

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

Blue Sheet No. 20030284

1. REQUESTED MOTION:

ACTION REQUESTED: Adopt resolution approving the issuance of Lee County Industrial Development Authority Bonds on behalf of North Fort Myers Utility, Inc., in an amount not to exceed \$17,000,000.00 for the primary purpose of (i) currently refunding the Authority's outstanding Sewer Industrial Revenue Bonds (North Fort Myers Utility Project), Series 1995A (the "Refunded Bonds"), including payment of a premium on such Refunded Bonds, (ii) refinancing certain taxable indebtedness incurred by the Corporation to expand its System, and (iii) paying costs associated with the issuance of the Bonds.

WHY ACTION IS NECESSARY: Authorizes Industrial Development Authority to issue industrial development bonds pursuant to Chapter 159, Florida Statutes.

WHAT ACTION ACCOMPLISHES: Provides Board consideration of proposed Industrial Development Authority Bonds as required by Internal Revenue Code and Florida Statutes. Board approval will authorize and adopt approving bond issuance resolution.

2. DEPARTMENTAL CATEGORY:

COMMISSION DISTRICT # C12A

3. MEETING DATE:

03-18-2003

4. AGENDA:

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

5. REQUIREMENT/PURPOSE:

- (Specify)*
- STATUTE F.S. Ch. 159
 - ORDINANCE _____
 - ADMIN. CODE _____
 - OTHER Sec. 147 IRC

6. REQUESTOR OF INFORMATION:

- A. COMMISSIONER _____
- B. DEPARTMENT County Attorney
- C. DIVISION _____
- BY: James G. Yaeger
County Attorney

7. BACKGROUND: The Lee County Industrial Development Authority has entered into an agreement for issuance of private activity revenue bonds with North Fort Myers Utility, Inc.. On February 14, 2003, the Industrial Development Authority held a noticed public hearing and adopted an inducement resolution for the proposed issuance of Industrial Development Authority private activity revenue bonds in an initial amount not to exceed \$17,000,000.00 for the primary purpose of (i) currently refunding the Authority's outstanding Sewer Industrial Revenue Bonds (North Fort Myers Utility Project), Series 1995A (the "Refunded Bonds"), including payment of a premium on such Refunded Bonds, (ii) refinancing certain taxable indebtedness incurred by the Corporation to expand its System, and (iii) paying costs associated with the issuance of the Bonds.

The Internal Revenue Code and Florida Statutes require an applicable elected body to approve the prospective bond financing for the project. The county resolution approves the issuance of the bonds and the project. Section 3 provides that Board action is a limited approval.

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
N/A	N/A	N/A	N/A	<i>[Signature]</i>	OA <i>[Signature]</i>	OM <i>[Signature]</i>	RISK <i>[Signature]</i>	GC <i>[Signature]</i>	<i>[Signature]</i>

10. COMMISSION ACTION:

- APPROVED
- DENIED
- DEFERRED
- OTHER

CO. ATTY.
FORWARDED
TO CO. ADMIN.
3-6-03

RECEIVED BY
COUNTY ADMIN.
3-6-03
3:10
COUNTY ADMIN.
FORWARDED TO:

NABORS, GIBLIN & NICKERSON, P.A.

ATTORNEYS AT LAW
THE POINTE, SUITE 1060
2502 ROCKY POINT DRIVE
TAMPA, FLORIDA 33607

TELEPHONE (813) 281-2222
TELECOPY (813) 281-0129

SUITE 200
1500 MAHAN DRIVE
TALLAHASSEE, FLORIDA 32308
(850) 224-4070
TELECOPY (850) 224-4073

CNL CENTER, SUITE 510
450 SOUTH ORANGE AVENUE
ORLANDO, FLORIDA 32801
(407) 426-7595
TELECOPY (407) 426-8022

March 5, 2003

James G. Yaeger, Esq.
Lee County Attorney
2115 Second Street
Fort Myers, Florida 33901

Dear Mr. Yaeger:

Attached please find ten copies of a proposed resolution for consideration by the Board of County Commissioners at the Board's next meeting. Adoption of the resolution would provide the Board's limited approval to the issuance of not exceeding \$17,000,000 of Lee County Industrial Development Authority Utility System Refunding Revenue Bonds, Series 2003 (North Fort Myers Utility, Inc. Project) for the benefit of North Fort Myers Utility, Inc. As always, the approval of the County is extremely limited and is required by Section 147(f) of the Internal Revenue Code and Section 159.47(1)(i), Florida Statutes. In essence, these provisions provide that an elected public body must give its approval to the issuance of private activity bonds prior to their issuance. The Board's approval is given in accordance with Section 125.01(1)(z), Florida Statutes.

