

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

Blue Sheet No. 20031124

**1. REQUESTED MOTION:**

**ACTION REQUESTED:** Approve resolution authorizing the refinancing of the Road Improvement Refunding Revenue Bonds, Series 1993 (up to \$5,100,000) with a Tax Exempt Term Note from Wachovia Bank.

**WHY ACTION IS NECESSARY:** Board of County Commissioners must approve refinancing of debt.

**WHAT ACTION ACCOMPLISHES:** Allows Lee County to take advantage of savings from refinancing the Road Improvement Refunding Revenue Bonds, Series 1993.

**2. DEPARTMENTAL CATEGORY:**  
COMMISSION DISTRICT #

**A1A**

**3. MEETING DATE:**

**10-21-2003**

**4. AGENDA:**

**5. REQUIREMENT/PURPOSE:**  
(Specify)

**6. REQUESTOR OF INFORMATION:**

CONSENT  
 ADMINISTRATIVE  
 APPEALS

STATUTE  
 ORDINANCE  
 ADMIN.  
CODE  
 OTHER

A. COMMISSIONER  
B. DEPARTMENT County Administration  
C. DIVISION

PUBLIC  
 WALK ON  
TIME REQUIRED:

BY: Antonio Majul, Budget Director

**BACKGROUND:** The Road Improvement Refunding Revenue Bonds, Series 1993 were issued on August 5, 1993. The final debt service payment is due on October 1, 2008. A refunding opportunity had been identified that could provide in excess of a 3.00% present value savings opportunity. However, because of the relatively short duration remaining in the debt, the County's Financial Advisor recommended that a Request for Commitment (RFC) be submitted to the banking community in lieu of a bond issue. The RFC was issued on August 13, 2003 to ten financial institutions with a due date of August 27, 2003. Wachovia, SunTrust and Bank of America submitted proposals.

Each proposal provided information about a proposed rate, present value savings in amount and percentage, computation of the interest rate formula used to determine the rate, any prepayment penalties, additional bonds test and debt coverage  
(Continued on Page 2)

**8. MANAGEMENT RECOMMENDATIONS:** Approve the proposal from Wachovia Bank to refund the Road Improvement Refunding Revenue Bonds, Series 1993.

**9. RECOMMENDED APPROVAL:**

A	B	C	D	E	F				G
Department Director	Purchasing or Contracts	Human Resources	Other	County Attorney	Budget Services				County Manager
<i>[Signature]</i> 10/8/03				<i>[Signature]</i> 10/8/03	OA	OM	Risk	GC	<i>[Signature]</i> 10/8/03
					<i>[Signature]</i>	<i>[Signature]</i>	<i>[Signature]</i>	<i>[Signature]</i>	<i>[Signature]</i> 10/8/03

**10. COMMISSION ACTION:**

APPROVED  
 DENIED  
 DEFERRED  
 OTHER

Rec. by CoAtty  
Date: **10/8/03**  
Time: **2:50 PM**  
Forwarded To: **Budget**  
**10/8/03**

RECEIVED BY  
COUNTY ADMIN: **[Signature]**  
**10/8/03**  
**3:40 pm**  
COUNTY ADMIN  
FORWARDED TO:

Blue Sheet #20031124  
Background (continued)

requirements and fees. Wachovia bid a rate of 3.17% for August 27, 2003 (**Note: The actual rate will be set three days prior to closing**) based on 88.7% of the 5 year US Dollar Swap Rate less 31 basis points. Their rate was 22 basis points lower than SunTrust's bid for a traditional fixed rate refunding option and 32 basis points lower than Bank of America. Wachovia's rate equated to a present value savings of \$177,912 or 3.62% of refunded par. The 5 year US Dollar Swap Rate is based upon the 5 Year LIBOR (London Interbank Offered Rate) semi-annual fixed interest rate index. LIBOR is the primary fixed income index used in the Euromarkets.

An update on rates since the August 27, 2003 bid proposal indicated that if rates had been set on October 8, 2003, the percent would be 2.81% and the savings would be \$218,517 or 4.45% of the refunded par.

Closing costs are estimated to be \$2,500 for bank counsel fees, a one-time escrow agent fee of \$500 financial advisor fees of \$12,500, bond counsel fees of \$17,500, verification agent fees of \$1,500 and a miscellaneous allocation of \$1,000 for a total cost of \$35,500. These closing costs compare to estimated costs of \$300,000 for refinancing a bond issue of comparable size. Wachovia had no prepayment penalty. The most important criteria used to select Wachovia was the projected rate, which was derived from their choice of an interest rate formula. Wachovia's acceptance date for this commitment is October 30, 2003.

This transaction should be completed by October 30, 2003.

**RESOLUTION NO. 2003 - \_\_\_\_**

A RESOLUTION OF THE BOARD OF COUNTY COMMISSIONERS OF LEE COUNTY, FLORIDA AMENDING AND SUPPLEMENTING RESOLUTION NO. 90-06-32, AS AMENDED AND SUPPLEMENTED, WHICH, AMONG OTHER THINGS, AUTHORIZES THE ISSUANCE OF LEE COUNTY, FLORIDA ROAD IMPROVEMENT REVENUE BONDS FROM TIME TO TIME; ACCEPTING THE PROPOSAL OF WACHOVIA BANK, NATIONAL ASSOCIATION TO PROVIDE THE COUNTY WITH A LOAN IN AN AGGREGATE PRINCIPAL AMOUNT OF NOT EXCEEDING \$5,100,000 TO REFUND ALL OF THE OUTSTANDING LEE COUNTY, FLORIDA ROAD IMPROVEMENT REFUNDING REVENUE BONDS, SERIES 1993; AUTHORIZING THE ISSUANCE OF THE LEE COUNTY, FLORIDA ROAD IMPROVEMENT REFUNDING REVENUE BOND, SERIES 2003 TO EVIDENCE SUCH LOAN; MAKING CERTAIN COVENANTS AND AGREEMENTS IN CONNECTION WITH THE ISSUANCE OF SUCH BOND; AUTHORIZING A NEGOTIATED SALE OF SAID BOND TO WACHOVIA BANK, NATIONAL ASSOCIATION; DELEGATING CERTAIN AUTHORITY TO THE CHAIRMAN FOR THE AUTHORIZATION, EXECUTION AND DELIVERY OF THE BOND AND VARIOUS OTHER DOCUMENTS WITH RESPECT THERETO; AUTHORIZING THE EXECUTION AND DELIVERY OF AN ESCROW DEPOSIT AGREEMENT AND THE APPOINTMENT OF AN ESCROW AGENT THERETO; AND PROVIDING AN EFFECTIVE DATE.

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

**SECTION 1. FINDINGS.** It is hereby found and determined that:

(A) On June 27, 1990, the Board of County Commissioners (the "Board") of Lee County, Florida (the "Issuer") duly adopted Resolution No. 90-06-32, as amended and supplemented (collectively, the "Resolution") pursuant to which there were issued

the Issuer's Lee County, Florida Road Improvement Revenue Bonds, Series 1990 (the "Series 1990 Bonds").

(B) Pursuant to the Resolution, there has been issued and are outstanding the Issuer's Lee County, Florida Road Improvement Refunding Revenue Bonds, Series 1993 (the "Series 1993 Bonds"), the proceeds of which were used to refund all of the then Outstanding Series 1990 Bonds.

(C) The Issuer hereby deems it in its best interests to refund, on a current basis, all of its Outstanding Series 1993 Bonds (the "Refunded Bonds") in order to achieve debt service savings.

(D) The Resolution provides for the issuance of Additional Bonds (as defined in the Resolution), for the principal purpose of refunding the Refunded Bonds, upon meeting certain requirements set forth in the Resolution.

(E) The Issuer previously has distributed a Request for Commitment for a Tax-Exempt Term Note (the "Request for Commitment"), the form of which is attached as Exhibit A, to solicit bids from various financial institutions to provide for the refunding of the Refunded Bonds.

(F) Wachovia Bank, National Association, a national banking association (the "Bank") has submitted a proposal that conforms in all material respects with the Request for Commitment and provides for the most cost-effective financing plan for refunding the Refunded Bonds, a copy of which proposal is attached hereto as Exhibit B.

(G) The Issuer hereby determines that the most cost effective and beneficial way to refund the Refunded Bonds is through the issuance of its Lee County, Florida Road Improvement Refunding Revenue Bond, Series 2003 (the "Series 2003 Bond") to the Bank.

(H) A portion of the proceeds derived from the sale of the Series 2003 Bond, together with other legally available moneys of the Issuer, shall be deposited to a special escrow deposit trust fund to purchase certain investments selected by the Issuer's investment committee, upon the advice of the Issuer's Financial Advisor, and approved by the Bank (the "Escrow Investments") which shall be sufficient, together with the investment earnings therefrom and a cash deposit, if any, to pay the Refunded Bonds as the same become due and payable or are redeemed prior to maturity, all as provided herein and in the hereinafter described Escrow Deposit Agreement.

(I) Due to the potential volatility of the market for tax-exempt obligations such as the Series 2003 Bond and the complexity of the transactions relating to such Series 2003 Bond, it is in the best interest of the Issuer to sell the Series 2003 Bond to the Bank

by a negotiated sale, allowing the Issuer to enter the market at the most advantageous time, rather than at a specified advertised date, thereby permitting the Issuer to obtain the best possible price and interest rate for the Series 2003 Bond.

(J) The Issuer hereby certifies that it is not in default in performing any of the covenants and obligations set forth in the Resolution and all of the covenants, pledges and conditions in the Resolution shall be applicable to the Series 2003 Bond herein authorized.

(K) The Resolution provides that the Series 2003 Bond shall have such terms and details as shall be determined by Supplemental Resolution (as defined in the Resolution) adopted by the Issuer; and it is now appropriate that the Issuer set forth such terms and details in this Supplemental Resolution.

