

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

Blue Sheet No. 20031022

**1. REQUESTED MOTION:**

**ACTION REQUESTED:** Approve agreement with SunTrust Bank to provide paying agent and registrar services for the Gulf Environmental Services, Inc. (GES) Water and Sewer System Revenue Bonds, Series 1998 ("1998 Bonds") at an annual fee of \$500.

**WHY ACTION IS NECESSARY:** When Lee County acquired the GES system on 6/30/03 the existing paying agent and registrar agreement with SunTrust Bank for the 1998 Bonds was invalidated. The 1998 Bonds were advance refunded by the County on that date and a new agreement is needed so that paying agent and registrar services continue to be provided to bondholders.

**WHAT ACTION ACCOMPLISHES:** Continuation of paying agent and registrar services for the GES 1998 Bonds.

**2. DEPARTMENTAL CATEGORY:**

*CIA*

**3. MEETING DATE:**

*09-09-2003*

**4. AGENDA:**

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

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

- STATUTE
- ORDINANCE
- ADMIN. CODE
- OTHER

**6. REQUESTOR OF INFORMATION:**

- A. COMMISSIONER
- B. DEPARTMENT County Administration
- C. DIVISION

BY: Antonio Majul, Budget Director

*AM*

**7. BACKGROUND:** Water and Sewer Revenue Bonds were issued in 1998 ("1998 Bonds") by Gulf Environmental Services, Inc. (GES), to acquire the Gulf Utility Company water and wastewater assets. On 6/30/03 the 1998 Bonds were defeased with the issuance of the Lee County Water and Sewer Refunding Revenue Bonds, Series 2003A ("2003 Bonds") resulting in the acquisition of all GES assets by the County and the dissolution of GES as an entity. When the 1998 Bonds were issued, SunTrust Bank was engaged by GES as Trustee, Paying Agent, and Registrar of the bonds. That agreement was invalidated with the issuance of the 2003 Bonds. Because the 1998 Bonds were advance refunded and the final maturity will not be paid until 2020 paying agent and registrar services need to continue being provided to bondholders. A new paying agent and registrar agreement with SunTrust Bank has been negotiated and will provide continuing service to bondholders.

Funding is available in GE5360948767.507310.

**8. MANAGEMENT RECOMMENDATIONS:** Approve agreement with SunTrust Bank to continue to provide paying agent and registrar services for the GES Water and Sewer System Revenue Bonds, Series 1998.

**9. RECOMMENDED APPROVAL:** Approve continued services of SunTrust Bank for paying agent and registrar services.

A Department Director	B Purchasing or Contracts	C Human Resources	D Other	E County Attorney	F Budget Services				G County Manager
<i>Approved 8/26/03</i>	<i>N/A per CR 08-28-03</i>			<i>[Signature]</i>	OA	OM <i>8/27/03</i>	Risk <i>8/26/03</i>	GC <i>[Signature]</i>	<i>[Signature]</i> 8-26-03

**10. COMMISSION ACTION:**

- APPROVED
- DENIED
- DEFERRED
- OTHER

Rec. by CoAtty *T.D.*  
 Date: *8/26/03*  
 Time: *2:25 PM*  
 Forwarded To: *Budget*

RECEIVED BY *[Signature]*  
 COUNTY ADMIN. *8/26/03*  
 FORWARDED TO: COUNTY ADMIN.

*County Attorney*

## PAYING AGENT AND REGISTRAR AGREEMENT

This PAYING AGENT AND REGISTRAR AGREEMENT, dated as of June 30, 2003 (the "Agreement") by and between Lee County, Florida (the "Issuer"), and SunTrust Bank, a Georgia banking corporation, having a corporate trust office at 225 East Robinson Street, Suite 250, Orlando, Florida 32801 (the "Bank").

### WITNESSETH:

WHEREAS, Issuer has designated Bank as Paying Agent and Registrar for the Gulf Environmental Services, Inc. Water and Sewer System Revenue Bonds, Series 1998 (the "Bonds"); and

WHEREAS, Issuer and Bank desire to set forth Bank's duties as Paying Agent and Registrar, and the compensation to be paid to Bank for its services hereunder;

NOW, THEREFORE, it is agreed by the parties hereto as follows:

Section 1. **Duties.** Bank agrees to serve as Paying Agent and Registrar for the Bonds and to perform the duties of Paying Agent and Registrar as set forth hereunder. No implied duties or obligations shall be read into this Agreement against Bank.

Section 2. **Obligation to Act.** Bank shall be obligated to act only in accordance with any written instructions received in accordance herewith; provided, however, that Bank is authorized hereby to comply with any orders, judgments, or decrees of any court with or without jurisdiction and shall not be liable as a result of its compliance with the same.

Section 3. **Reliance by Bank.** Bank may rely absolutely upon the genuineness and authorization of the signature and purported signature of any party upon any instruction, notice, release, request, affidavit, or other document delivered to it.