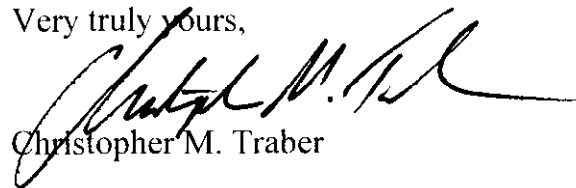
Section 3 of the Board's resolution makes it clear that the approval being given by the Board is limited and, importantly, that the Board is not incurring any liability as a result thereof. Please note that Section 10 of the Authority's Resolution, which is attached as an Exhibit to the Board's resolution, also contains the same provision.

Please let us know whether or not it will be necessary to have any representatives from the Authority, North Fort Myers Utility, Inc. or their counsel present at the meeting. Also, please provide me with a certified copy of the adopted resolution.

03 MAR -6 AM 10:11
LEE COUNTY ATTORNEY

Once again, thank you for your assistance in this matter.

Very truly yours,

A handwritten signature in black ink, appearing to read "Christopher M. Traber". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Christopher M. Traber

CMT:mbw

Enclosures

cc w/Enclosures:

James T. Humphrey, Esq.

John R. Stokes, Esq.

RESOLUTION NO. 2003 - _____

A RESOLUTION APPROVING THE ISSUANCE BY THE LEE COUNTY INDUSTRIAL DEVELOPMENT AUTHORITY OF ITS PRIVATE ACTIVITY UTILITY SYSTEM REVENUE BONDS IN AN AGGREGATE PRINCIPAL AMOUNT NOT TO EXCEED \$17,000,000, THE PROCEEDS FROM THE SALE OF WHICH WILL BE USED TO PROVIDE FUNDS TO MAKE A LOAN TO NORTH FORT MYERS UTILITY, INC. IN A PRINCIPAL AMOUNT EQUAL TO THE PRINCIPAL AMOUNT OF SAID BONDS FOR THE PRIMARY PURPOSES OF REFUNDING CERTAIN OUTSTANDING OBLIGATIONS OF THE AUTHORITY AND REFINANCING CERTAIN TAXABLE INDEBTEDNESS INCURRED BY THE CORPORATION.

BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF LEE COUNTY, FLORIDA:

SECTION 1. FINDINGS. It is hereby ascertained, determined and declared as follows:

A. The Lee County Industrial Development Authority (the "Authority") has submitted to the Board of County Commissioners of Lee County, Florida (the "County"), a copy of a resolution of the Authority adopted on February 14, 2003 (the "Authority Resolution"), granting its approval for the issuance by the Authority of its private activity revenue bonds (the "Bonds"), in an initial aggregate principal amount not to exceed \$17,000,000, and a loan by the Authority to North Fort Myers Utility, Inc., a Florida corporation (the "Corporation"), in a principal amount equal to the principal amount of the Bonds for the primary purposes of (i) currently refunding the Authority's outstanding Sewer Industrial Revenue Bonds (North Fort Myers Utility Project), Series 1995A (the "Refunded Bonds"), including payment of a premium on such Refunded Bonds, (ii) refinancing certain taxable indebtedness incurred by the Corporation to expand its System (as hereinafter defined) (the "Project"), and (iii) paying costs associated with the issuance of the Bonds. A copy of the Authority Resolution is attached hereto as Exhibit A.

B. On February 14, 2003, the Authority held a public hearing, which public hearing was duly conducted by the Authority on such date upon reasonable public notice, and at which hearing members of the public were afforded reasonable opportunity to be heard on all matters pertaining to the location and nature of the Project, the refunding of the Refunded Bonds and to the issuance of the Bonds.

C. Pursuant to the Authority Resolution, the Authority has requested the County approve the issuance of the Bonds, the location and nature of the Project and the refunding of the Refunded Bonds in accordance with the requirements of Section 147(f) of the Internal Revenue Code of 1986, as amended.

D. The purposes of Part II, Chapter 159, Florida Statutes, will be effectively served and it is desirable and in the best interests of the County that the issuance of the Bonds and the use of the proceeds thereof to finance the costs of the Project and the refunding of the Refunded Bonds be approved by the Board of County Commissioners of the County (the "Board").

SECTION 2. APPROVAL OF ISSUANCE OF BONDS. The issuance of the Bonds and the use of the proceeds thereof to finance the costs of the Project and the refunding of the Refunded Bonds as contemplated by the Authority Resolution be and hereby are approved in accordance with the provisions of the Code.

