

**\$18,000,000**  
**LEE COUNTY, FLORIDA**  
**SIX CENTS LOCAL OPTION**  
**GAS TAX REVENUE BOND, SERIES 2010**

List of Closing Documents  
May 26, 2010

1. Certified copy of Ordinance No. 89-21, enacted by the County on June 21, 1989, authorizing the levy of the Six Cents Local Option Gas Tax.
2. Certified copy of Resolution No. 10-05-\_\_\_, adopted on May 18, 2010, authorizing the issuance of Six Cents Local Option Gas Tax Revenue Bonds from time to time and determining certain details of the Series 2010 Bond.
3. Request for Proposals.
4. Proposal of Banc of America Public Capital Corp.
5. Banc of America Public Capital Corp Disclosure Letter and Truth-in-Bonding Statement.
6. Incumbency Certificate.
7. Signature Certificate.
8. General Certificate of the County.
9. Certificate as to Arbitrage and Certain Other Tax Matters.
10. Certificate as to Specimen Bond.
11. Certificate of Delivery and Payment.
12. Cross Receipt.
13. Information Return to Internal Revenue Service.
14. Advance Notice of Bond Sale.
15. Division of Bond Finance Information Form.
16. Approving Opinion of Nabors, Giblin & Nickerson, P.A., Bond Counsel.
17. Reliance Letter of Nabors, Giblin & Nickerson, P.A., Bond Counsel.
18. Opinion of David M. Owen, Esq., County Attorney.
19. Final Numbers.

**CLERK'S CERTIFICATE AS TO ORDINANCE NO. 89-21**

I, Charlie Green, the undersigned Clerk of the Circuit Court of Lee County, Florida (the "County"), **DO HEREBY CERTIFY** that attached hereto is a copy of "AN ORDINANCE IMPOSING A LOCAL OPTION GAS TAX UPON EVERY GALLON OF MOTOR FUEL AND SPECIAL FUEL SOLD IN LEE COUNTY AND TAXED UNDER THE PROVISIONS OF CHAPTER 206, FLORIDA STATUTES; IMPOSING THE LOCAL OPTION GAS TAX AS AUTHORIZED BY SECTION 336.025, FLORIDA STATUTES; PROVIDING FOR THE IMPOSITION OF FOUR CENTS (4¢) LOCAL OPTION GAS TAX AND PROVIDING FOR THE LEVY OF TWO ADDITIONAL CENTS (2¢), BEING THE 5TH CENT AND 6TH CENT (6¢); PROVIDING FOR A TAX EFFECTIVE DATE OF SEPTEMBER 1, 1989, AND PERIOD; PROVIDING FOR THE REPEAL OF LEE COUNTY ORDINANCE 84-15 EFFECTIVE SEPTEMBER 1, 1989; PROVIDING FOR DISTRIBUTION BETWEEN LEE COUNTY AND MUNICIPALITIES LOCATED WITHIN LEE COUNTY; PROVIDING FOR SEVERABILITY AND AN EFFECTIVE DATE " enacted at a meeting of the Board of County Commissioners duly called and held on June 21, 1989, at which meeting a quorum was present and acting throughout, which ordinance has been compared by me with the original thereof as recorded in the Minute Book of said County and that said ordinance is a true, complete and correct copy thereof, and said ordinance has been duly enacted and has not been further modified, amended or repealed and is in full force and effect on and as of the date hereof in the form attached hereto.

**IN WITNESS WHEREOF**, I have hereunto set my hand and affixed the official seal of the County as of this 26th day of May, 2010.

(SEAL)

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Clerk of the Circuit Court of Lee County,  
Florida

