

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

Blue Sheet No. 20060060

1. ACTION REQUESTED/PURPOSE: Approve and authorize the Chairwoman's signature on an "Agreement of Resignation, Appointment and Acceptance" for trustee services on Lee County bonds. The Bank of New York ("BONY") is transferring its services from several internal corporate entities to a single entity.

2. WHAT ACTION ACCOMPLISHES: Provides continued trustee services for County bonds from the Bank of New York.

3. MANAGEMENT RECOMMENDATION: Approve and execute the Agreement with BONY for trustee services on County bonds.

4. Departmental Category: 12

C12A

5. Meeting Date:

02-07-2006

6. Agenda:

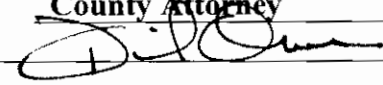
7. Requirement/Purpose: (specify)

8. Request Initiated: Clerk of Courts

- Consent
- Administrative
- Appeals
- Public
- Walk-On

- Statute
- Ordinance
- Admin. Code
- Other Agmt.

Commissioner _____
Department County Attorney
Division _____
By: David M. Owen
County Attorney



9. Background:

The Bank of New York ("BONY") recently (November, 2005) reorganized its Trust Departments and consolidated its trust services into one national company based in California. In order to maintain the integrity of the trustee services being provided, BONY has requested that the "Agreement of Resignation, Appointment and Acceptance" be executed by its clients as part of their and our audit trail for the change in companies providing their services as Trustee for Lee County bonds.

Recommend approval and execution of the Agreement (four (4) copies).

10. Review for Scheduling:

Department Director	Purchasing or Contracts	Human Resources	Other	County Attorney	Budget Services				County Manager/P.W. Director
				<i>[Signature]</i> 1/19/06	Analyst <i>[Signature]</i> 1/19/06	Risk <i>[Signature]</i> 1/19/06	Grants <i>[Signature]</i> 1/19/06	Med. <i>[Signature]</i> 1/19/06	<i>[Signature]</i> 1-17-06

11. Commission Action:

- Approved
- Deferred
- Denied
- Other

RECEIVED BY
 COUNTY ADMIN. *[Signature]*
 1-19-06
[Signature]
 COUNTY ADMIN
 FORWARDED TO:
 1-19-06
[Signature]

CO. ATTY
 FORWARDED
 TO CO. ADMIN.
 10:55 am

Securities Servicing

The Bank of New York
Trust Company, N.A.

10161 Centurion Parkway
2nd Floor
Jacksonville, FL 32256

December 20, 2005

Lee County, Florida
Attn: Marcia Simons
PO Box 2238
Fort Myers, FL 33902-2238



Re: Lee County, Florida Solid Waste System Revenue Bonds

Dear Marcia:

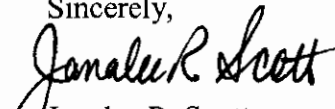
To further streamline services and enhance The Bank of New York's client support throughout the United States, The Bank of New York Company, Inc. has realigned its U.S. resources. Effective November, 1, 2004, the Company has consolidated multiple regional trust company subsidiaries into a single, nationally chartered trust entity named The Bank of New York Trust Company, N. A. (BNYTC).

To accomplish this consolidation, we are enclosing, in quadruplicate, an Agreement of Resignation, Appointment and Acceptance in connection with the transfer of your account from The Bank of New York, New York, to The Bank of New York Trust Company, National Association.

Please sign all four copies and return all four to me in the self-addressed envelope provided. After all parties have signed, I will forward one fully executed original to you for your files.

Thank you for your cooperation and prompt attention to this matter. If you have any questions, please feel free to contact me at 904-645-1914.

Sincerely,


Janalee R. Scott
Vice President

encl.

cc: MBIA Insurance Corporation

AGREEMENT OF RESIGNATION, APPOINTMENT AND ACCEPTANCE

This Agreement of Resignation, Appointment and Acceptance is made by and among that issuer or other person who is identified in Exhibit A attached hereto (the "Exhibit") as the "Issuer" (the "Issuer"), The Bank of New York, a banking corporation with trust powers duly organized and existing under the laws of the State of New York and having its principal corporate trust office at 101 Barclay Street, New York, NY 10286 (the "Bank) and The Bank of New York Trust Company, N.A., a [national banking association] duly organized and existing under the laws of the United States and having its principal office in Los Angeles, California ("BNYTC").