SECTION 3. LIMITED APPROVAL. The approval given herein shall not be construed as an approval of any necessary rezoning applications or approval or acquiescence to the alteration of existing zoning or land use nor approval for any other regulatory permits relating to the Project and the Board shall not be construed by reason of its adoption of this resolution to have waived any right of the Board or estopping the Board from asserting any rights or responsibilities it may have in such regard. Further, the approval by the Board of the issuance of the Bonds by the Authority shall not be construed to obligate the County to incur any liability, pecuniary or otherwise, in connection with the issuance of the Bonds, the refinancing of the Project and the refunding of the Refunded Bonds, and the Authority shall so provide in the financing documents setting forth the details of the Bonds. Finally, the County shall not be construed by reason of its adoption of this resolution to (i) attest to the Corporation's ability to repay the indebtedness represented by the Bonds, or (ii) a recommendation to prospective purchasers of the Bonds to purchase the same.

SECTION 4. EFFECTIVE DATE. This Resolution shall take effect immediately.

ADOPTED this ____ day of March, 2003.

LEE COUNTY, FLORIDA

Chairman, Board of County Commissioners of
Lee County, Florida

ATTEST:

Clerk of the Circuit Court of Lee County
and ex-officio Clerk of the Board of County
Commissioners of Lee County, Florida

Approved as to Form and
Legal Sufficiency

County Attorney

EXHIBIT A

AUTHORITY APPROVING RESOLUTION

RESOLUTION

AN INDUCEMENT RESOLUTION OF THE LEE COUNTY INDUSTRIAL DEVELOPMENT AUTHORITY REGARDING THE OFFICIAL ACTION OF THE AUTHORITY WITH RESPECT TO THE PROPOSED ISSUANCE OF UTILITY SYSTEM REVENUE BONDS IN ONE OR MORE SERIES FOR THE PRINCIPAL PURPOSES OF CURRENTLY REFUNDING THE AUTHORITY'S OUTSTANDING SEWER INDUSTRIAL DEVELOPMENT REVENUE BONDS, SERIES 1995A (NORTH FORT MYERS UTILITY PROJECT), INCLUDING PAYMENT OF A PREMIUM ON SUCH REFUNDED BONDS AND REFINANCING CERTAIN INDEBTEDNESS INCURRED BY NORTH FORT MYERS UTILITY, INC. TO EXPAND ITS WASTEWATER UTILITY SYSTEM; PAYING COSTS ASSOCIATED WITH THE ISSUANCE OF THE SERIES 2003 BONDS; AUTHORIZING THE EXECUTION AND DELIVERY OF A MEMORANDUM OF AGREEMENT BETWEEN THE AUTHORITY AND NORTH FORT MYERS UTILITY, INC.; PROVIDING FOR THE PRELIMINARY APPROVAL BY THE AUTHORITY FOR THE ISSUANCE OF NOT EXCEEDING \$17,000,000 OF SUCH BONDS IN ONE OR MORE SERIES; AND PROVIDING FOR RELATED MATTERS.

WHEREAS, North Fort Myers Utility, Inc., a Florida corporation (the "Corporation"), has applied to the Lee County Industrial Development Authority (the "Authority"), to issue its private activity tax-exempt and taxable revenue bonds in one or more series and in an aggregate principal amount not to exceed \$17,000,000 (the "Bonds") for the principal purposes of (i) currently refunding the Authority's outstanding Sewer Industrial Development Revenue Bonds (North Fort Myers Utility Project), Series 1995A (the "Refunded Bonds"), including payment of a premium on such Refunded Bonds, (ii) refinancing certain taxable indebtedness incurred by the Corporation to expand its System (as hereinafter defined) (the "Project"), and (iii) paying costs associated with the issuance of the Series 2003 Bonds. The Corporation owns and operates a system of facilities providing wastewater collection, transmission, treatment and disposal services for pollution control located in Lee County, Florida, and a portion of which was financed with proceeds of the Refunded Bonds (collectively, the "System"); and

WHEREAS, the Corporation has requested that the Authority loan the proceeds of the Bonds to said Corporation pursuant to Chapter 159, Parts II, III and VII, Florida Statutes, and such other provision or provisions of Florida law as the Authority may determine advisable (the "Act") in order to accomplish the foregoing; and

WHEREAS, the bond resolution granting the final authority for the issuance of the Bonds has not yet been adopted by the Authority; and