**CLERK'S CERTIFICATE AS TO RESOLUTION NO. 10-05-\_\_**

I, Charlie Green, the undersigned Clerk of the Circuit Court of Lee County, Florida (the "County"), **DO HEREBY CERTIFY** that attached hereto is a copy of "A RESOLUTION OF THE BOARD OF COUNTY COMMISSIONERS OF LEE COUNTY, FLORIDA ACCEPTING THE PROPOSAL OF BANC OF AMERICA PUBLIC CAPITAL CORP TO PROVIDE THE COUNTY WITH A LOAN TO FINANCE THE COSTS OF CERTAIN TRANSPORTATION-RELATED CAPITAL IMPROVEMENTS WITHIN LEE COUNTY; AUTHORIZING THE ISSUANCE OF LEE COUNTY, FLORIDA SIX CENTS LOCAL OPTION GAS TAX REVENUE BOND, SERIES 2010 IN AN AGGREGATE PRINCIPAL AMOUNT NOT TO EXCEED \$18,000,000 TO BANC OF AMERICA PUBLIC CAPITAL CORP IN ORDER TO EVIDENCE SUCH LOAN; PLEDGING THE MONEYS RECEIVED BY THE COUNTY FROM THE LEVY OF THE HEREIN DESCRIBED SIX CENTS LOCAL OPTION GAS TAX TO SECURE PAYMENT OF THE PRINCIPAL OF, REDEMPTION PREMIUM, IF ANY, AND INTEREST ON SAID BOND; PROVIDING CERTAIN TERMS AND DETAILS OF SAID BOND, INCLUDING AUTHORIZING A NEGOTIATED SALE OF THE BOND TO BANC OF AMERICA PUBLIC CAPITAL CORP; DELEGATING CERTAIN AUTHORITY TO THE CHAIR OF THE BOARD OF COUNTY COMMISSIONERS AND OTHER OFFICERS OF THE COUNTY FOR THE AUTHORIZATION, EXECUTION AND DELIVERY OF THE BOND AND VARIOUS OTHER DOCUMENTS WITH RESPECT THERETO; PROVIDING FOR THE RIGHTS OF THE HOLDER OF SAID BOND; PROVIDING FOR THE ISSUANCE OF ADDITIONAL BONDS FROM TIME TO TIME; PROVIDING FOR CERTAIN ADDITIONAL MATTERS IN RESPECT TO SAID BOND; AND PROVIDING SEVERABILITY AND AN EFFECTIVE DATE" adopted at a meeting of the Board of County Commissioners duly called and held on May 18, 2010, at which meeting a quorum was present and acting throughout, which resolution has been compared by me with the original thereof as recorded in the Minute Book of said County and that said resolution is a true, complete and correct copy thereof, and said resolution has been duly adopted and has not been further modified, amended or repealed and is in full force and effect on and as of the date hereof in the form attached hereto.

**IN WITNESS WHEREOF**, I have hereunto set my hand and affixed the official seal of the County as of this 26th day of May, 2010.

(SEAL)

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Clerk of the Circuit Court of Lee County,  
Florida

**BANC OF AMERICA PUBLIC CAPITAL CORP  
DISCLOSURE LETTER  
AND  
TRUTH-IN-BONDING STATEMENT**

May 26, 2010

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

Commissioners:

In connection with the purchase of the \$18,000,000 aggregate principal amount of Lee County, Florida Six Cents Local Option Gas Tax Revenue Bond, Series 2010 (the "Series 2010 Bond") authorized to be issued by Resolution No. 10-05-\_\_ of Lee County, Florida (the "Issuer") adopted on May 18, 2010 (the "Resolution"), the undersigned purchaser of the Series 2010 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 2010 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 2010 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 2010 Bond there may not be available current business and financial information about the Issuer. Further, no trading market now exists for the Series 2010 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 2010 Bond may not be possible or may be at a price below that which the Original Purchaser is paying for the Series 2010 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 to undertake the furnishing or verification of information relating to this transaction.

The Original Purchaser acknowledges that the Series 2010 Bond is being purchased as part of a private placement of the Series 2010 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 2010 Bond and we hereby acknowledge that we have made our own independent examination of all facts and circumstances surrounding the Series 2010 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 2010 Bond or any other representations by anyone other than the Issuer.

The Original Purchaser is purchasing the Series 2010 Bond for investment purposes only and not with intent to distribute or resell the Series 2010 Bond. The Original Purchaser hereby covenants that prior to any distribution or resale of the Series 2010 Bond, it will comply with all applicable securities laws regarding such distribution or resale.