(L) The Series 2003 Bond shall not constitute a general obligation, or a pledge of the faith, credit or taxing power of the Issuer, the State of Florida, or any political subdivision thereof, within the meaning of any constitutional or statutory provisions. Neither the State of Florida, nor any political subdivision thereof, nor the Issuer shall be obligated (i) to exercise its ad valorem taxing power in any form on any real or personal property of or in the Issuer to pay the principal of the Series 2003 Bond, the interest thereon, or other costs incidental thereto or (ii) to pay the same from any other funds of the Issuer except from the Pledged Funds, as defined in the Resolution, in the manner provided in the Resolution; provided, however, the Series 2003 Bond shall not be secured by the Reserve Account.

**SECTION 2. DEFINITIONS.** When used in this Supplemental Resolution, capitalized terms defined in the Resolution shall have the meanings therein stated, except as such definitions shall be hereinafter amended and defined. The following definitions shall be applicable so long as the Series 2003 Bond is Outstanding under the Resolution:

**"Default Rate"** shall mean the Bank's prime lending rate, as publicly announced by the Bank from time to time, plus 3.00%.

**"Determination of Taxability"** shall mean with respect to the Series 2003 Bond, the circumstance of interest paid or payable on the Series 2003 Bond becoming includable for federal income tax purposes in the gross income of the Holder of the Series 2003 Bond for any reason whatsoever and regardless of whether the same was within or beyond the control of the Issuer. A Determination of Taxability shall be evidenced by either (a) the receipt by the Issuer or Holder of the Series 2003 Bond of an original or a copy of an Internal Revenue Service Technical Advice Memorandum or Statutory Notice of Deficiency which holds that any interest payable on the Series 2003 Bond is includable in the gross income of such Holder of the Series 2003 Bond; (b) the issuance of any

public or private ruling of the Internal Revenue Service that any interest payable on the Series 2003 Bond is includable in the gross income of the Holder of the Series 2003 Bond; or (c) receipt by the Issuer or the Holder of the Series 2003 Bond of an opinion of Bond Counsel that any interest on the Series 2003 Bond has become includable in the gross income of the Holder of the Series 2003 Bond for federal income tax purposes. For all purposes of this definition, a Determination of Taxability will be deemed to occur on the first date as of which the interest on the Series 2003 Bond is deemed includable in the gross income of the Holder of the Series 2003 Bond. A Determination of Taxability shall not occur solely from the fact that such interest is taken into account in determining adjusted current earnings for the purpose of the alternative minimum income tax imposed on corporations.

**"Maximum Corporate Tax Rate"** shall mean the highest marginal United States federal income tax rate applicable to the taxable income of corporations without regard to any increase in tax designed to normalize the rate for all income at the highest marginal tax rate, which as of the date hereof is 35%.

**"Reserve Account Requirement"** shall mean with respect to the Series 2003 Bond, an amount equal to \$0.

**SECTION 3. AUTHORITY FOR THIS SUPPLEMENTAL RESOLUTION.** This Supplemental Resolution is adopted pursuant to the Act.

**SECTION 4. AUTHORIZATION OF REFUNDING OF THE REFUNDED BONDS.** The Issuer hereby authorizes the current refunding of the Refunded Bonds pursuant to the terms of the Resolution, this Supplemental Resolution and the hereinafter described Escrow Deposit Agreement.

**SECTION 5. AUTHORIZATION AND DESCRIPTION OF THE SERIES 2003 BOND.** The Issuer hereby authorizes the issuance of a series of Bonds in the aggregate principal amount of not exceeding \$5,100,000 to be known as the "Lee County, Florida Road Improvement Refunding Revenue Bond, Series 2003," for the principal purpose of refunding, on a current basis, the Refunded Bonds. The aggregate principal amount of the Series 2003 Bond shall be determined by the Chairman provided such aggregate principal amount does not exceed \$5,100,000.

The Series 2003 Bond shall be dated as of its date of delivery to the Bank, shall be issued in the form of one, fully registered Bond in the denomination of its aggregate principal amount, and shall be numbered "R-1". The Series 2003 Bond shall bear interest from its dated date at a fixed interest rate per annum equal to 88.7% of the 5-year U.S. Dollar Swap Offering Rate minus 31 basis points as determined three (3) business days prior to the date of issuance of the Series 2003 Bond (the "Interest Rate"). The Interest

Rate shall be calculated on the basis of a 360-day year consisting of twelve 30-day months and is subject to adjustment as provided in Section 6 hereof. Interest shall be payable semi-annually, on April 1 and October 1 of each year (the "Interest Dates"), commencing on April 1, 2004. The Series 2003 Bond shall mature on October 1, 2008 and will be subject to mandatory sinking fund redemption in Amortization Installments commencing on October 1, 2004 and on each October 1 thereafter through the maturity date, the principal amounts of such Amortization Installments to be determined by the Chairman and approved by the Bank; provided, however, notwithstanding any other provision of the Resolution to the contrary, the Issuer shall not be required to give the Bank any notice of redemption with respect to the scheduled payment of such Amortization Installments. The Series 2003 Bond shall be sold on a negotiated basis to the Bank at a purchase price equal to 100% of the aggregate principal amount thereof. A copy of the Bank's Disclosure Letter and Truth-in-Bonding Statement is attached hereto as Exhibit C. The interest rate on the Series 2003 Bond shall comply in all respects with Section 215.84, Florida Statutes.

Principal and interest on the Series 2003 Bond shall be payable by check, draft, bank wire transfer or in such other manner as is agreed to between the Issuer and the Holder of the Series 2003 Bond, made payable to and distributed to the Holder in whose name such Bond shall be registered at the close of business on the date which shall be the fifteenth day (whether or not a Business Day) of the calendar month next preceding each Interest Date; provided, however, that the Holder of the Series 2003 Bond shall present and surrender the Series 2003 Bond for the final payment thereon (or otherwise provide the Issuer with satisfactory evidence of the cancellation or destruction of the Series 2003 Bond). All payments of principal and interest on the Series 2003 Bond shall be payable in any coin or currency of the United States of America which at the time of payment is legal tender for the payment of public and private debts. The Issuer shall keep registration books and records as to the Holder or Holders of the Series 2003 Bond and shall act in the capacity of Registrar and Paying Agent for purposes of the Resolution.

The Series 2003 Bond may be prepaid at any time, in whole or in part, at a prepayment price equal to 100% of the principal amount thereof to be prepaid, without premium, plus interest accrued to the prepayment date. No prepayment may be made by the Issuer unless it has provided the Holder of the Series 2003 Bond with no less than five (5) business days prior written notice specifying the principal amount of the Series 2003 Bond to be prepaid and the prepayment date.

**SECTION 6. ADJUSTMENTS TO INTEREST RATE.** (A) In the event of a Determination of Taxability, the Interest Rate on the Series 2003 Bond shall be increased to a rate per annum as shall provide the Holder of the Series 2003 Bond with the same rate of return that the Holder would have otherwise received on the Series 2003 Bond taking into account the increased taxable income of the Holder of the Series 2003

Bond as a result of such Determination of Taxability (the "Taxable Rate") effective retroactively to the date on which such Determination of Taxability was made. Immediately upon a Determination of Taxability, the County agrees to pay to the Holder of the Series 2003 Bond subject to such Determination of Taxability the Additional Amount (as defined herein). "Additional Amount" means (i) the difference between (a) interest on the Series 2003 Bond for the period commencing on the date on which the interest on such Series 2003 Bond (or portion thereof) loses its tax-exempt status and ending on the earlier of the date such Series 2003 Bond ceased to be outstanding or such adjustment is no longer applicable to such Series 2003 Bond (the "Taxable Period") at a rate per annum equal to the Taxable Rate, and (b) the aggregate amount of interest payable on such Series 2003 Bond for the Taxable Period under the provisions of such Series 2003 Bond without considering the Determination of Taxability, plus (ii) any penalties and interest paid or payable by such Holder of the Series 2003 Bond to the Internal Revenue Service by reason of such Determination of Taxability.

(B) If the Maximum Corporate Tax Rate as applicable to the Bank decreases or increases from 35%, the Interest Rate otherwise borne by the Series 2003 Bond shall be increased or decreased, respectively, to such rate as the Bank shall determine in its reasonable discretion that will result in the Bank realizing the same taxable equivalent yield on the Series 2003 Bond that it would have realized in the absence of such increase or decrease in the Maximum Corporate Tax Rate. The Bank shall provide the Issuer with reasonable evidence of its determinations of such yield.

(C) Upon the occurrence and continuance of any Event of Default under Section 6.01 of the Resolution, the Interest Rate on the Series 2003 Bond shall be adjusted to the Default Rate as of the date of the event causing such Event of Default and such Default Rate shall apply until the Event of Default is cured or the Bank waives it in writing.

(D) The Holder of such Series 2003 Bond shall promptly notify the County in writing of any adjustments pursuant to this Section 6. Such adjustments shall become effective as of the effective date of the event causing such adjustment. Adjustments pursuant to this Section 6 may be retroactive. The Holder of the Series 2003 Bond shall certify to the County in writing the additional amount, if any, due to the Holder of the Series 2003 Bond as a result of an adjustment pursuant to this Section 6. Notwithstanding any provision of this Section 6 to the contrary, in no event shall the Interest Rate on the Series 2003 Bond exceed the maximum rate permitted by law.

(E) The provisions set forth in this Section 6 shall survive payment of the Series 2003 Bond until such time as the federal statute of limitations under which the interest on the Series 2003 Bond could be declared taxable under the Code shall have expired.