WHEREAS, the issuance of the Bonds under the Act in one or more issues or series not exceeding an aggregate principal amount of \$17,000,000 and the loaning of the proceeds thereof to refund the Refunded Bonds, finance payment of a premium on such Refunded Bonds and refinance the Project under a loan agreement or other financing agreement which will provide that payments thereunder be at least sufficient to pay the principal of and interest and redemption premium, if any, on such Bonds and such other costs in connection therewith as may be incurred by the Authority, will assist the Corporation and promote the public purposes provided in the Act; and

WHEREAS, in order to satisfy certain requirements of Section 147(f) of the Internal Revenue Code of 1986, as amended (the "Code"), the Authority held a public hearing on the proposed issuance of the Bonds for the purposes herein stated on the date hereof, which date is more than 14 days following the first publication of notice of such public hearing in a newspaper of general circulation in Lee County, Florida (a true and accurate copy of the affidavit of publication of such notice is attached hereto as Exhibit A), which public hearing was conducted in a manner that provided a reasonable opportunity for persons with differing views to be heard, both orally and in writing, on the issuance of such Bonds and the location and nature of the System and was held in a location which, under the facts and circumstances, was convenient for the residents of Lee County, such notice was reasonably designed to inform residents of Lee County of the proposed issue, stated that the Authority would be the issuer of the Bonds, stated the time and place of the hearing and generally contained the information required by Section 147(f) of the Code and applicable regulations thereunder; and such 14 days were adequate for notice to be brought to the attention of all interested persons, exceeds the normal periods for notice of public hearings conducted by the Authority and provided sufficient time for interested persons to prepare for and to express their views at such hearing; and

WHEREAS, the Corporation has agreed to execute and deliver to the Authority the Memorandum of Agreement (the "Memorandum of Agreement") relating to the issuance of the Bonds, attached hereto as Exhibit B; and

WHEREAS, it is intended that this Resolution shall constitute official action toward the issuance of the Bonds within the meaning of the applicable United States Treasury Regulations and, specifically, to satisfy the requirements of Treasury Regulations Section 1.150-2 and to be a declaration of official intent under such Section; and

IT IS, THEREFORE, DETERMINED AND RESOLVED BY THE LEE COUNTY INDUSTRIAL DEVELOPMENT AUTHORITY, THAT:

SECTION 1. AUTHORITY FOR THIS RESOLUTION. This resolution, hereinafter called "Resolution" is adopted pursuant to the provisions of the Act and other applicable provisions of law.

SECTION 2. PRELIMINARY STATEMENT. This Resolution is entered into to permit the Corporation to proceed with refunding of the Refunded Bonds, financing the payment of a premium on such Refunded Bonds and refinancing the Project and to provide a limited expression of intention by the Authority, prior to the issuance of the Bonds, to issue and sell the Bonds and make the proceeds thereof available to refund the Refunded Bonds, to the extent of such proceeds, all in accordance with and subject to the provisions of the Constitution and other laws of the State of Florida, including the Code and this Resolution, but subject in all respects to the terms of the Memorandum of Agreement.

SECTION 3. APPROVAL OF THE REFUNDING AND PROJECT. The refunding of the Refunded Bonds, financing the payment of a premium on such Refunded Bonds and refinancing the Project by the Authority through the issuance of the Bonds, pursuant to the Act, will promote the economic development and health and welfare of the citizens of Lee County, will provide the residents of the County with new jobs, will promote the general economic structure of the County, will thereby serve the public purposes of the Act and is hereby preliminarily approved, subject, however, in all respects to the Corporation meeting the conditions set forth in the Memorandum of Agreement to the sole satisfaction of the Authority.

SECTION 4. EXECUTION AND DELIVERY OF MEMORANDUM OF AGREEMENT. The Chair or the Vice-Chair and the Secretary are hereby authorized and directed to execute, for and on behalf of the Authority, the Memorandum of Agreement attached hereto as Exhibit B between the Authority and the Corporation providing understandings relative to the proposed issuance of the Bonds by the Authority to refund the Refunded Bonds, finance payment of a premium on such Refunded Bonds and refinance the Project in an aggregate principal amount not to exceed lesser of (a) \$17,000,000, or (b) the amount determined by the Authority and the Corporation to be necessary to accomplish the foregoing.

SECTION 5. AUTHORIZATION OF THE BONDS. There is hereby authorized to be issued and the Authority hereby determines to issue the Bonds, if so requested by the Corporation and subject to the conditions set forth in the Memorandum of Agreement attached hereto, in one or more issues or series of such tax-exempt and taxable revenue bonds in an aggregate principal amount not to exceed \$17,000,000 for the principal purposes of refunding the Refunded Bonds, finance the payment of a premium on such Refunded Bonds and refinancing the Project as described in the Memorandum of Agreement and paying the costs associated with the issuance of the Series 2003 Bonds. The rate of interest payable on the Bonds shall not exceed the maximum rate permitted by law.