Section 4. **Indemnity.** To the extent permitted by law, Issuer hereby assumes liability for, and hereby agrees (whether or not any of the transactions contemplated hereby are consummated) to indemnify, protect, save and keep harmless Bank and its respective successors, assigns, agents and servants, from and against any and all liabilities, obligations, losses, damages, penalties, claims, actions, suits, cost, expenses and disbursements (including legal fees and disbursements) of whatsoever kind and nature which may be imposed on, incurred by, or asserted against, at any time, Bank (whether or not also indemnified against the same by the Issuer or any other person under any other agreement or instrument) and in any way relating to or arising out of the execution and delivery of this Agreement, the deposit of funds with Bank hereunder, the acceptance and retention of funds by Bank hereunder, and any payment, transfer or other application of funds by Bank in accordance with the provisions of this Agreement; provided, however, that Issuer shall not be required to indemnify Bank against its own gross negligence or willful misconduct. In no event shall Issuer be liable to any person by

reason of the transactions contemplated hereby other than to Bank as set forth in this Section. The indemnities contained in this Section shall survive the termination of this Agreement.

Section 5. **Counsel; Limited Liability.** Bank may consult with counsel of its own choice and shall have sole and complete authorization and protection for any action taken or suffered by it in good faith and in accordance with the opinion of such counsel. Bank shall otherwise not be liable for any mistakes of fact or errors of judgment, or for any acts or omissions of any kind unless caused by its willful misconduct or negligence.

Section 6. **Fees and Expenses.** In consideration of the services rendered by Bank as Paying Agent and Registrar, Issuer agrees to and shall pay to Bank its proper fees (including extraordinary fees for extraordinary services) and all reasonable expenses, charges, attorneys fees, and other disbursements incurred by it or its attorneys, agents, and employees (including, without limitation, expenses associated with the transmittal or publication of any notices relating to redemption of the Bonds) in and about the performance of its powers and duties as Paying Agent and Registrar. Bank shall not be obligated to credit interest to Issuer, any bondholder or any other person upon any moneys held by Bank in respect of principal, interest or premium, if any, due in respect of the Bonds, which it shall at any time receive under this Agreement. The fees to be paid to Bank are outlined in Exhibit A. In the event the Bank shall resign or be removed as Paying Agent and Registrar, the Bank shall return to the Issuer any moneys which it has not earned for the current year.

Section 7. **Furnishing Information; Authorization.** Bank shall, at all times, when requested to do so by Issuer, furnish full and complete information pertaining to its functions as the Paying Agent and Registrar with regard to the Bonds, and shall without further authorization, execute all necessary and proper deposit slips, checks, certificates and other documents with reference thereto.

Section 8. **Cancellation; Termination.** Either of the parties hereto, at its option, may cancel this Agreement after giving thirty (30) days written notice to the other party of its intention to cancel, and this Agreement may be cancelled at any time by mutual consent of the parties hereto. This Agreement shall terminate without further action upon final payment of the Bonds and the interest appertaining thereto.

Section 9. **Surrender of Funds, Registration Record; Notification of Bondholders.** In the event of a cancellation of this Agreement, and subject to the provisions of Section 15 hereof, Issuer shall deliver any proper and necessary releases to Bank upon demand and Bank shall upon demand pay over the funds on deposit with Bank as Paying Agent and Registrar for the Bonds in connection with the Bonds and surrender all registration books and related records, and Issuer may appoint and name a successor to act as Paying Agent and Registrar for the Bonds. Issuer shall, in such event, at its expense, notify all holders of the Bonds of the appointment and name of the successor, by providing notice in the manner required for the redemption of the Bonds.

Section 10. **Nonassignability.** This Agreement shall not be assigned by either party without the written consent of the other party.

Section 11. **Modification.** No modification of this Agreement shall be valid unless made by a written agreement, executed and approved by the parties hereto.

Section 12. **Severability.** Should any section or part of any section of this Agreement be declared void, invalid, or unenforceable by any court of law for any reason, such determination shall not render void, invalid, or unenforceable any other section or other part of any section of this Agreement.

Section 13. **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 14. **Governing Law.** This Agreement shall be governed by and interpreted in accordance with the laws of the State of Florida.


Section 15. **Escheatment.** The Bank will escheat any money deposited with the Bank for the payment of the principal, redemption or premium, if any, or interest on any Bond as required by State law. Any unclaimed moneys provided for the payment of Bonds shall not be returned to the Issuer, but shall be disposed of in accordance with applicable law.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their duly authorized officers and their official seals to be hereunto affixed and attested as of the date first above written.

Lee County, Florida, as Issuer

SUNTRUST BANK, as Paying Agent and Registrar

By: \_\_\_\_\_  
Chairman

By:   
Marylou R. Frey  
Vice President

(Seal)



Attest:

By: \_\_\_\_\_  
Clerk

## **EXHIBIT A**

### **[Bonds]**

#### **Paying Agent and Registrar Fees**

Issuer shall pay Bank an annual fee of \$ 500.00 for services rendered as Paying Agent and Registrar hereunder.

Account Number	Account Description	Budget Amt	General Lr Variance	Budget Amt	General Lr Variance	Level Of I Posting	Edit Code
GE5369048767.507310	Other Debt Service Costs			1,504.00	1,504.00	5	
	Total Object Account 507310			1,504.00	1,504.00		