The Original Purchaser further acknowledges and represents that (1) it is the only initial purchaser of the Series 2010 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 2010 Bond, and (3) it is not purchasing the Series 2010 Bond for more than one account or with a view to distributing the Series 2010 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 2010 Bond. The Original Purchaser represents to you as follows:

- (a) The nature and estimated amounts of expenses to be incurred by the Original Purchaser in connection with the issuance and sale of the Series 2010 Bond are:

Foley & Lardner LLP (legal counsel)                      \$\_\_\_\_\_

- (b) There are no "finders," as defined in Section 218.386, Florida Statutes, as amended, in connection with the issuance of the Series 2010 Bond.

- (c) No discount or fee is expected to be realized by the Original Purchaser in connection with the issuance of the Series 2010 Bond.
- (d) No management fee will be charged by the Original Purchaser in connection with the issuance of the Series 2010 Bond.
- (e) No other fee, bonus or other compensation will be paid by the Original Purchaser in connection with the issuance of the Series 2010 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:

Banc of America Public Capital Corp  
Mail Code: VA2-300-18-02  
1111 East Main Street, 18th Floor  
Richmond, VA 23219-3500

- (g) The Issuer is proposing to issue \$18,000,000 in aggregate principal amount of the Series 2010 Bond for the principal purposes of financing the acquisition and construction of a new two-lane bascule bridge over the Matlacha Pass in Charlotte Harbor within the Issuer (the "Project"). The Series 2010 Bond is expected to be repaid over a period of approximately 3.4 years. At an interest rate of \_\_\_\_\_%, total interest paid over the life of the Series 2010 Bond will be approximately \$\_\_\_\_\_. The expected source of repayment for the Series 2010 Bond is certain Six Cents Local Option Gas Tax Revenues (as defined in the Resolution) of the Issuer. Making the foregoing assumptions, issuing the Series 2010 Bond will result in an average of approximately \$\_\_\_\_\_ (average annual debt service) of such Six Cents Local Option Gas Tax Revenues of the Issuer being expended to pay debt service on the Series 2010 Bond each year.

Very truly yours,

**BANC OF AMERICA PUBLIC CAPITAL  
CORP**

By: \_\_\_\_\_  
Charles Maguire, Senior Vice President

## INCUMBENCY CERTIFICATE

I, Charlie Green, Clerk of the Circuit Court of Lee County and Ex-Officio Clerk to the Board of County Commissioners of Lee County, Florida (the "County"), **DO HEREBY CERTIFY** as follows:

1. The following are now, and have continuously been since the dates of beginning of their respective current terms shown below, the duly elected, qualified and acting members of the Board of County Commissioners of Lee County, Florida (the "Board"), and the dates of the beginning and ending of their respective current terms are hereunder correctly designated opposite their names:

<u>Member</u>	<u>Beginning Date of Current Term</u>	<u>Ending Date of Current Term</u>
Brian Bigelow	November 2006	November 2010
Tammy Hall	November 2006	November 2010
Robert P. Janes*	November 2008	November 2012
Ray Judah	November 2008	November 2012
Frank Mann	November 2008	November 2012

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\*Mr. Janes passed away March 10, 2010 and the commission seat remains vacant at this time.

2. The following are now, and have continuously been since the dates of beginning of their respective current terms of office shown below, the duly elected or chosen (as the case may be), qualified and acting officers of the County and the dates of the beginning and ending of their respective current terms of office are hereunder correctly designated opposite their names:

<u>Office</u>	<u>Name</u>	<u>Beginning Date of Current Term</u>	<u>Ending Date of Current Term</u>
Chair	Tammy Hall	November 2009	At the Discretion of the Board
Clerk	Charlie Green	January 2008	January 2012
County Manager	Karen B. Hawes	September 2009	At the Discretion of the Board
County Attorney	David M. Owen	January 2005	At Discretion of Board

**IN WITNESS WHEREOF**, I have hereunto set my hand and affixed the official seal of the County as of this 26th day of May, 2010

(SEAL)

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Clerk of the Circuit Court of Lee County and  
Ex-Officio Clerk to the Board of County  
Commissioners of Lee County, Florida



## SIGNATURE CERTIFICATE

We, the undersigned, **DO HEREBY CERTIFY** as follows:

1. That we did heretofore cause to be officially executed the \$18,000,000 Lee County, Florida Six Cents Local Option Gas Tax Revenue Bond, Series 2010 (the "Bond") of Lee County, Florida (the "County").