**SECTION 7. FORM OF SERIES 2003 BOND.** The text of the Series 2003 Bond shall be substantially in the form set forth in Section 2.09 of the Resolution, with such omissions, insertions and variations as may be necessary or desirable and authorized or permitted by the Resolution, or as may be necessary to comply with applicable laws, rules and regulations of the United States and the State of Florida in effect upon the issuance thereof.

**SECTION 8. APPLICATION OF SERIES 2003 BOND PROCEEDS.** The proceeds derived from the sale of the Series 2003 Bond shall be applied by the Issuer simultaneously with the delivery thereof as follows:

(A) A sufficient amount of Series 2003 Bond proceeds, together with other legally available moneys of the Issuer, shall be deposited irrevocably in trust in an escrow deposit trust fund established under the terms and provisions of the hereinafter defined Escrow Deposit Agreement and, other than a cash deposit, shall be invested in the Escrow Investments in the manner set forth in the Escrow Deposit Agreement, which investments shall mature at such times and in such amounts as shall be sufficient, together with such cash deposit, to pay the principal of, premium, if applicable, and interest on the Refunded Bonds as the same mature or are redeemed on their respective redemption dates.

(B) The remainder of the proceeds of the Series 2003 Bond shall be applied to the payment of costs and expenses relating to the issuance of the Series 2003 Bond. If any proceeds of the Series 2003 Bond remain following the payment of such costs and expenses, such proceeds shall be used to pay scheduled interest on the Series 2003 Bond.

**SECTION 9. TRANSFER OF CERTAIN MONEYS.** The Refunded Bonds will be refunded from proceeds of the Series 2003 Bond and other legally available moneys of the Issuer. Any excess moneys on deposit in the funds or accounts not required by the terms of the Resolution to be on deposit therein and which are allocated to the Refunded Bonds shall be transferred to the escrow deposit trust fund established pursuant to the Escrow Deposit Agreement.

**SECTION 10. AUTHORIZATION TO EXECUTE ESCROW DEPOSIT AGREEMENT.** The Issuer hereby authorizes the Chairman to execute and the Clerk to attest an Escrow Deposit Agreement (the "Escrow Deposit Agreement") and to deliver the Escrow Deposit Agreement to Wachovia Bank, National Association, which is hereby appointed as escrow agent thereunder (the "Escrow Agent"). All of the provisions of the Escrow Deposit Agreement when executed and delivered by the Issuer as authorized herein and when duly authorized, executed and delivered by the Escrow Agent, shall be deemed to be a part of this Supplemental Resolution as fully and to the same extent as if incorporated verbatim herein, and the Escrow Deposit Agreement shall be in substantially

the form attached hereto as Exhibit D, with such changes, amendments, modifications, omissions and additions, including the date of such Escrow Deposit Agreement, as may be approved by the Chairman. Execution by the Chairman of the Escrow Deposit Agreement shall be deemed to be conclusive evidence of the approval of such changes.

**SECTION 11. PROVISION OF INFORMATION TO THE BANK.** The Issuer shall, immediately after the close of each fiscal year of the Issuer, cause the certified public accountant or recognized independent firm of certified public accountants, and shall require such accountants to complete their report on the annual financial statements in accordance with applicable law. The annual financial statements shall be prepared in conformity with generally accepted accounting principles consistently applied. A copy of the audited financial statements for each fiscal year shall be furnished to the Bank within 210 days after the end of each such fiscal year, so long as the Series 2003 Bond is outstanding. As long as the Series 2003 Bond is outstanding, the Issuer shall also provide the Bank each fiscal year with a copy of its annual budget when available, or within 30 days after the final adoption of such budget, whichever is earlier, the Issuer's Capital Improvement Plan, and such other information that is reasonably requested by the Bank.

**SECTION 12. AMENDMENTS TO RESOLUTION.** (A) The definition of "Reserve Account Requirement" in Section 1.01 of the Resolution is hereby amended and restated in its entirety as follows:

**"Reserve Account Requirement** shall mean, as of any date of calculation for the Reserve Account, an amount equal to the lesser of (1) the Maximum Annual Debt Service for all Outstanding Bonds, or (2) 125% of the average annual debt service for all Outstanding Bonds. In computing the Reserve Account Requirement in respect of Bonds that constitute Variable Rate Bonds, the interest rate on such Bonds shall be assumed to be the lesser of (A) the interest rate for 30-year revenue bonds published by The Bond Buyer no more than two weeks prior to the date of sale for such Bonds, or (B) the Maximum Interest Rate. Notwithstanding the foregoing, if there is established a separate subaccount in the Reserve Account for any Series of Bonds pursuant to the Resolution or if any Series of Bonds is not secured by the Reserve Account, the Reserve Account Requirement for such Series of Bonds shall be determined pursuant to a Supplemental Resolution of the Issuer."

(B) Notwithstanding any provision in the Resolution to the contrary, so long as the Series 2003 Bond is Outstanding, for purposes of determining "Annual Debt Service" or "Maximum Annual Debt Service" or "Reserve Account Requirement," the interest rate on any Variable Rate Bonds shall be assumed to be the greater of 6.00% per annum or the

actual interest rate borne by such Variable Rate Bonds, if any, for the calendar month immediately preceding the date of calculation. The provisions of this Section 12(B) shall not apply when the Series 2003 Bond is no longer Outstanding under the Resolution.

(C) Notwithstanding any provision in the Resolution to the contrary, so long as the Series 2003 Bond is Outstanding, the first sentence of Section 5.02(F) of the Resolution shall be amended in its entirety to read as follows:

"In the event any Additional Bonds are issued for the purpose of refunding any Bonds then Outstanding, the conditions of Section 5.02 hereof shall not apply, provided the issuance of such Additional Bonds shall result in a reduction of Annual Debt Service for each Fiscal Year following the issuance of such Additional Bonds."

The provisions of this Section 12(C) shall not apply when the Series 2003 Bonds are no longer Outstanding under the Resolution.

**SECTION 13. GENERAL AUTHORITY.** The Chairman, the Clerk, the County Attorney, and the other officers, attorneys and other agents or employees of the Issuer are hereby authorized to do all acts and things required of them by this Supplemental Resolution, the Resolution or the Escrow Deposit Agreement or desirable or consistent with the requirements hereof or of the Resolution or the Escrow Deposit Agreement for the full punctual and complete performance of all the terms, covenants and agreements contained herein or in the Series 2003 Bond, the Resolution and the Escrow Deposit Agreement and each member, employee, attorney and officer of the Issuer is hereby authorized and directed to execute and deliver any and all papers and instruments and to be and cause to be done any and all acts and things necessary or proper for carrying out the transactions contemplated hereunder. The Issuer hereby authorizes its Bond Counsel to do all things necessary to acquire the Federal Securities.

**SECTION 14. SEVERABILITY AND INVALID PROVISIONS.** If any one or more of the covenants, agreements or provisions herein contained shall be held contrary to any express provision of law or contrary to the policy of express law, though not expressly prohibited or against public policy, or shall for any reason whatsoever be held invalid, then such covenants, agreements or provisions shall be null and void and shall be deemed separable from the remaining covenants, agreements or provisions and shall in no way affect the validity of any of the other provisions hereof or of the Series 2003 Bond.

**SECTION 15. RESOLUTION TO CONTINUE IN FORCE.** Except as herein expressly provided, the Resolution and all the terms and provisions thereof are and shall remain in full force and effect.

**SECTION 16. EFFECTIVE DATE.** This Supplemental Resolution shall become effective immediately upon its adoption.

**DULY ADOPTED** in Regular Session, this \_\_\_\_ day of \_\_\_\_\_, 2003.

(SEAL)

**BOARD OF COUNTY COMMISSIONERS  
OF LEE COUNTY, FLORIDA**

\_\_\_\_\_  
Chairman

ATTEST:

\_\_\_\_\_  
Clerk

APPROVED AS TO FORM AND  
LEGAL SUFFICIENCY:

\_\_\_\_\_  
County Attorney

**EXHIBIT A**

**REQUEST FOR COMMITMENT**



**LEE COUNTY, FLORIDA**

**REQUEST FOR COMMITMENT**

**FOR A**

**TAX-EXEMPT TERM NOTE**

**Refunding of Road Improvement Refunding Revenue Bonds, Series 1993**

**Issue Date: August 13, 2003**

**Due Date: August 27, 2003**

**Public Financial Management, Inc.  
10100 Deer Run Farms Road  
Ft. Myers, FL 33912  
239-939-3009  
239-939-1220**

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**REQUEST FOR COMMITMENT  
TERM LOAN  
LEE COUNTY, FLORIDA**

**I. Introduction**

**A. Objectives**

The objective of this Request for Commitment (the "RFC") is to identify the institution that can provide Lee County, Florida ("County") with a non-bank qualified, tax-exempt, fixed-rate Loan (the "Loan") for the following:

- Refunding of Road Improvement Refunding Revenue Bonds, Series 1993 (the "Series 1993 Bonds")

**B. Bidding Instructions**

**1. Sealed Bids**

Copies of the response to this RFC should be submitted on or before 2:00 P.M. on August 27, 2003 per the following instructions:

Kelly Ryman and Kyrle Turton  
Consultant  
Public Financial Management, Inc.  
10100 Deer Run Farms Rd. Suite 201  
Fort Myers, FL 33912  
(239) 939-3009  
(one copy)

Jim Lewin  
Fiscal Research Director  
Lee County  
2115 Second Street  
Fort Myers, FL 33901  
(239) 335-2336  
(two copy)

The County reserves the right to reject any and all responses, to waive any informalities or irregularities in any responses received and to readvertise or take any other such actions that may be deemed to be in the best interest of the County.



2. Bid Response

Each bid should address all pertinent areas and be specific. Any conditions should be clearly stated.