SECTION 6. RECOMMENDATION FOR APPROVAL TO BOARD OF COUNTY COMMISSIONERS. The Authority hereby recommends the issuance of the Bonds and the refunding of the Refunded Bonds, financing the payment of a premium on such Refunded Bonds and refinancing the Project for approval to the Board of County Commissioners of Lee County (the "Board"). The Authority hereby directs the Chair or Vice-Chair, either alone or jointly, at the expense of the Corporation, to cooperate in seeking approval for the issuance of the Bonds, the refunding of the Refunded Bonds, financing the payment of a premium on such Refunded Bonds and refinancing the Project by the Board as the applicable elected representatives of Lee County under and pursuant to the Act and Section 147(f) of the Internal Revenue Code of 1986, as amended.

SECTION 7. GENERAL AUTHORIZATION. The Chair, the Vice-Chair and the Secretary are hereby further authorized to proceed with the undertakings provided for herein and in the Memorandum of Agreement on the part of the Authority and are further authorized to take such steps and actions as may be required or necessary in order to cause the Authority to issue the Bonds subject in all respects to the terms and conditions set forth herein and in the Memorandum of Agreement.

SECTION 8. AFFIRMATIVE ACTION. This resolution is an affirmative action of the Authority toward the issuance of the Bonds, as contemplated in the Memorandum of Agreement, in accordance with the purposes of the laws of the State of Florida and the applicable United States Treasury Regulations.

SECTION 9. LIMITED OBLIGATIONS. The Bonds and the interest thereon shall not constitute an indebtedness or pledge of the general credit or taxing power of Lee County, the State of Florida or any political subdivision or agency thereof but shall be payable solely from the revenues pledged therefor pursuant to a loan agreement or other financing agreement entered into by and between the Authority and the Corporation prior to or contemporaneously with the issuance of the Bonds. The Authority has no taxing power.

SECTION 10. LIMITED APPROVAL. The approval given herein shall not be construed as an approval of any necessary rezoning applications nor for any other regulatory permits relating to the System and the Authority shall not be construed by reason of its adoption of this resolution to have waived any right of the County or estopping the County from asserting any rights or responsibilities it may have in that regard.

SECTION 11. EFFECTIVE DATE. This Resolution shall take effect immediately.

ADOPTED this 14th day of February 2003.

**LEE COUNTY INDUSTRIAL
DEVELOPMENT AUTHORITY**

(SEAL)



Chair

ATTEST:



Secretary

EXHIBIT A

**AFFIDAVIT OF PUBLICATION OF
NOTICE OF PUBLIC HEARING**

NEWS-PRESS
Published every morning - Daily and Sunday
 Fort Myers, Florida
Affidavit of Publication

STATE OF FLORIDA
 COUNTY OF LEE

Before the undersigned authority, personally appeared
Kieanna Henry
 who on oath says that he/she is the
Asst. Legal Clerk of the News-Press, a daily newspaper,
 published at Fort Myers, in Lee County, Florida; that the
 attached copy of advertisement, being a
Legal Notice
 in the matter of Public Hearing on 2/14/03
 in the _____ Court
 was published in said newspaper in the issues of
January 30, 2003

Affiant further says that the said News Press is a paper of general circulation daily in Lee, Charlotte, Collier, Glades and Hendry Counties and published at Fort Myers, in said Lee County, Florida and that said newspaper has heretofore been continuously published in said Lee County, Florida, each day, and has been entered as a second class mail matter at the post office in Fort Myers in said Lee County, Florida, for a period of one year next preceding the first publication of the attached copy of the advertisement; and affiant further says that he/she has neither paid nor promised any person, firm or corporation any discount, rebate, commission or refund for the purpose of securing this advertisement for publication in the said newspaper.

Kieanna Henry

Sworn to and subscribed before me this

30th day of January 2003 by

Kieanna Henry
 personally known to me or who has produced

as identification, and who did or did not take an oath.