2. That Tammy Hall, Chair of the Board of County Commissioners of Lee County, Florida (the "Board"), has manually executed the Bond, and that said Chair was on the date she executed the Bond and is now the duly chosen, qualified and acting Chair of the Board.

3. That we have caused the official seal of the County to be imprinted on the Bond, said seal imprinted thereon being the official seal of the County, and that Charlie Green, Clerk to the Board, has caused such seal to be attested by his manual signature, and that Charlie Green was on the date he executed the Bond and is now the duly qualified and acting Clerk of the Board.

4. That the seal which has been impressed on or otherwise reproduced on the Bond and upon this certificate is the legally adopted, proper and only seal of the County.

**IN WITNESS WHEREOF**, we have hereunto set our hands and affixed the official seal of the County as of this 26th day of May, 2010.

(SEAL)

<u>Signature</u>	<u>Title of Office</u>	<u>Term of Office Expires</u>
_____	Chair	At Discretion of Board
_____	Clerk	January 1, 2012

## GENERAL CERTIFICATE OF THE COUNTY

We, Tammy Hall, Chair of the Board of County Commissioners of Lee County, Florida (the "County") and Charlie Green, Clerk of the Circuit Court of Lee County and Ex-Officio Clerk to the Board of County Commissioners of the County, are delivering this Certificate in connection with the issuance by the County of its Lee County, Florida Six Cents Local Option Gas Tax Revenue Bond, Series 2010 (the "Bond") to Banc of America Public Capital Corp. All capitalized terms not otherwise defined herein shall have the meanings ascribed thereto in Resolution No. 10-05-\_\_ of the County, adopted on May 18, 2010 (the "Resolution"). We hereby certify, to the best of our knowledge, as follows:

1. The County has complied or is presently in compliance with all agreements related to the Bond and has satisfied all conditions on its part to be observed or satisfied under the Resolution at or prior to the date hereof.

2. The representations, warranties, covenants and agreements of the County contained in the Resolution are true and correct in all respects on and as of the date hereof as if made on the date hereof.

3. The County is not presently in default nor has it been in default since December 31, 1975 as to the payment of principal or interest with respect to any obligations issued by it.

4. No litigation or other proceedings are pending or threatened in any court or other tribunal, state or federal (a) restraining or enjoining, or seeking to restrain or enjoin, the issuance, sale, execution or delivery of the Bond, or (b) in any way questioning or affecting the validity of any provisions of the Bond or the Resolution, or (c) in any way questioning or affecting the validity of any of the proceedings or authority for the authorization, sale, execution or delivery of the Bond, of any provision, program or transactions made or authorized for its payment, or (d) questioning or affecting the receipt or pledge of the Gas Tax Revenues (as defined in the Resolution) by the County, or (e) questioning or affecting the organization or existence of the County or the authority of any of its officers to perform all required actions in connection with the issuance and sale of the Bond as contemplated by the Resolution.

5. The County is not in material breach of or material default under any applicable constitutional provision, law or administrative regulation of the State or the United States or any applicable judgment or decree or any loan agreement, indenture, bond, note, material resolution, material agreement or other material instrument to which the County is a party or to which the County or any of its property or assets is otherwise subject, and no event has occurred and is continuing that with the passage of time or the

giving of notice, or both, would constitute a default or event of default under any such instrument; and the execution and delivery of the Bond and the adoption of the Resolution and compliance with the provisions on the County's part contained therein, will not conflict with or constitute a material breach of or default under, any constitutional provision, law, administrative regulation, judgment, decree, loan agreement, indenture, bond, note, resolution, agreement or other instrument to which the County is a party or to which the County or any of its property or assets is otherwise subject, and any such execution, delivery, adoption or compliance will not result in the creation or imposition of any lien, charge, or other security interest or encumbrance of any nature whatsoever upon any of the property or assets of the County under the terms of any such ordinance, law, regulation or instrument, except as expressly provided by the Bond.

6. Since September 30, 2009, no material adverse change has occurred in the financial condition of the County and the County has not incurred any material liabilities other than in the ordinary course of business.