The failure to disclose substantive terms, conditions and covenants may be considered cause for the offeror's response to be rejected by the County. In addition, any responses that are subject to credit review and approval may be considered cause for the offeror's response to be rejected by the County.

3. Questions, Additional Information

Offerors, their agents and/or associates shall refrain from contacting or soliciting any member of the County Commission, County staff or the County's Financing Team regarding this RFC during the selection process. Failure to comply with this provision may result in the disqualification of the offeror. All requests for clarifications or additional information should be directed to Public Financial Management, Inc., the County's Financial Advisor, as addressed above.

The Financial Advisor may choose, at its sole discretion, to redirect such requests to other members of the County's Financing Team. However, all initial requests should be directed to the Financial Advisor. All documents needed for your review should be requested immediately.

4. Tentative Schedule

The County will attempt to adhere to the following schedule:

August 13, 2003	RFC Issued
August 27, 2003	Written responses due prior to 2:00 P.M.
To Be Determined	Analysis of Responses to County
To Be Determined	County approval of Provider
To Be Determined	Lock In Rate
To Be Determined	Pre-Closing
To Be Determined	Closing and Wiring of Funds

The County reserves the right to alter scheduled dates if necessary. Schedule is subject to change.

### **C. Structure of the Financing**

The following describes the County's requirements in establishing the Loan:

1. Amount: As outlined in Exhibit A
2. Rate: Fixed, tax-exempt rate on a non-bank qualified basis. The rate quoted may not exceed the maximum rate permitted under Florida Statute 215.84 applicable at the time of sale.
3. Repayment Provisions: Principal will be paid annually and interest payments on the outstanding principal balance of the Loan will be calculated on a 30/360-day basis and will be paid semi-annually.
4. Prepayment Provisions: The Loan is subject to prepayment with no penalty in whole or in part at any time following five (5) business days notice by the County.
5. Structure: The Refunding Bonds are to be structured to provide for level annual savings over the life of the bonds and must also generate at least a 3% present value savings at the time of setting the interest rate.

If the proposer is unable to adhere to the above structure, please identify the structure or minimum conditions or prepayment requirements of the proposer for bidding on the Loan.

### **D. Qualified Tax-Exempt Obligation**

The County will attempt to take such actions as may be required by U S Treasury regulations in order to maintain the status of the Term Loan as a "qualified" tax-exempt obligation according to the Internal Revenue Code.

The County shall furnish, without charge to the successful offeror, a legal opinion from a qualified bond counsel, approving the legality of the Term Loan together with the closing certificates and documents related to the transaction.

### **E. Conditions**

The County will not accept responses with reserve requirements or requirements to maintain minimum balances in any bank account as a condition for the Loan.

#### **Late Payment**

The bidder may include in its bid a "late payment rate" to apply if payments are not made when due. Such a late payment rate may take effect no earlier than ten (10) days after the date payment is due. There shall be no other fees or penalties

imposed for late payment. No late payment rate will be included in the bond documents unless it is specified in the bid.

## II. EVALUATION OF COMMITMENTS - CRITERIA

Proposals will be evaluated on the basis of cost and compliance with the proposed structure and terms of the Loan as outlined in this RFC.

### A. Proposal Format

In order to assist the County in reviewing proposals, each proposal shall be prepared utilizing the following format and headings:

1. **Contact Information** - State the legal name of the financial institution or firm, current principal business address, contact person, telephone and facsimile numbers.
2. **Interest Rate** - State the fixed rates being proposed for the above identified structure as follows:
  - a. Such rates must be expressed as a function of the yield of a U.S. Government Treasury obligation. The County is requesting a rate indicator (index) that may be tracked on a daily basis, with the actual interest rate for each loan being set three (3) business days prior to the closing date.
  - b. Provide a preliminary debt service schedule.
  - c. Interest will be payable as discussed under Section C., "Structure of the Financing" above.
  - d. Provide bids for a non-bank qualified rate --See Exhibit A
3. **Fees and Expenses** - Describe in detail all fees and expenses that the County will be responsible to pay for each transaction. The amounts stated in the proposal shall represent the maximum amounts payable to the offeror by the County. All fees and expenses in excess of those stated in the response shall be the sole responsibility of the offeror and will not be paid or reimbursed by the County. The County has determined that bond counsel will prepare documents. Please include your fees for bank counsel review only.
4. **Covenants and Conditions** - Provide a listing of all conditions, terms or restrictions, other than those already specified in this RFC, which would be included in your commitment to provide each Loan.

### III. INSTRUCTIONS TO OFFERORS

- A. Offerors shall thoroughly examine and be familiar with the bid specifications. Failure of any offeror to receive or examine this document shall in no way relieve any offeror of obligations pertaining to this bid or the subsequent contract.
- B. Any changes or modifications to the bid specifications can result in the rejection of the bid as not being responsive to this RFC.
- C. Any responses that are subject to credit review or approval of the bank may be considered cause for the offeror's response to be rejected by the County. All responses submitted should be commitments to lend.
- D. The responsibility for delivering the proposal to the County on or before the specified date and time will be solely and strictly the responsibility of the offeror. The County will in no way be responsible for delays caused by the United States Post Office or a delay caused by any other occurrence.
- E. The response deadline shall be strictly observed. Under no circumstances will a proposal delivered after the time specified be considered. Such responses will be returned to the offeror unopened.
- F. Offerors will not be allowed to withdraw or modify their bids for a period of sixty (60) days after the opening time and date.
- G. The County reserves the right to reject the bid of any offeror who has previously failed in the proper performance of a contract or to deliver on time other contracts similar in nature, or who is not in a position to perform properly under this contract.
- H. Federal, state and local laws, ordinances, rules and regulations that in any manner affect the items covered herein apply. Lack of knowledge by the offeror will in no way be a cause for relief from responsibility.
- I. No successful offeror may assign any portion of the contractual agreement between the parties without prior written authorization by the County.
- J. Changes to the RFC may be made by and at the sole discretion of the County.
- K. Public Entity Crimes Form - Each offeror shall complete a Public Entity Crimes Form and shall submit the same with the proposal. The County considers the failure of the offeror to submit this document to be a major irregularity and may be cause for rejection of the proposal.
- L. Warranties - The offeror, in submission of its proposal, warrants to the County that it will comply with all applicable federal, state and local laws, regulations and orders in providing the services under the proposed documents.

#### **IV. OTHER INFORMATION**

- A. The award will be made to the institution whose response complies with all of the requirements set forth in this RFC and whose bid, in the sole opinion of the County, is best, considering all aspects of the offeror's response.
  
- B. In the event that the successful offeror does not execute a contract within a time frame acceptable to the County, the County may give notice of intent to award the bid to the next most qualified offeror or to call for new bids and may proceed to act accordingly.

**EXHIBIT A**  
**Road Improvement Refunding Revenue Bonds, Series 1993**

- Refund maturities 2004 through 2008 of the outstanding \$4,910,000 Road Improvement Refunding Revenue Bonds, Series 1993 ("Series 1993 Bonds")
- The Series 1993 Bonds maturing on or before October 1, 2003 are not subject to optional redemption by the County. The Series 1993 Bonds maturing on October 1, 2004 and on each October 1 thereafter may be redeemed prior to their respective maturities on or after October 1, 2003 at the option of the County, in whole at any time or in part on any Interest Date, at redemption prices together with accrued interest to the redemption date.

**Redemption Period**

**Redemption Price**

October 1, 2003 through September 30, 2004	101%
October 1, 2004 through September 30, 2005	100.5%
October 1, 2005 and thereafter	100%

- The note will be secured by a prior lien upon and an irrevocable pledge of the Ninth-Cent Gas Tax.

**EXHIBIT B**

**PROPOSAL OF WACHOVIA BANK, N.A.**

Wachovia Bank, N.A.  
Government Services Group  
FL6005  
1950 West Hillsboro Boulevard  
Deerfield Beach, FL 33442

**WACHOVIA**

October 9, 2003

Mr. Jim Lewin  
Fiscal Research Director  
Lee County  
2115 Second Street  
Fort Myers, FL 33901

Dear Mr. Lewin:

Wachovia Bank, National Association (the "Bank") is pleased to submit the Commitment described below to Lee County (the "County") subject to the following terms and conditions.

**Borrower:** Lee County, Florida (the "County")

**Amount:** Not to exceed \$5,100,000.00

**Facility:** Term Loan

**Purpose:** To provide funds to refund the maturities 2004 through 2008 of the outstanding Road Improvement Refunding Revenue Bonds, Series 1993.

**Term:** To mature on October 1, 2008. Interest will be due and payable semi-annually of each year commencing April 1, 2004. Principal payments will be payable annually based on a five-year amortization commencing October 1, 2004 and each October 1<sup>st</sup> thereafter until maturity. Interest on the outstanding balance of the loan will be calculated on a 30/360-day basis.

**Security:** The Loan will be secured by a senior lien on the Ninth-Cent Gas Tax ("Pledged Revenues").

**Interest Rate:** NOTE: The County must indicate closing date and interest option selected at the time of acceptance.

**Fixed:** 2.81% Non-Bank Qualified Indication Rate\*

Lee County Commitment Letter gas tax UPDATED 10-03.doc



\* The above fixed rate is an **indication** fixed rate based on current market conditions and subject to change. The Bank will set the rate three business days prior to closing and will be based upon the U.S. Dollar Swap Offering Rate in effect two business days prior to setting the final rate. The final rate will approximate 88.7% of the 5-year U.S. Dollar Swap Offering Rate minus 31 basis points. This rate may be prepaid in full at any time without penalty.