RECITALS:

WHEREAS, the Issuer and the Bank entered into one or more trust indentures, paying agency agreements, registrar agreements, or other relevant agreements as such are more particularly described in the Exhibit under the section entitled "Agreements" (individually and collectively referred to herein as the "Agreements") under which the Bank was appointed in the capacity or capacities identified in the Exhibit (individually and collectively the "Capacities");

WHEREAS, the Issuer desires to appoint BNYTC as the successor to the Bank in its Capacities under the Agreements; and

WHEREAS, BNYTC is willing to accept such appointment as the successor to the Bank in its Capacities under the Agreements.

NOW, THEREFORE, the Issuer, the Bank and BNYTC, for and in consideration of the premises and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, hereby consent and agree as follows:

ARTICLE I

THE BANK

SECTION 1.01. The Bank hereby resigns from its Capacities under the Agreements.

SECTION 1.02. The Bank hereby assigns, transfers, delivers and confirms to BNYTC all right, title and interest of the Bank in its Capacity(s) relating to the Agreements.

ARTICLE II

THE ISSUER

SECTION 2.01. The Issuer hereby accepts the resignation of the Bank from its Capacities under the Agreements.

SECTION 2.02. All conditions relating to the appointment of BNYTC as the successor to the Bank in its Capacities under the Agreements have been met by the Issuer, and the Issuer hereby appoints BNYTC to its Capacities under the Agreements with like effect as if originally named to such Capacities under the Agreements.

ARTICLE III

BNYTC

SECTION 3.01. BNYTC hereby represents and warrants to the Bank and to the Issuer that BNYTC is not disqualified to act in the Capacities under the Agreements.

SECTION 3.02. BNYTC hereby accepts its appointment to the Capacities under the Agreements and accepts and assumes the rights, powers, duties and obligations of the Bank under the Agreements, upon the terms and conditions set forth therein, with like effect as if originally named to such Capacities under the Agreements.

ARTICLE IV

MISCELLANEOUS

SECTION 4.01. This Agreement and the resignation, appointment and acceptance effected hereby shall be effective as of 12:01 A.M. local Los Angeles time on the Effective Date set forth in the Exhibit.

SECTION 4.02. This Agreement shall be governed by and construed in accordance with the laws of the State of Florida.

SECTION 4.03. This Agreement may be executed in any number of counterparts each of which shall be an original, but such counterparts shall together constitute but one and the same instrument.

SECTION 4.04. The persons signing this Agreement on behalf of the Issuer, BNYTC and the Bank are duly authorized to execute it on behalf of the each party, and each party warrants that it is authorized to execute this Agreement and to perform its duties hereunder.

SECTION 4.05. The Issuer represents that it is the type of entity as identified in the Exhibit and has been duly organized and is validly existing under the laws of the jurisdiction and with the principal office as identified in the Exhibit.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement of Resignation, Appointment and Acceptance to be duly executed and acknowledged all as of the day and year first above written.


Lee County, Florida

By: _____
Name:
Title:

MBIA Insurance Corporation

By: _____
Name:
Title:

The Bank of New York

By:  _____
Name:
Title: Vice President

**The Bank of New York Trust Company,
N.A.**

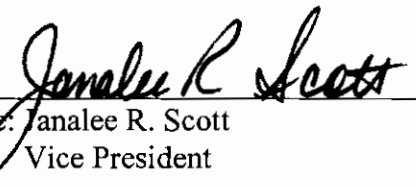
By:  _____
Name: Janalee R. Scott
Title: Vice President

EXHIBIT A

Issuer: Lee County, Florida

Effective Date:

Agreement(s):

<u>Name/Description of Transaction</u>	<u>TAS Account Numbers</u>	<u>Description of Relevant Agreement & Date</u>	<u>The Bank of New York's Capacity(s)</u>
Lee County, Florida Solid Waste System Revenue Bonds	211096 430334 430337 430340 430346 430397	Indenture of Trust June 15, 1991 Third Supplemental Indenture of Trust May 26, 1993 Fourth Supplemental Indenture of Trust November 1, 1995 Fifth Supplemental Indenture of Trust September 14, 1999 Sixth Supplemental Indenture of Trust October 15, 2001	Trustee/Registrar/Paying Agent and any other capacities pursuant to the Bond Documents

Owen, David M.

From: Marcia Simons [MSIMONS@leeclerk.org]
Sent: Thursday, January 12, 2006 4:27 PM
To: Owen, David M.
Subject: RE: Agreement of Resignation, Appointment and Acceptance

The Bank explained that the change is not exactly a consolidation or merger. BONY, the successor trustee, will remain as an entity in New York. The new trust entity, BNYTC, is a consolidation of other regional trust company subsidiaries. So BONY will be resigning and BNYTC will be appointed as the new trustee. Therefore, section 910 re: merger or consolidation is probably not the applicable section in the indenture; rather the sections on resignation (911 and 912) would be. The Bank wants to proceed with the formal agreement. Once the County signs the Bank will give notice to MBIA as required by the indenture. I'll go ahead and send the originals to you. Thanks.