Notary Public Brenda Leighton

Print Name _____

My commission Expires:



Brenda Leighton
 MY COMMISSION EXPIRES
 February 14, 2003
 BOUNDARY PROTECTAN INSURANCE INC

NOTICE OF PUBLIC HEARING
 The Lee County Industrial Development Authority ("Authority") will hold a public hearing on February 14, 2003 at 10:00 A.M. or as soon thereafter as possible. The hearing will be held at the Authority's offices located at 2100 West First Street, 5th Floor, Conference Room, Station House, Fort Myers, Florida, to consider approval of the issuance by the Authority of not exceeding \$17,000,000 of its Utility System Revenue Bonds 2003 (North Fort Myers Utility, Inc. Project) ("Series 2003 Bonds"). The Series 2003 Bonds will be issued for the principal purposes of (A) financing outstanding indebtedness of North Fort Myers Utility, Inc. (the "Borrower"), including, but not limited to, all or a portion of the Authority's outstanding Sewer Industrial Development Revenue Bonds, Series 1995A (North Fort Myers Utility Project), the proceeds of which were used by the Borrower to refund certain outstanding indebtedness and construct and equip certain capital improvements to the utility system for its service area (the "System"), and (B) paying costs associated with the issuance of the Series 2003 Bonds. The System is owned and operated by the Borrower. The mailing address of the Borrower is 5600 Sycamore Road, Suite 36, North Fort Myers, Florida 33917. A map of the Borrower's service area may be obtained by requesting the same from A. Anthony Reeves, General Manager, (239) 543-1005. The Series 2003 Bonds shall be payable solely from the revenues derived by the Authority from a loan agreement to be entered into by and between the Authority and the Borrower prior to or contemporaneously with the issuance of the Series 2003 Bonds. Such Series 2003 Bonds and the interest thereon shall not constitute an indebtedness or pledge of the general credit or taxing power of Lee County, the State of Florida or any political subdivision or agency thereof. Issuance of the Series 2003 Bonds shall be subject to several conditions, including satisfactory documentation, the approval by bond counsel as to the tax-exempt status of the interest on the Series 2003 Bonds and receipt of necessary approvals for the financing. The aforementioned meeting shall be a public meeting and all persons who may be interested will be given an opportunity to be heard concerning the same. Written comments may also be submitted to the Lee County Industrial Development Authority prior to the hearing at 2100 West First Street, Suite 301, Fort Myers, Florida 33901. Attention: Janet Watermeyer.
 ALL PERSONS FOR OR AGAINST SAID APPROVAL CAN BE HEARD AT SAID TIME AND PLACE. IF A PERSON DECIDES TO APPEAL ANY DECISION MADE BY THE AUTHORITY WITH RESPECT TO SUCH HEARING OR MEETING, (S)HE WILL NEED TO ENSURE THAT A VERBATIM RECORD OF SUCH HEARING OR MEETING IS MADE, WHICH RECORD INCLUDES THE TESTIMONY AND EVIDENCE UPON WHICH THE APPEAL IS BASED.
 In accordance with the Americans with Disabilities Act persons needing a special accommodation to participate in this proceeding should contact the individual or agency publishing this notice no later than seven days prior to the proceeding at the address given in this notice. Telephone: (239) 538-3161.
 By order of the Lee County Industrial Development Authority:
 LEE COUNTY INDUSTRIAL DEVELOPMENT AUTHORITY
 /s/ L. Gail Markham
 Chair
 Jan 30 No. 17970

**MEMORANDUM OF AGREEMENT FOR ISSUANCE OF
PRIVATE ACTIVITY REVENUE BONDS**

This Memorandum of Agreement (the "Agreement") is between the Lee County Industrial Development Authority, a public body corporate and politic (the "Authority") and North Fort Myers Utility, Inc., a Florida corporation, (the "Corporation").

WITNESSETH:

1. Preliminary Statement. Among the matters of mutual understanding and inducement which have resulted in the execution of this Agreement are the following:

(a) Whereas Chapter 159, Parts II, III and VII, Florida Statutes, and other applicable provisions of law (the "Act") provide that the Authority may issue tax-exempt and taxable revenue bonds and loan the proceeds thereof to one or more persons, firms or private corporations, or use such proceeds, to defray the cost of acquiring, by purchase or by construction, certain pollution control facilities.

(b) The Corporation is considering refinancing outstanding indebtedness including, but not limited to, all or a portion of the Authority's outstanding Sewer Industrial Development Revenue Bonds, Series 1995A (North Fort Myers Utility Project) (the "Refunded Bonds") which were used to refund certain outstanding indebtedness and construct and equip certain capital improvements to the utility system for its service area (the "System"), finance the payment of a premium on such Refunded Bonds and refinancing certain taxable indebtedness incurred by the Corporation to expand its System (the "Project").

(c) The Authority intends this Agreement to constitute its preliminary approval, subject in all respects to the terms hereof, to issue its bonds (the "Bonds") in one or more series or issues pursuant to the Act in the amount to be agreed upon by the Authority and the Corporation and to loan the proceeds thereof to the Corporation, or to use such proceeds as described above, including all costs incurred in connection with the issuance of the Bonds by the Authority and the Corporation, up to an amount not to exceed \$17,000,000.