### Conditions

1. The County, by official action, shall approve entering into this commitment and the loan facility described herein.
2. In the event that the interest on any drawing under this Commitment is ever determined to be taxable for purposes of federal or state income taxation, or in the event that any or all of the interest on any drawing under this Commitment is deemed to be included in the gross income of the Bank for federal or state income taxation, or in the event the Bank is unable to deduct any other amounts as a result of purchasing or carrying any borrowings resultant from the Commitment, or in the event of a change in the marginal tax rate applicable to corporations or the alternative minimum tax rate or in the method prescribed by federal income tax laws for calculating the alternative minimum tax to which the Bank may be subject, or in the event of any action which would otherwise decrease the after tax or taxable equivalent yield to the Bank, the interest on this Commitment shall be subject to a full gross up modification, as determined by the Bank and its counsel. In no event, however, shall the interest rate on this Commitment exceed the maximum rate permitted by law.
3. For purposes of calculating maximum annual debt service or annual debt service, all variable rate borrowings secured by the Pledged Revenues shall be assumed to bear interest at the higher of 6% per annum or the actual interest rate borne by the variable rate debt for the month preceding the date of the calculation.
4. **Additional Bonds Test:** The County may not issue any additional senior lien debt secured by the Pledged Revenues. The County may not issue any additional parity debt secured by the Pledged Revenues unless the historic (for any consecutive twelve months out of the prior eighteen months), Pledged Revenues cover maximum annual debt service on all existing and prospective debt by **1.50x**.
5. This paragraph deleted in its entirety.
6. Legal opinions relating to this facility shall be prepared by the County's Bond

Counsel (which must be a firm listed in "The Bond Buyer's Municipal Marketplace", a/k/a the Red Book), and be in such form and content as are acceptable to the Bank and its counsel, all costs related to the review of these documents shall not exceed \$2,500. All costs relating to the preparation of documents and to otherwise complete this transaction shall be paid for by the County. Costs will include a fee to provide Escrow Agent services outlined in the previously submitted letter dated August 26, 2003. This cost will be paid by the Borrower. Documents shall be available for review at least 5 business days prior to closing.

7. The Bank will make the loan for its own account and not with the intent to distribute the loan or interests therein. However, the Bank may in the future enter into participation agreements or securitization transactions with respect to the loan. No transfer restrictions will apply to the loan. If requested, the Bank will deliver an appropriate investor letter at closing.
8. On an ongoing basis, the County agrees that it shall deliver to the Bank, when available, or within 210 days of each fiscal year end, whichever is sooner, a Comprehensive Annual Financial Report, a Current Year Operating Budget as soon as it is completed and a Capital Improvement Plan and any other such information as reasonably requested by Bank.
9. This Commitment shall remain in full force and effect through 3:00 p.m., local time, October 31, 2003, at which time, if not accepted by execution of the acceptance clause below and mailed to the Bank at its 5801 Pelican Bay Blvd., Naples, Florida 34108, office to my attention, this Commitment shall expire and shall not be enforceable by either the Bank or the County unless extended by the Bank in writing. Unless extended by the Bank in writing, this facility must close on or prior to October 31, 2003 after which this commitment shall expire.
10. If the Bank chooses to waive any covenant, paragraph, or provision of this Commitment, or if any covenant, paragraph, or provision of this Commitment is construed by a court of competent jurisdiction to be invalid, it shall not affect the applicability, validity or enforceability of the remaining covenants, paragraphs or provisions.
11. The preceding terms and conditions are not exhaustive. Any final commitment may include other covenants, terms and closing conditions as are customarily required by the Bank for similar transactions including but not limited to covenants relating to, a Cross Default with like secured debt, Default Rate of Prime + 3.0%, Events of Default, and a Late Payment Rate of the Note Rate + 3.0%. This Commitment Letter shall not survive closing.
12. The County represents and agrees that all information provided to the Bank is correct and complete. No material adverse change may occur in, nor may any adverse circumstance be discovered as to, the financial condition of the County

prior to closing. The Bank's obligations under this Commitment are conditioned on the fulfillment to the Bank's sole satisfaction of each term and condition referenced by this Commitment.

- 13. This Commitment supersedes all prior Commitments and proposals with respect to this transaction, whether written or oral, including any previous loan proposals made by the Bank or anyone acting within its authorization. No modification shall be valid unless in writing and signed by an authorized Officer of the Bank. This Commitment is not assignable and no entity other than the County shall be entitled to rely on this Commitment.

Wachovia Bank, National Association appreciates the opportunity to submit this Commitment to you and looks forward to your favorable response. Should you have any questions, please do not hesitate to contact me at (800) 562-9272.

Best Regards,

WACHOVIA BANK, NATIONAL ASSOCIATION

Scott Kreiger  
Vice President

**ACCEPTANCE**

The above Commitment is hereby accepted on the terms and conditions outlined therein by authority of the Governing Board of the **County**:

Closing Date: \_\_\_\_\_

By: \_\_\_\_\_ Date: \_\_\_\_\_

Its:

Wachovia Corporate Trust Group  
225 Water Street, 3<sup>rd</sup> Floor  
Jacksonville, FL 32202

Tel: 904 489-5580  
Fax: 904 489-5410



August 26, 2003

**WACHOVIA**

RE: Lee County  
Defeasance Escrow Agent Services

Dear Sirs,

Thank you for your interest in the Corporate Trust Services of Wachovia Bank, N.A. On behalf of Wachovia Bank, I am very pleased to have the opportunity to submit our proposal to serve as Defeasance Escrow Agent on the above referenced transaction.

We welcome the opportunity to provide these services and look forward to demonstrating our unique skills in the acceptance and administration of this account. Should we receive this appointment, John Stephens (904.489.5914) from our Jacksonville office will be the officer assigned to the day-to-day management of this account.

Wachovia Bank, N.A. is committed to the best service delivery possible and we believe in quality customer service. We have dedicated people in our administrative offices and want to do business with you. If you have any questions regarding our fees or our role as Defeasance Escrow Agent please do not hesitate to contact me. Thank you for your consideration.

Sincerely,

*Robert Buker III*

Robert Buker III  
Vice President  
Wachovia Corporate Trust

**Fee Proposal  
For  
Defeasance Escrow Agent Services  
Lee County**

Page 2

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Name of Firm	Wachovia Bank, N.A.		
Contact	Robert Buker		
Phone Number	(904) 489-5580	Fax:	(904) 489-5410

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**Fee Proposal**

*Escrow Agent Fee* \$500

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Out-of-pocket expenses incurred in rendering any service covered by this schedule are in addition to the fee quoted. Expenses for which Wachovia Bank, N.A. is normally reimbursed include, but are not limited to, counsel fees, travel expenses, publications, printing costs, postage, and courier charges.

*If a default occurs, we will charge an hourly rate for performing extraordinary services in addition to the services covered by our Annual Escrow Agent fee. The hourly rates charged will be those which are published in the Fee Section of our Bond Administration Policy & Procedure Manual at the time the default occurs.*

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Acknowledged by: \_\_\_\_\_ Date: \_\_\_\_\_

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Location of office where services will be performed: Wachovia Bank, N.A.  
225 Water Street, 3<sup>rd</sup> Floor  
Jacksonville, Florida 32202

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*The fees quoted above are based solely on the information provided to Wachovia Bank, N.A. at the time of submission. If the parameters of this transaction change for any reason whatsoever, we reserve the right to re-bid our proposal. All new business proposals are subject to approval by Wachovia's New Business Acceptance Committee*

**SWORN STATEMENT PURSUANT TO SECTION 287.133(3)(a),  
FLORIDA STATUTES, ON PUBLIC ENTITY CRIMES**

THIS FORM MUST BE SIGNED AND SWORN TO IN THE PRESENCE OF A NOTARY PUBLIC OR OTHER OFFICIAL AUTHORIZED TO ADMINISTER OATHS.

1. This sworn statement is submitted to Lee County, Florida by Scott D. Kreiger for Wachovia Bank, N.A. whose business address is 5801 Pelican Bay Boulevard, Naples, FL 34108 and (if applicable) its Federal Employer Identification Number (FEIN) is 22-1147033.
2. I understand that a "public entity crime" as defined in Paragraph 287.133(1)(g), Florida Statutes, means a violation of any state or federal law by a person with respect to and directly related to the transaction of business with any public entity or with an agency or political subdivision of any other state or of the United States, including, but not limited to, any bid or contract for goods or services to be provided to any public entity or an agency or political subdivision of any other state or of the United States and involving antitrust, fraud, theft, bribery, collusion, racketeering, conspiracy, or material misrepresentation.
3. I understand that "convicted" or "conviction" as defined in Paragraph 287.133(1)(b), Florida Statutes, means a finding of guilt or a conviction of a public entity crime, with or without an adjudication of guilt, in any federal or state trial court of recording relating to charges brought by indictment or information after July 1, 1989, as a result of a jury verdict, non-jury trial, or entry of a plea of guilty or nolo contendere.
4. I understand that an "affiliate" as defined in Paragraph 287.133(1)(a), Florida Statutes, means:
  1. A predecessor or successor of a person convicted of a public entity crime;  
or
  2. An entity under the control of any natural person who is active in the management of the entity and who has been convicted of a public entity crime. The term "affiliate" includes those officers, directors, executives, partners, shareholders, employees, members, and agents who are active in the management of an affiliate. The ownership by one person of shares constituting a controlling interest in another person, or a pooling of equipment or income among persons when not for fair market value under an arm's length agreement, shall be a prima facie case that one person controls another person. A person who knowingly enters into a joint venture with a person who has been convicted of a public entity crime in Florida during the preceding 36 months shall be considered an affiliate.

5. I understand that a "person" as defined in Paragraph 287.133(1)(e), Florida Statutes, means any natural person or entity organized under the laws of any state or of the United States with the legal power to enter into a binding contract and which bids or applies to bid on contracts for the provisions of goods or services let by a public entity, or which otherwise transacts or applies to transact business with which otherwise transacts or applies transact business with a public entity. The term "person" includes those officers, directors, executives, partners, shareholders, employees, members, and agents who are active in management of an entity.


