terminated, or changed without thirty (30) days written notice thereof from the insurer to the City. An appropriate certificate of insurance evidencing such coverage issued by insurer shall be provided to the City and kept current during the term of this Agreement.

(d) Failure of GEICO to maintain the insurance coverage required by this Section may result in immediate termination of this Agreement upon written notification to that effect from the City.

SECTION 6. GEICO shall, at its expense, during its use of the Premises, maintain it in good condition at all times and shall be responsible for maintaining a litter and debris free Premises. The City shall be responsible for property maintenance to repairs required as a result of normal wear and tear, maintain existing lighting and necessary repairs as a result of damages caused by force majeure events. For purposes of this Agreement, a force majeure event shall be defined as any act of God; act of civil military authority; act of war; whether declared or undeclared; actions or inactions of governmental authorities; earthquake; flood; or hurricane. GEICO shall not be responsible for any maintenance or damages to the Premises caused outside the GEICO Hours of Use, unless such maintenance or damages result from or arise out of the negligent or willful misconduct of GEICO, its officers, employees, agents, servants or invitees.

SECTION 7. GEICO shall be required to comply with all Florida Department of Transportation (FDOT), Federal Aviation Administration (FAA) or any other governmental agency

regulations concerning Security and/or its activities on the Premises. GEICO shall notify the Airport immediately of any unusual circumstances or damage occurring on the Premises. GEICO shall be solely responsible for any damage to the Premises or Airport facilities during the term of this Agreement.

SECTION 8.

(a) GEICO may not assign this Agreement or any rights or any monies due or that become due hereunder.

(b) This Agreement is made and shall be interpreted, construed, governed and enforced in accordance with the laws of the State of Florida. Venue shall be Polk County, Florida or the United States District Court in and for the Middle District of Florida, Tampa, Division.

(c) In the event any portion or part of this Agreement is deemed invalid, against public policy, void or otherwise unenforceable by a court of law, the parties shall negotiate an equitable adjustment in the affected provision of this Agreement. The validity and enforceability of the remaining parts thereof shall otherwise be fully enforceable.

(d) No waiver, consent or modification of any of the provisions of this Agreement shall be binding unless in writing and signed by a duly authorized representative of each party hereto.

(e) This Agreement and any Exhibits hereto constitute the entire agreement between the City and GEICO with respect to the matters set forth herein and all previous representations relative thereto, either written or oral, are hereby annulled or superseded.

(f) GEICO shall be responsible for obtaining all applicable licenses, permits and/or authorizations necessary during use of the premises.

SECTION 9. Notice to the City shall be sufficient if either mailed by first class mail, postage prepaid, addressed to Airport Director, Lakeland Linder Regional Airport, City of Lakeland, 3900 Don Emerson Drive, Suite 210, Lakeland, Florida 33811, or delivered at such address, and notice to GEICO named herein shall be sufficient if mailed by first class mail to GEICO at 3535 West Pipken Road Lakeland Florida 33811. Either party may change its address at which notice is to be mailed

or delivered, by giving written notice of such change of address to the other party in the manner provided in this Section.

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

CITY OF LAKELAND, FLORIDA

ATTEST: _____
Kelly S. Koos, City Clerk

By: _____
R. Howard Wiggs, Mayor

APPROVED AS TO FORM AND CORRECTNESS:

Timothy J. McCausland, City Attorney

GEICO

ATTEST: _____

By: _____

Exhibit "A"



EXHIBIT "B"
INSURANCE REQUIREMENTS
LEASING AGREEMENTS

Special Insurance Provisions: Lessee shall maintain and pay the premium on the Comprehensive General Liability, Business

Auto Liability, Workers' Compensation, and Fire Legal Liability policies. With the exception of Workers' Compensation, the City of Lakeland shall be listed as an "additional named insured" as their interest may appear. The City shall not by reason of their inclusion under these policies incur liability to the insurance carrier for payment of premium for these policies. A renewal certificate shall be issued 30 days prior to expiration of coverage.

These insurance requirements shall in no way limit the liability of the Lessee. The City does not represent these minimum insurance requirements to be sufficient or adequate to protect the Lessee's interest or liabilities, but are merely minimums. Where available, all policies shall be of an occurrence type and provide a 30 day notice of cancellation or modification of coverages. Prior to commencement of work, the proper insurance certificates shall be provided to, and approved by the City.

Except for Workers' Compensation, the Lessee waives its rights of recovery against the City, to the extent permitted by its insurance policies.

Deductibles: GEICO will provide full disclosure of policy deductibles for all policies required by this specification or contract, the only exception will be the area of Workers' Compensation. GEICO reserves the right to determine acceptable limits of such deductibles.

Comprehensive General Liability: This insurance shall be an "occurrence" type policy written in comprehensive form and shall protect the lessee and the additional insureds against all claims arising from bodily injury, sickness, disease, or death of any person other than the lessee's employees or damage to property of the City or others arising out of any act or omission of the lessee or his agents, employees, or contractors. This policy shall also include protection against claims insured by usual personal injury liability coverage, and to insure the contractual liability assumed by the lessee under the article entitled INDEMNIFICATION.

The liability limits shall not be less than:

Bodily Injury and	\$1,000,000
Property Damage	Single limit per occurrence

Business Auto Liability: This insurance shall cover any auto for bodily injury and property damage arising out of ownership, maintenance or use of any auto, including owned, non-owned and hired automobiles and employee non-ownership use.

The liability limits shall not be less than:

Bodily Injury and	\$500,000
Property Damage	Single limit per occurrence

Workers' Compensation: Workers' Compensation coverage to apply for all employees for statutory limits and shall include employer's liability with a limit of \$100,000 each accident, \$500,000 disease policy limits, \$100,000 disease limit each employee. ("All States" endorsement is required where applicable). If exempt from Workers' Compensation coverage, as defined in Florida Statute 440, the Tenant will provide a copy of the State Workers' Compensation exemption.