(d) The Authority considers the issuance and sale of the Bonds, for the purposes hereinabove set forth, consistent with the objectives of the Act. This Agreement constitutes the official action of the Authority toward the issuance of the Bonds as herein contemplated in accordance with the purposes of both the Act and the applicable United States Treasury Regulations.

2. Undertakings on the Part of the Authority. Subject to the terms hereof, the Authority agrees as follows:

(a) Subject to the Corporation providing the Authority with sufficient evidence to enable the Authority to make the findings set forth in Section 159.29 of the Act, the Authority will authorize the issuance of the Bonds, in one or more series or issues, in the aggregate principal amount necessary and sufficient to refund the Refunded Bonds, finance the payment of a premium on such Refunded Bonds and refinance the Project as the Authority and the Corporation shall agree in writing, but in all events, the principal amount of such Bonds shall not exceed the lesser of (i) the amount determined by the Authority and the Corporation necessary to accomplish the foregoing, or (ii) \$17,000,000.

(b) The Authority will cooperate with the Corporation and with the underwriters, placement agents or purchasers of the Bonds and the bond counsel of the Authority with respect to the issuance and sale of the Bonds and will take such further action and authorize the execution of such documents as shall be mutually satisfactory to the Authority and the Corporation for the authorization, issuance and sale of such Bonds and the use of the proceeds thereof to refund the Refunded Bonds.

(c) Such actions and documents may permit the issuance from time to time in the future of additional bonds on terms which shall be set forth therein, whether pari passu with other series of bonds or otherwise, for the purpose of defraying the cost of completion, enlargements, improvements and expansions of the System, or any segment thereof, or refunding of the Bonds.

(d) The loan agreement, trust indenture, mortgage and other financing documents (collectively, the "Financing Agreements") between the Authority and the Corporation shall, under terms agreed upon by the parties, provide for payments to be made by the Corporation in such sums as shall be necessary to pay the amounts required under the Act, including the principal of and interest and redemption premium, if any, on the Bonds, as and when the same shall become due and payable.

(e) The Bonds shall specifically provide that they are payable solely from the revenues derived pursuant to the Financing Agreements between the Authority and the Corporation or other agreements approved by the Authority, except to the extent payable out of amounts attributable to Bond proceeds. The Bonds and the interest thereon shall not constitute an indebtedness or pledge of the general credit of Lee County, the State of Florida or any political subdivision or agency thereof, and such fact shall be plainly stated on the face of the Bonds.

(f) Issuance of the Bonds by the Authority shall be contingent upon compliance with (i) all of the provisions hereof, and (ii) all provisions of the Internal Revenue Code of 1986, as amended (the "Code"), and the regulations promulgated thereunder, including the ability of and desirability by the Authority to issue obligations to refund the Refunded Bonds and the approval thereof by the Authority and the Board of Commissioners of Lee County in accordance with the provisions of Section 147(f) of the Code.

3. Undertakings on the Part of the Corporation. Subject to the terms hereof, the Corporation agrees as follows:

(a) The Corporation will use reasonable efforts to insure that the Bonds in the aggregate principal amount as stated above are sold; provided, however, that the terms of such Bonds and of the sale and delivery thereof shall be mutually satisfactory to the Authority and the Corporation.

(b) Prior to the issuance of the Bonds in the principal amount stated above, in one or more series or issues from time to time as the Authority and the Corporation shall agree in writing, the Corporation will enter into the Financing Agreements with the Authority, the terms of which shall be mutually agreeable to the Authority and Corporation, providing for the loan or use of the proceeds of the Bonds to refund the Refunded Bonds, finance the payment of a premium for such Refunded Bonds and refinance the Project. Such Financing Agreements will provide that the Corporation will be obligated to pay the Authority (or the trustee for holders of the Bonds on behalf of the Authority, as the case may be) sums sufficient in the aggregate to enable the Authority to pay the principal of and interest and redemption premium, if any, on the Bonds, as and when the same shall become due and payable, and all other expenses related to the issuance and delivery of the Bonds.

(c) The Corporation shall, in addition to paying the amounts set forth in the Financing Agreements, pay all costs of operation, maintenance, taxes, governmental and other charges which may be assessed or levied against or with respect to the System.

(d) To the extent not otherwise paid from Bond proceeds, the Corporation hereby agrees to pay all of the out of pocket expenses of officials and representatives of the Authority incurred in connection with the issuance of the Bonds and will pay all reasonable fees and expenses of the Authority in accordance with its guidelines, of Fowler, White, Boggs & Banker, Counsel to the Authority, and of Nabors, Giblin & Nickerson, P.A., Bond Counsel.