6. Based on information and belief, the following statement which I have marked below is true in relation to the entity submitting this sworn statement: (indicate which statement applies)

X  Neither the entity submitting this sworn statement, nor any officers, directors, executives, partners, shareholders, employees, members, or agents who are active in management of the entity, nor any affiliate of the entity has been charged with and convicted of a public entity crime subsequent to July 1, 1989.

     The entity submitting this sworn statement, or one or more of its officers, directors, executives, partners, shareholders, employees, members, or agents who are active in management of the entity, or any affiliate of the entity has been charged with and convicted of a public entity crime subsequent to July 1, 1989.

     The entity submitting this sworn statement, or one or more of its officers, directors, executives, partners, shareholders, employees, members, or agents who are active in management of the entity, nor any affiliate of the entity has been charged with and convicted of a public entity crime subsequent to July 1, 1989. However, there has been a subsequent proceeding before a Hearing Officer of the State of Florida, Division of Administrative Hearings and the Final Order entered by the Hearing Officer determined that it was not in the public interest to place the entity submitting this sworn statement on the convicted vendor list.

I UNDERSTAND THAT THE SUBMISSION OF THIS FORM TO THE CONTRACTING OFFICER FOR THE PUBLIC ENTITY IDENTIFIED IN PARAGRAPH 1 (ONE) ABOVE IS FOR THAT PUBLIC ENTITY ONLY AND, THAT THIS FORM IS VALID THROUGH DECEMBER 31 OF THE CALENDAR YEAR IN WHICH IT IS FILED. I ALSO UNDERSTAND THAT I AM REQUIRED TO INFORM THE PUBLIC ENTITY PRIOR TO ENTERING INTO A CONTRACT IN EXCESS OF THE THRESHOLD AMOUNT PROVIDED IN SECTION 287.017, FLORIDA STATUTES FOR CATEGORY TWO OF ANY CHANGE IN THE INFORMATION CONTAINED IN THIS FORM.

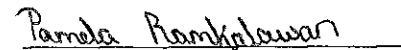
  
Scott D. Kreiger  
August 26, 2003

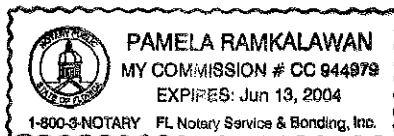
STATE OF FLORIDA  
COUNTY OF Broward

PERSONALLY APPEARED BEFORE ME, the undersigned authority, Scott D. Kreiger, personally known to me, affixed his signature in the space provided above on this 26<sup>th</sup> day of August, 2003.

My commission expires:

NOTARY PUBLIC







**EXHIBIT C**

**DISCLOSURE LETTER AND  
TRUTH-IN-BONDING STATEMENT  
OF WACHOVIA BANK, N.A.**

**WACHOVIA BANK, NATIONAL ASSOCIATION  
DISCLOSURE LETTER  
AND  
TRUTH-IN-BONDING STATEMENT**

October 21, 2003

Board of County Commissioners of  
Lee County, Florida  
Fort Myers, Florida

Board Members:

In connection with the purchase of the Lee County, Florida Road Improvement Refunding Revenue Bond, Series 2003 (the "Series 2003 Bond") authorized to be issued by Resolution No. 90-06-32 of the Board of County Commissioners of Lee County, Florida (the "Issuer") adopted on June 27, 1990, as amended and supplemented, particularly as amended and supplemented by a resolution of the Issuer adopted on October 21, 2003 (collectively, the "Resolution"), the undersigned purchaser of the Series 2003 Bond (the "Original Purchaser"), hereby acknowledges and represents that (1) the Original Purchaser is familiar with the Issuer; (2) the Original Purchaser has been furnished certain business and financial information about the Issuer; (3) the Issuer has made available to the Original Purchaser the opportunity to obtain additional information and to evaluate the merits and risks of an investment in the Series 2003 Bond; and (4) the Original Purchaser has had the opportunity to ask questions of and receive answers from representatives of the Issuer concerning the terms and conditions of the offering and the information supplied to the Original Purchaser.

The Original Purchaser acknowledges and represents that it has been advised that the Series 2003 Bond has not been registered under the Securities Act of 1933, as amended, in reliance upon the exemption contained in Section 3(a)(2) thereof, and that the Issuer is not presently registered under Section 12 of the Securities and Exchange Act of 1934, as amended. The Original Purchaser, therefore, realizes that if and when the Original Purchaser wishes to resell the Series 2003 Bond there may not be available current business and financial information about the Issuer. Further, no trading market now exists for the Series 2003 Bond. Accordingly, the Original Purchaser understands that it may need to bear the risks of this investment for an indefinite time, since any sale prior to the maturity of the Series 2003 Bond may not be possible or may be at a price below that which the Original Purchaser is paying for the Series 2003 Bond.

It is understood that the Original Purchaser has undertaken to verify the accuracy, completeness and truth of any statements made concerning any of the material facts relating to

this transaction, including information regarding the business and financial condition of the Issuer. The Original Purchaser has conducted its own investigation to the extent it deemed necessary. The Original Purchaser has been offered an opportunity to have made available to it any and all such information it might request from the Issuer. On this basis, it is agreed by acknowledgment of this letter that the Original Purchaser hereto is not relying on any other party or person (other than the Issuer) to undertake the furnishing or verification of information relating to this transaction.

The Original Purchaser acknowledges that the Series 2003 Bond is being purchased as part of a private placement of the Series 2003 Bond negotiated directly between the Issuer and representatives of the undersigned. Accordingly, no Official Statement or other disclosure document has been prepared in connection with the issuance of the Series 2003 Bond and we hereby acknowledge that we have made our own independent examination of all facts and circumstances surrounding the Series 2003 Bond and the financing and that no reliance has been placed on any findings by the Issuer in the Resolution as to the ability of the Issuer to meet its payment obligations so as to meet debt service on the Series 2003 Bond or any other representations by anyone other than the Issuer.

The Original Purchaser is purchasing the Series 2003 Bond for investment purposes only and not with any present intent to distribute or resell the Series 2003 Bond. The Original Purchaser hereby covenants that any such distribution or resale shall comply in all respects with the applicable securities laws.

The Original Purchaser further acknowledges and represents that (1) it is the only initial purchaser of the Series 2003 Bond, (2) it has such knowledge and experience in financial and business matters that it is capable of evaluating the merits and risks of the Series 2003 Bond, and (3) it is not purchasing the Series 2003 Bond for more than one account or with a view to distributing the Series 2003 Bond. The Original Purchaser acknowledges that the representations contained in this paragraph are being made in order to meet one of the exceptions to the continuing disclosure requirements set forth in Rule 15c2-12 promulgated under the Securities Exchange Act of 1934.

Pursuant to the provisions of Section 218.385, Florida Statutes, as amended, the Original Purchaser is providing the following information with respect to the purchase of the Series 2003 Bond. The Original Purchaser represents to you as follows:

- (a) The nature and estimated amounts of expenses to be incurred and paid by the Original Purchaser in connection with the issuance and sale of the Series 2003 Bond are: None
- (b) There are no "finders," as defined in Section 218.386, Florida Statutes, as amended, in connection with the issuance of the Series 2003 Bond.
- (c) No discount or fee is expected to be realized by the Original Purchaser in connection with the issuance of the Series 2003 Bond.

- (d) No management fee will be charged by the Original Purchaser in connection with the issuance of the Series 2003 Bond.
- (e) No other fee, bonus or other compensation will be paid by the Original Purchaser in connection with the issuance of the Series 2003 Bond to any person not regularly employed or retained by the Original Purchaser (including a "finder" as defined in Section 218.386, Florida Statutes).
- (f) The name and address of the Original Purchaser is:

Wachovia Bank, National Association  
225 Water Street, 3<sup>rd</sup> Floor  
Jacksonville, Florida 32202

- (g) The Issuer is proposing to issue the Series 2003 Bond for the principal purpose of refunding, on a current basis, certain outstanding obligations of the Issuer. The Series 2003 Bond is expected to be repaid over a period of approximately 4.92 years. Assuming a principal amount of the Series 2003 Bond equal to \$5,054,597 and an annual interest rate of 2.81%, total interest paid over the life of the Series 2003 Bond will be approximately \$800,652. The expected source of repayment for the Series 2003 Bond is the Pledged Funds (in accordance with, as limited by, and as such term is defined in the Resolution). Authorizing the Series 2003 Bond will result in an average of approximately \$1,095,300 such Pledged Funds being expended to pay debt service on the Series 2003 Bond each year and such amount will not be available to pay for other services of the Issuer.

Very truly yours,

**WACHOVIA BANK, NATIONAL ASSOCIATION**

By: \_\_\_\_\_  
Authorized Signatory

**EXHIBIT D**

**FORM OF ESCROW DEPOSIT AGREEMENT**

## ESCROW DEPOSIT AGREEMENT

**ESCROW DEPOSIT AGREEMENT**, dated as of October \_\_, 2003, by and between the **LEE COUNTY, FLORIDA**, a political subdivision of the State of Florida (the "County"), and **WACHOVIA BANK, NATIONAL ASSOCIATION** (the "Escrow Agent"), a national banking association organized and existing under the laws of the United States of America, having its designated corporate trust office in Jacksonville, Florida, as escrow agent hereunder.