7. No Event of Default has occurred and is continuing under the Resolution.

**IN WITNESS WHEREOF**, we hereunto set our hands as of the 26th day of May, 2010.

(SEAL)

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Chair, Board of County Commissioners of Lee  
County, Florida

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Clerk of the Circuit Court of Lee County and  
Ex-Officio Clerk to the Board of County  
Commissioners of Lee County, Florida

**CERTIFICATE AS TO ARBITRAGE  
AND CERTAIN OTHER TAX MATTERS**

I, Tammy Hall, Chair of the Board of County Commissioners of Lee County, Florida (the "County"), being a person duly charged, together with others, with the responsibility for issuing the \$18,000,000 Lee County, Florida Six Cents Local Option Gas Tax Revenue Bond, Series 2010 (the "Series 2010 Bond"), dated May 26, 2010, and being issued this day, **DO HEREBY CERTIFY** that:

**1. AUTHORIZATION AND DEFINITIONS.** The Series 2010 Bond is being issued pursuant to the authority contained in Chapter 125, Florida Statutes, and other applicable provisions of law, and pursuant to Resolution No. 10-05-\_\_\_, adopted by the County on May 18, 2010 (the "Resolution").

The terms defined in the Resolution shall retain the meanings set forth therein when used in this Certificate unless the context clearly indicates another meaning is intended. Other capitalized terms used in this Certificate shall have the meanings set forth herein or in the Internal Revenue Code of 1986, as amended, and the applicable Treasury Regulations promulgated thereunder and under the Internal Revenue Code of 1954, as amended (collectively, the "Code"), or in the Arbitrage Rebate Statement attached hereto as Exhibit A, in each case unless the context clearly indicates another meaning is intended.

**2. PURPOSE.** The Series 2010 Bond is being issued for the principal purposes of providing moneys to (a) finance the costs of acquisition and construction of a new two-land bascule bridge over the Matlacha Pass in Charlotte Harbor within the County, as more particularly described in the Resolution (the "Project"), and (b) pay certain costs of issuance of the Series 2010 Bond as more particularly described in the Resolution.

**3. FACTS, ESTIMATES AND CIRCUMSTANCES.** On the basis of the facts, estimates and circumstances in existence on the date hereof, we reasonably expect the following with respect to the Series 2010 Bond and with respect to the proceeds of the Series 2010 Bond:

(a) NET PROCEEDS.

(i) Total. The amount of proceeds received by the County from the sale of the Series 2010 Bond (the "Net Proceeds") will be \$\_\_\_\_\_.

(ii) Construction Fund Deposit. An amount of the Net Proceeds of the Series 2010 Bond equal to \$\_\_\_\_\_ will be deposited to the Series 2010

Account of the Construction Fund and will be applied to finance certain costs of the acquisition and construction of the Project.

(iv) Costs of Issuance. An amount of the Net Proceeds of the Series 2010 Bond equal to \$\_\_\_\_\_ will be held by the County and will be used within six months of the date hereof to provide for the payment of the expenses of issuing the Series 2010 Bond.

(b) NO OVERISSUANCE. The Net Proceeds of the Series 2010 Bond (\$\_\_\_\_\_), less payment of the costs of issuance of \$\_\_\_\_\_ will be \$\_\_\_\_\_ (the "Original Proceeds"). Taking into account other available funds, the amount of Original Proceeds necessary to finance the Project equals or exceeds \$\_\_\_\_\_, plus any investment earnings thereon.

(c) AS TO THE PROJECT.

(i) Construction Fund. An amount of the Original Proceeds of the Series 2010 Bond equal to \$\_\_\_\_\_ will be deposited in the Series 2010 Account of the Construction Fund and such amount and the investment earnings thereon will be used to pay the costs of the Project.

(ii) Use of Construction Fund Moneys. The County expects to spend all of the Original Proceeds of the Series 2010 Bond deposited in the Series 2010 Account of the Construction Fund and any investment proceeds related thereto on or before May 25, 2013.

(iii) Binding Obligations. The County has spent or expects, within six months of the date hereof, to spend (or to enter into binding obligations with third parties obligating the County to spend) from the Original Proceeds of the Series 2010 Bond and any investment proceeds thereon, an amount at least equal to 5% of the costs of the Project to be financed from such Original Proceeds in order to acquire and/or construct such portion of the Project.