(e) The Corporation will hold the Authority and Lee County free and harmless from any loss or damage and from any taxes or other charges levied or assessed by reason of any mortgaging or other disposition of the System.

(f) The Corporation agrees to indemnify and defend the Authority and Lee County and hold the Authority and Lee County harmless against any and all claims, losses, liabilities or damages to property or any injury or death of any person or persons occurring in connection with the System or the issuance of the Bonds and the Corporation's undertaking thereof, or in any way growing out of or resulting from this Agreement including, without limitation, all costs and expenses of the Authority and reasonable attorneys' and legal assistants' fees incurred in the enforcement of any agreement of the Corporation contained herein. In the event that the Bonds are not issued and delivered, this indemnity shall survive the termination of this Agreement.

(g) The Corporation will take such further action as may be required to implement its aforesaid undertakings and as it may deem appropriate in pursuance thereof.

4. General Provisions. All commitments of the Authority under Section 2 hereof and of the Corporation under Section 3 hereof are subject to the conditions that all of the following events shall have occurred not later than December 31, 2003 or such other date as shall be mutually satisfactory to the Authority and Corporation.

(a) The Authority shall be lawfully entitled to issue the Bonds as herein contemplated.

(b) The Authority and Corporation shall have agreed on mutually acceptable terms for the Bonds and the sale and delivery thereof and mutually acceptable terms and conditions of any trust instrument or instruments in respect thereto and any Financing Agreements or other agreements incidental to the financing or referred to in Sections 2 and 3 hereof.

(c) Such rulings, approvals, consents, certificates of compliance, opinions of counsel and other instruments and proceedings satisfactory to the Corporation and to the Authority as to such matters with respect to the Bonds, the refunding of the Refunded Bonds, financing the payment of a premium for such Refunded Bonds and refinancing the Project, the Financing Agreements and any other trust instrument or instruments, as shall be specified by the Corporation or the Authority, shall have been obtained from the Internal Revenue Service and/or United States Treasury Department or such other governmental, as well as non-governmental, agencies and entities as may have or assert competent jurisdiction over or interest in matters pertinent thereto and shall be in full force and effect at the time of issuance of the Bonds.

(d) Compliance with all applicable provisions of Chapters 159, 189, 215 and 218, Florida Statutes, relating to the issuance of the Bonds, the interest rate thereon, the type of purchasers of the Bonds and the terms on which the Bonds may otherwise be issued.

(e) Notwithstanding any other terms hereof, nothing contained herein shall be construed to create a binding commitment by the Authority to issue the Bonds until such time, if ever, as the Authority shall grant its final approval for the issuance of the Bonds and the final terms and provisions of the financing and refinancing. By execution hereof, the Corporation agrees that the Authority may withhold its final approval of the issuance of the Bonds in its sole discretion and shall not incur any liability whatsoever as a result of it not granting any such approval notwithstanding any other provision hereof.

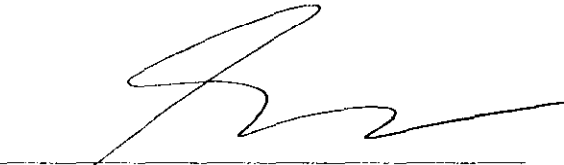
If the events set forth in this Section 4 do not take place within the time set forth or any extension thereof, the Corporation agrees that it will reimburse the Authority for all the reasonable and necessary direct or indirect expenses which the Authority may incur at the Corporation's request arising from the execution of this Agreement and the performance by the Authority of its obligations hereunder, including all reasonable legal fees for counsel to the Authority and expenses of bond counsel.

5. Binding Effect. All covenants and agreements herein contained by or on behalf of the Authority and the Corporation shall bind and inure to the benefit of the respective successors and assigns of the Authority and the Corporation whether so expressed or not.

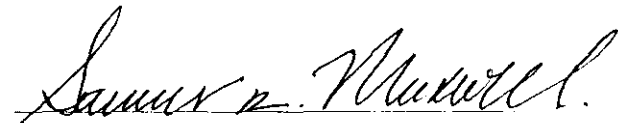
IN WITNESS WHEREOF, the parties hereto have entered into this Agreement by their officers thereunder duly authorized as of the 14th day of February 2003.

**LEE COUNTY INDUSTRIAL
DEVELOPMENT AUTHORITY**

(SEAL)


By: 
Chair

ATTEST:



Secretary

NORTH FORT MYERS UTILITY, INC.

(CORPORATE SEAL)

By: 
General Manager

ATTEST:


Secretary
Attorney-in-fact