**WHEREAS**, the County has heretofore issued its Lee County, Florida Road Improvement Refunding Revenue Bonds, Series 1993 (the "Series 1993 Bonds") pursuant to Resolution No. 90-06-32 adopted on June 27, 1990, as amended and supplemented (collectively, the "Resolution"); and

**WHEREAS**, the County has determined to exercise its option under the Resolution to refund, on a current basis, all of the Series 1993 Bonds (the "Refunded Bonds"); and

**WHEREAS**, the County has determined to issue its \$\_\_\_\_\_ aggregate principal amount of Lee County, Florida Road Improvement Refunding Revenue Bond, Series 2003 (the "Series 2003 Bond") pursuant to the Resolution, a portion of the proceeds of which Series 2003 Bond will be used to purchase certain investments in order to provide payment for the Refunded Bonds.

**NOW, THEREFORE**, in consideration of the foregoing and of the mutual covenants hereinafter set forth, the parties hereto agree as follows:

**SECTION 1. PREAMBLES.** The recitals stated above are true and correct and incorporated herein.

**SECTION 2. RECEIPT OF RESOLUTION.** Receipt of a true and correct copy of the above-mentioned Resolution and this Agreement is hereby acknowledged by the Escrow Agent. The applicable and necessary provisions of the Resolution, including but not limited to Article III thereto, are incorporated herein by reference. Reference herein to or citation herein of any provisions of the Resolution shall be deemed to incorporate the same as a part hereof in the same manner and with the same effect as if the same were fully set forth herein.

**SECTION 3. ESTABLISHMENT OF ESCROW FUND.** There is hereby created and established with the Escrow Agent a special, segregated and irrevocable escrow fund designated the "Lee County, Florida Road Improvement Refunding Revenue Bonds, Series 1993 Escrow Deposit Trust Fund" (the "Escrow Fund"). The Escrow Fund

shall be held in the custody of the Escrow Agent as a trust fund for the benefit of the holders of the Refunded Bonds, separate and apart from other funds and accounts of the County and the Escrow Agent. The Escrow Agent hereby accepts the Escrow Fund and acknowledges the receipt of and deposit to the credit of the Escrow Fund the sum of \$ \_\_\_\_\_ received from the County from proceeds of the Series 2003 Bond ("Bond Proceeds") and \$ \_\_\_\_\_ received from the County from other legally available moneys (the "County Moneys").

**SECTION 4. DEPOSIT OF MONEYS AND INVESTMENTS IN ESCROW FUND.** The County hereby directs and the Escrow Agent represents and acknowledges that, concurrently with the deposit of the Bond Proceeds under Section 3 above, it has used all of the Bond Proceeds and \$ \_\_\_\_\_ of the County Moneys to purchase on behalf of and for the account of the County certain investments (collectively, together with any other securities which may be on deposit, from time to time, in the Escrow Fund, the "Escrow Investments"), which are described in Schedule A hereto, and the Escrow Agent will deposit such Escrow Investments and \$ \_\_\_\_\_ in cash (the "Cash Deposit") in the Escrow Fund.

In the event any of the Escrow Investments described in Schedule A hereto are not available for delivery on October \_\_, 2003, the Escrow Agent may, at the written direction of the County and with the approval of Bond Counsel and Wachovia Bank, National Association, as the initial purchaser of the Series 2003 Bond (the "Bank"), substitute other investments and shall credit such other obligations to the Escrow Fund and hold such obligations until the aforementioned Escrow Investments have been delivered. The Escrow Agent shall in no manner be responsible or liable for failure or delay of Bond Counsel or the County to promptly approve the substitutions of other United States Treasury obligations for the Escrow Fund.

**SECTION 5. SUFFICIENCY OF ESCROW INVESTMENTS AND THE CASH DEPOSIT.** The County represents that the Cash Deposit and the interest on and the principal amounts successively maturing on the Escrow Investments in accordance with their terms (without consideration of any reinvestment of such maturing principal and interest) are sufficient such that moneys will be available to the Escrow Agent in amounts sufficient and at the times required to pay the amounts of principal of, redemption premium, if any, and interest due and to become due on the Refunded Bonds as described in Schedule B attached hereto. If the Escrow Investments and the Cash Deposit shall be insufficient to make such payments, the County shall timely deposit to the Escrow Fund, solely from legally available funds of the County, such additional amounts as may be required to pay the Refunded Bonds as described in Schedule B hereto. Notice of any insufficiency shall be given by the Escrow Agent to the County as promptly as possible, but the Escrow Agent shall in no manner be responsible for the County's failure to make such deposits.

**SECTION 6. ESCROW INVESTMENTS AND THE CASH DEPOSIT IN TRUST FOR HOLDERS OF REFUNDED BONDS.** The deposit of the Escrow Investments and the Cash Deposit in the Escrow Fund shall constitute an irrevocable deposit of investments and cash in trust solely for the payment of the principal of, redemption premium, if any, and interest on the Refunded Bonds at such times and in such amounts as set forth in Schedule B hereto, and the principal of and interest earnings on such Escrow Investments and the Cash Deposit shall be used solely for such purpose.

**SECTION 7. ESCROW AGENT TO PAY REFUNDED BONDS FROM ESCROW FUND.** The County hereby directs, and the Escrow Agent hereby agrees, that it will take all actions required to be taken by it under the provisions of the Resolution referenced in this Agreement, including the timely transfer of money to the Paying Agent for the Refunded Bonds [(The Bank of New York Trust Company of Florida, N.A., as agent for The Bank of New York (successor by acquisition to NationsBank of Florida, N.A.))] as provided in the Resolution, in order to effectuate this Agreement and to pay the Refunded Bonds in the amounts and at the times provided in Schedule B hereto. The Escrow Investments and the Cash Deposit shall be used to pay the principal of, redemption premium, if any, and interest on the Refunded Bonds as the same may mature or be redeemed. If any payment date shall be a day on which either the Paying Agent for the Refunded Bonds or the Escrow Agent is not open for the acceptance or delivery of funds, then the Escrow Agent may make payment on the next business day. The liability of the Escrow Agent for the payment of the principal of, redemption premium, if any, and interest on the Refunded Bonds pursuant to this Agreement shall be limited to the application of the Escrow Investments and the Cash Deposit and the interest earnings thereon available for such purposes in the Escrow Fund.

**SECTION 8. REINVESTMENT OF MONEYS AND INVESTMENTS IN ESCROW FUND.** Moneys deposited in the Escrow Fund shall be invested only in the Escrow Investments listed in Schedule A hereto and the Cash Deposit and, except as provided in Section 5 hereof and this Section 9, neither the County nor the Escrow Agent shall otherwise invest or reinvest any moneys in the Escrow Fund.

Except as provided in Section 5 hereof and in this Section 9, the Escrow Agent may not sell or otherwise dispose of any or all of the Escrow Investments or the Cash Deposit in the Escrow Fund and reinvest the proceeds thereof in other securities or investments nor may it substitute securities or investments for any of the Escrow Investments, except upon written direction of the County and where, prior to any such reinvestment or substitution, the Escrow Agent has received from the County the following:

- (a) a written opinion of nationally recognized Bond Counsel to the effect that
  - (i) such investment will not cause the Refunded Bonds to be "arbitrage bonds" within the



meaning of Section 148 of the Internal Revenue Code, as amended, and the regulations promulgated thereunder or otherwise cause the interest on the Refunded Bonds to be included as gross income for purposes of federal income taxation, and (ii) such investment does not violate any provision of Florida law or of the Resolution; and

(b) written approval of the Bank.

The Escrow Fund shall continue in effect until the date upon which the Escrow Agent makes the final payment to the Paying Agent for the Refunded Bonds in an amount sufficient to pay the Refunded Bonds as described in Schedule B hereto, whereupon the Escrow Agent shall sell or redeem any Escrow Investments remaining in the Escrow Fund, and shall remit to the County the proceeds thereof, together with all other money, if any, then remaining in the Escrow Fund.

**SECTION 9. REDEMPTION OF REFUNDED BONDS.** The County hereby irrevocably instructs the Escrow Agent to direct, on behalf of the Issuer, that the Registrar for the Refunded Bonds [(The Bank of New York Trust Company of Florida, N.A., as agent for The Bank of New York (successor by acquisition to NationsBank of Florida, N.A.))], give at the appropriate times the notice or notices, if any, required by the Resolution in connection with the redemption of the Refunded Bonds. Such notice of redemption shall be given by the Registrar for such Refunded Bonds in accordance with the Resolution. The Refunded Bonds shall be redeemed on \_\_\_\_\_, 2003 at a redemption price equal to 101% of the principal amount thereof, plus accrued interest to the redemption date.

**SECTION 10. ESCROW FUND IRREVOCABLE.** The Escrow Fund hereby created shall be irrevocable and the holders of the Refunded Bonds shall have an express lien on all Escrow Investments and the Cash Deposit deposited in the Escrow Fund pursuant to the terms hereof and the interest earnings thereon until paid out, used and applied in accordance with this Agreement and the Resolution. Neither the County nor the Escrow Agent shall cause nor permit any other lien or interest whatsoever to be imposed upon the Escrow Fund.

**SECTION 11. AMENDMENTS TO AGREEMENT.** This Agreement is made for the benefit of the County, the Bank and the holders from time to time of the Refunded Bonds and it shall not be repealed, revoked, altered or amended without the written consent of all such holders, the Bank and the written consent of the Escrow Agent; provided, however, that the County and the Escrow Agent may, without the consent of, or notice to, such holders (but with the consent of the Bank), enter into such agreements supplemental to this Agreement as shall not adversely affect the rights of such holders and as shall not be inconsistent with the terms and provisions of this Agreement, for any one or more of the following purposes:

- (a) to cure any ambiguity or formal defect or omission in this Agreement;
- (b) to grant, or confer upon, the Escrow Agent for the benefit of the holders of the Refunded Bonds, any additional rights, remedies, powers or authority that may lawfully be granted to, or conferred upon, such holders or the Escrow Agent; and
- (c) to subject to this Agreement additional funds, securities or properties.