(iv) Due Diligence. Work on the acquisition and construction of the Project funded from the Original Proceeds of the Series 2010 Bond will proceed with due diligence to the completion thereof.

(v) Disposal of Project. The Project is not expected to be sold or disposed of prior to the maturity date of the Series 2010 Bond, except such portions as may be disposed of in the normal course of business.

(vi) Reimbursement. The County will not reimburse itself from proceeds of the Series 2010 Bond for any expenditures made by the County prior to the date the Series 2010 Bond was issued except for (A) any expenditures that were made within 60 days prior to the adoption date of Resolution No. 10-05-\_\_ (May 18,

2010), and (B) any "preliminary expenditures" authorized to be reimbursed pursuant to Treasury Regulations Section 1.150-2, provided such "preliminary expenditures" do not exceed \$3,600,000.

(d) FLOW OF FUNDS.

(i) Restricted Revenue Account. All Six Cents Local Option Gas Tax Revenues shall be deposited, as received, into the Restricted Revenue Account of the Revenue Fund. Moneys in the Restricted Revenue Account shall be deposited monthly into the various funds and accounts established by the Resolution.

(ii) Debt Service Accounts. Except for the Principal Account, the Interest Account and the Bond Amortization Account (collectively, the "Debt Service Accounts") and the Reserve Account, the County has not created and established, and does not expect to create or establish any fund or account in connection with the Bonds that is reasonably expected to be used to pay debt service on the Bonds. The Debt Service Accounts will be used primarily to achieve a proper matching of revenues and debt service within each bond year and will be depleted at least annually except for a reasonable carryover amount not to exceed the greater of (A) one year's earnings on amounts in the Debt Service Accounts, or (B) one-twelfth of annual debt service on the Bonds. Amounts deposited in the Debt Service Accounts will be used to pay debt service on the Bonds within a 13-month period beginning on the date of deposit therein, and any income earned from the investment of such amounts shall be used for the purposes provided in the Resolution.

(iii) Reserve Account. Amounts in the Reserve Account will be used only for the purpose of the payment of maturing principal of or interest on the Bonds when the other moneys in the Debt Service Accounts are insufficient therefor. The Reserve Account is intended to provide for the payment of debt service on the Bonds in the event of a temporary interruption of revenues, and, as such, constitutes a reasonably required reserve fund.

(iv) Construction Fund. Amounts in the Series 2010 Account of the Construction Fund shall be used to pay or reimburse costs of the Project. Amounts on deposit in the Series 2010 Account may be used for the payment of debt service on the Series 2010 Bonds; however, the County does not expect that amounts in such Account will be used to pay debt service on the Series 2010 Bond and there is no assurance that any portion of the amounts deposited in such Account will be available to pay such debt service.

(v) Unrestricted Revenue Account. After the fulfillment of the requirements of paragraphs (i) through (iii) above, the balance of any moneys remaining in the Restricted Revenue Account may be transferred to the

Unrestricted Revenue Account of the Revenue Fund or any other appropriate fund or account of the County and used for any lawful purpose. Moneys in the Unrestricted Revenue Account are not pledged to the payment of the Bonds.

(vi) Investment Earnings. Any and all income received from the investment of moneys in the Construction Fund, the Interest Account, the Restricted Revenue Account and the Reserve Account (only to the extent such income and the other amounts in the Reserve Account does not exceed the Reserve Account Requirement) shall be retained in such respective fund or account. Any and all income received from the investment of moneys in the Reserve Account (only to the extent such income and other amounts in the Reserve Account exceeds the Reserve Account Requirement), the Principal Account and the Bond Amortization Account shall be deposited in the Interest Account.

(vii) No Other Funds. Other than the funds and accounts described in this Certificate, no fund or account has been established pursuant to any instrument which secures or otherwise relates to the Bonds.