From: Owen, David M. [mailto:OWEND@leegov.com]
Sent: Thursday, January 12, 2006 2:21 PM
To: Marcia Simons
Subject: RE: Agreement of Resignation, Appointment and Acceptance

Marcia, please call BONY and advise of Tom's opinion. Ask BONY how they would like to proceed. I'm OK going either way (do nothing or take the agreement to the Board).

From: Marcia Simons [mailto:MSIMONS@leeclerk.org]
Sent: Thursday, January 12, 2006 1:50 PM
To: Owen, David M.
Subject: FW: Agreement of Resignation, Appointment and Acceptance

I received your note about the agreement. I did give Tom Giblin a copy at the preclosing and he called me about it earlier today (before I had your note). He said he thought that under section 9.10 of the indenture an agreement was not necessary – that the new entity would succeed as trustee automatically upon the consolidation. So his suggestion was to sign the agreement only if Bank of New York gave a good reason to do so.

I'll go ahead and drop off the original agreements at your office later today. If you want me to call BONY or do nothing just let me know. Thank you.

From: Marcia Simons
Sent: Monday, January 09, 2006 12:59 PM
To: David Owen
Subject: RE: Agreement of Resignation, Appointment and Acceptance

Sounds good. I'll bring it this afternoon.

From: Owen, David M. [mailto:OWEND@leegov.com]
Sent: Monday, January 09, 2006 12:59 PM
To: Marcia Simons
Subject: RE: Agreement of Resignation, Appointment and Acceptance

Let's all review it. Thanks.

1/12/2006

From: Marcia Simons [mailto:MSIMONS@leeclerk.org]
Sent: Monday, January 09, 2006 12:42 PM
To: Owen, David M.
Subject: Agreement of Resignation, Appointment and Acceptance

The Bank of New York sent me the attached agreement re: our trustee agreement with them on the Solid Waste bonds. Apparently BONY is consolidating several regional trust companies into a single trust entity. I think that Ritesh Patel from Nabors, Giblin will be at the bond preclosing this afternoon. Would you like me to ask them to review this agreement or would you prefer to have your office do this? Thanks.

Marcia Simons
Lee County Clerk of Courts
Finance and Records Dept.
(239) 335-2948
(239) 335-2386 (fax)

Owen, David M.

From: Marcia Simons [MSIMONS@leeclerk.org]
Sent: Monday, January 09, 2006 12:42 PM
To: Owen, David M.
Subject: Agreement of Resignation, Appointment and Acceptance
Attachments: Bank of America Agreement.pdf

The Bank of New York sent me the attached agreement re: our trustee agreement with them on the Solid Waste bonds. Apparently BONY is consolidating several regional trust companies into a single trust entity. I think that Ritesh Patel from Nabors, Giblin will be at the bond preclosing this afternoon. Would you like me to ask them to review this agreement or would you prefer to have your office do this? Thanks.

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 Lee County Clerk of Courts
 Finance and Records Dept.
 (239) 335-2948
 (239) 335-2386 (fax)

10/11

MARCIA -
 The form of the Agreement
 is legally acceptable from
 my perspective.
 I think it would be best
 that the BoCC approve the
 Agreement at a return meeting.
 If you will give me the
 originals, I'll see that it
 gets done, unless Charlie
 thinks otherwise.
 Thanks.
 SAND

Securities Servicing

The Bank of New York
Trust Company, N.A.

10161 Centurion Parkway
2nd Floor
Jacksonville, FL 32256

December 20, 2005

Lee County, Florida
Attn: Marcia Simons
PO Box 2238
Fort Myers, FL 33902-2238



The **BANK**
of **NEW YORK**

Re: Lee County, Florida Solid Waste System Revenue Bonds

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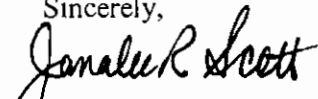
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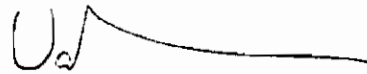
Lee County, Florida

By: _____
Name:
Title:

MBIA Insurance Corporation

By: _____
Name:
Title:

The Bank of New York

By:  _____
Name:
Title: Vice President

**The Bank of New York Trust Company,
N.A.**

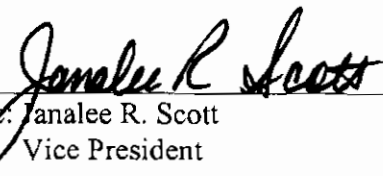
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