The Escrow Agent shall be entitled to rely exclusively upon an unqualified opinion of nationally recognized Bond Counsel with respect to compliance with this Section 11, including the extent, if any, to which any change, modification or addition affects the rights of the holders of the Refunded Bonds, or that any instrument executed hereunder complies with the conditions and provisions of this Section 11.

**SECTION 12. FEES AND EXPENSES OF ESCROW AGENT; INDEMNIFICATION.** In consideration of the services rendered by the Escrow Agent under this Agreement, the County agrees to and shall pay to the Escrow Agent a fee in the amount of [\$500.00]. The Escrow Agent shall have no lien whatsoever upon any of the Escrow Investments in said Escrow Fund for the payment of such proper fees and expenses. The County further agrees to indemnify and save the Escrow Agent harmless, to the extent allowed by law, against any liabilities which it may incur in the exercise and performance of its powers and duties hereunder, and which are not due to its negligence or misconduct. Indemnification provided under this Section 12 shall survive the termination of this Agreement.

Whenever the Escrow Agent shall deem it necessary or desirable that a matter be proved or established prior to taking, suffering or omitting any action under this Agreement, such matter may be deemed to be conclusively established by a certificate signed by an authorized officer of the County. The Escrow Agent may conclusively rely, as to the correctness of statements, conclusions and opinions therein, upon any certificate, report, opinion or other document furnished to the Escrow Agent pursuant to any provision of this Agreement; the Escrow Agent shall be protected and shall not be liable for acting or proceeding, in good faith, upon such reliance; and the Escrow Agent shall be under no duty to make any investigation or inquiry as to any statements contained or matters referred to in any such instrument. The Escrow Agent may consult with counsel, who may be counsel to the County or independent counsel, with regard to legal questions, and the opinion of such counsel shall be full and complete authorization and protection in respect of any action taken or suffered by it hereunder in good faith in accordance herewith. Prior to retaining such independent counsel, the Escrow Agent shall notify the County of its intention.

The Escrow Agent and its successors, agents and servants shall not be held to any personal liability whatsoever, in tort, contract or otherwise, by reason of the execution and delivery of this Agreement, the establishment of the Escrow Fund, the acceptance and disposition of the various moneys and funds described herein, the purchase, retention or payment, transfer or other application of funds or securities by the Escrow Agent in accordance with the provisions of this Agreement or any nonnegligent act, omission or error of the Escrow Agent made in good faith in the conduct of its duties. The Escrow Agent shall, however, be liable to the County and to holders of the Refunded Bonds to the extent of their respective damages for negligent or willful acts, omissions or errors of the Escrow Agent which violate or fail to comply with the terms of this Agreement. The duties and obligations of the Escrow Agent shall be determined by the express provisions of this Agreement.

**SECTION 13. REPORTING REQUIREMENTS OF ESCROW AGENT.**

As soon as practicable after \_\_\_\_\_, 2003, the Escrow Agent shall forward in writing to the County a statement in detail of the activity of the Escrow Fund.

**SECTION 14. RESIGNATION OR REMOVAL OF ESCROW AGENT.**

The Escrow Agent, at the time acting hereunder, may at any time resign and be discharged from the duties and obligations hereby created by giving not less than 20 days' written notice to the County and mailing notice thereof, specifying the date when such resignation will take effect to the holders of all Refunded Bonds then outstanding, but no such resignation shall take effect unless a successor Escrow Agent shall have been appointed by the holders of a majority in aggregate principal amount of the Refunded Bonds then outstanding or by the County as hereinafter provided and such successor Escrow Agent shall have accepted such appointment, in which event such resignation shall take effect immediately upon the appointment and acceptance of a successor Escrow Agent.

The Escrow Agent may be replaced at any time by an instrument or concurrent instruments in writing, delivered to the Escrow Agent and signed by either the County or the holders of a majority in aggregate principal amount of the Refunded Bonds then outstanding. Such instrument shall provide for the appointment of a successor Escrow Agent, which appointment shall occur simultaneously with the removal of the Escrow Agent.

In the event the Escrow Agent hereunder shall resign or be removed, or be dissolved, or shall be in the course of dissolution or liquidation, or otherwise become incapable of acting hereunder, or in case the Escrow Agent shall be taken under the control of any public officer or officers, or of a receiver appointed by a court, a successor may be appointed by the holders of a majority in aggregate principal amount of the Refunded Bonds then outstanding by an instrument or concurrent instruments in writing,

signed by such holders, or by their attorneys in fact, duly authorized in writing; provided, nevertheless, that in any such event, the County shall appoint a temporary Escrow Agent to fill such vacancy until a successor Escrow Agent shall be appointed by the holders of a majority in aggregate principal amount of the Refunded Bonds then outstanding in the manner above provided, and any such temporary Escrow Agent so appointed by the County shall immediately and without further act be superseded by the Escrow Agent so appointed by such holders. The County shall mail notice of any such appointment made by it at the times and in the manner described in the first paragraph of this Section 14.

In the event that no appointment of a successor Escrow Agent or a temporary successor Escrow Agent shall have been made by such holders or the County pursuant to the foregoing provisions of this Section 14 within 20 days after written notice of resignation of the Escrow Agent has been given to the County, the holder of any of the Refunded Bonds or any retiring Escrow Agent may apply to any court of competent jurisdiction for the appointment of a successor Escrow Agent, and such court may thereupon, after such notice, if any, as it shall deem proper, appoint a successor Escrow Agent.

In the event of replacement or resignation of the Escrow Agent, the Escrow Agent shall remit to the County the prorated portion of prepaid fees not yet incurred or payable, less any termination fees and expenses at the time of discharge, and shall have no further liability hereunder and the County shall indemnify and hold harmless the Escrow Agent, to the extent allowed by law, from any such liability, including costs or expenses incurred by the Escrow Agent or its counsel.

No successor Escrow Agent shall be appointed unless such successor Escrow Agent shall be a corporation with trust powers organized under the banking laws of the United States or any State, and shall have at the time of appointment capital and surplus of not less than \$30,000,000.

Every successor Escrow Agent appointed hereunder shall execute, acknowledge and deliver to its predecessor and to the County an instrument in writing accepting such appointment hereunder and thereupon such successor Escrow Agent, without any further act, deed or conveyance, shall become fully vested with all the rights, immunities, powers, trusts, duties and obligations of its predecessor; but such predecessor shall nevertheless, on the written request of such successor Escrow Agent or the County execute and deliver an instrument transferring to such successor Escrow Agent all the estates, properties, rights, powers and trust of such predecessor hereunder; and every predecessor Escrow Agent shall deliver all securities and moneys held by it to its successor; provided, however, that before any such delivery is required to be made, all fees, advances and expenses of the retiring or removed Escrow Agent shall be paid in full. Should any transfer, assignment or instrument in writing from the County be

required by any successor Escrow Agent for more fully and certainly vesting in such successor Escrow Agent the estates, rights, powers and duties hereby vested or intended to be vested in the predecessor Escrow Agent, any such transfer, assignment and instruments in writing shall, on request, be executed, acknowledged and delivered by the County.

Any corporation into which the Escrow Agent, or any successor to it in the trusts created by this Agreement, may be merged or converted or with which it or any successor to it may be consolidated, or any corporation resulting from any merger, conversion, consolidation or tax-free reorganization to which the Escrow Agent or any successor to it shall be a party shall be the successor Escrow Agent under this Agreement without the execution or filing of any paper or any other act on the part of any of the parties hereto, anything herein to the contrary notwithstanding.

**SECTION 15. TERMINATION OF AGREEMENT.** This Agreement shall terminate when all transfers and payments required to be made by the Escrow Agent under the provisions hereof shall have been made. Upon such termination, all moneys remaining in the Escrow Fund shall be released to the County and shall be used by the County to pay interest on the Series 2003 Bond.

**SECTION 16. GOVERNING LAW.** This Agreement shall be governed by the applicable laws of the State of Florida.

**SECTION 17. SEVERABILITY.** If any one or more of the covenants or agreements provided in this Agreement on the part of the County or the Escrow Agent to be performed should be determined by a court of competent jurisdiction to be contrary to law, such covenant or agreement shall be deemed and construed to be severable from the remaining covenants and agreements herein contained and shall in no way affect the validity of the remaining provisions of this Agreement.

**SECTION 18. COUNTERPARTS.** This Agreement may be executed in several counterparts, all or any of which shall be regarded for all purposes as one original and shall constitute and be but one and the same instrument.

**SECTION 19. NOTICES.** Any notice, authorization, request or demand required or permitted to be given in accordance with the terms of this Agreement shall be in writing and sent by registered or certified mail addressed to:

Wachovia Bank, National Association  
225 Water Street, 3<sup>rd</sup> Floor  
Jacksonville, Florida 32202  
Attention: Corporate Trust Department

Lee County, Florida  
2115 Second Street  
Fort Myers, Florida 33901  
Attention: Fiscal Resources Manager

IN WITNESS WHEREOF, the parties hereto have each caused this Escrow Deposit Agreement to be executed by their duly authorized officers and appointed officials and their seals to be hereunder affixed and attested as of the date first written herein.

**LEE COUNTY, FLORIDA**

(SEAL)

\_\_\_\_\_  
Chairman

ATTEST:

\_\_\_\_\_  
Clerk

**WACHOVIA BANK, NATIONAL  
ASSOCIATION, as Escrow Agent**

(SEAL)

By: \_\_\_\_\_  
Authorized Signatory

**SCHEDULE A**

**ESCROW INVESTMENTS**

**SCHEDULE B**

**DEBT SERVICE REQUIREMENTS FOR REFUNDED BONDS**

<u>Payment Date</u>	<u>Principal Redeemed</u>	<u>Redemption Premium</u>	<u>Interest</u>	<u>Total</u>
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