#### **4. YIELD.**

(a) GENERAL. For purposes of this Certificate, bond yield is, and shall be, calculated in the manner provided in Treasury Regulations Section 1.148-4, and the provisions therein will be complied with in all respects. The term "bond yield" means, with respect to a bond, the discount rate that when used in computing the present value of all the unconditionally payable payments of principal and interest and all the payments for a qualified guarantee paid and to be paid with respect to the bond produces an amount equal to the present value of the issue price of the bond. In computing the purchase price of the Series 2010 Bond, which is equal to the issue price, the County did not take into consideration the costs of issuance. The purchase price of the Series 2010 Bond, therefore, is the principal amount of \$18,000,000.00. For purposes hereof, yield is, and shall be, calculated on a 360-day year basis with interest compounded semiannually. As of the date hereof, the yield on the Series 2010 Bond calculated in the above-described manner is \_\_\_\_\_% (the "2010 Bond Yield"). Such yield calculation has been computed for the County by Dunlap & Associates, Inc., the financial advisor to the County. It should be noted, however, that such yield may, under certain circumstances set forth in the Treasury Regulations, be subject to recalculation.

The purchase price of all obligations other than certain tax-exempt investments ("Taxable Obligations") to which restrictions as to yield or rebate of excess earnings under this Certificate applies shall be calculated using (i) the price, taking into account discount, premium, and accrued interest, as applicable, actually paid or (ii) the fair market value if less than the price actually paid and if such Taxable Obligations were not purchased directly from the United States Treasury. The County will acquire all such

Taxable Obligations directly from the United States Treasury or in arms length transactions without regard to any amounts paid to reduce the yield on such Taxable Obligations. The County will not pay or permit the payment of any amounts to reduce the yield on any Taxable Obligations.

Any amounts subject to yield restrictions may be subject to yield reduction payments pursuant to Treasury Regulations Section 1.148-5(c).

(b) RESERVE ACCOUNT. Amounts, if any, on deposit in the Series 2010 Subaccount of the Reserve Account will be invested without regard to yield restrictions, provided that such amounts do not exceed the Reserve Account Requirement for the Series 2010 Bond. Any cash amounts in the Series 2010 Subaccount of the Reserve Account in excess of the Reserve Account Requirement for the Series 2010 Bond will be invested at a yield not in excess of the 2010 Bond Yield. The Reserve Account Requirement with respect to the Series 2010 Bond and the Series 2010 Subaccount is \$0.00. Accordingly, no funds will be on deposit therein upon the issuance of the Series 2010 Bond.

(c) DEBT SERVICE ACCOUNTS - DEBT SERVICE. Amounts held in the Debt Service Accounts which are set aside for the payment of the principal of and interest on the Bonds will be invested without regard to yield restrictions for a period not to exceed 13 months from the date of deposit of such amounts in such Accounts. Any amounts not expended within the period set forth above shall be invested at a yield not in excess of the 2010 Bond Yield.

(d) CONSTRUCTION FUND. The amounts on deposit in the Series 2010 Account of the Construction Fund, including any investment earnings thereon, shall be invested without regard to yield restrictions for a period of not to exceed 36 months from the date of deposit therein. Any such amounts not expended within such period shall be invested at a yield not in excess of the 2010 Bond Yield.

(e) RESTRICTED REVENUE ACCOUNT. Amounts in the Restricted Revenue Account shall be invested without regard to yield restrictions.

(f) UNRESTRICTED REVENUE ACCOUNT. Amounts in the Unrestricted Revenue Account shall be invested without regard to yield restrictions.

(g) INVESTMENT EARNINGS. All investment earnings on amounts deposited in the Debt Service Accounts may be invested without regard to yield restrictions for a period not to exceed one year from the date of receipt of the amount earned. Any investment earnings not expended within the applicable period set forth above shall be subject to yield restrictions.



(h) OTHER FUNDS AND ACCOUNTS. Any other funds and accounts not described in subsections (b) through and including (f) of this Section 4 may be invested without regard to yield restrictions.

(i) YIELD REDUCTION PAYMENTS. Any amounts subject to yield restrictions may be subject to yield reduction payments pursuant to Treasury Regulations Section 1.148-5(c).

**5. FURTHER CERTIFICATIONS.** The County will take no action which would cause the Series 2010 Bond to become a Private Activity Bond (as such term is defined in the Code). None of the Gross Proceeds of the Series 2010 Bond will be used directly or indirectly in any trade or business carried on by any person other than a governmental unit.

No bonds or other obligations of the County (a) were sold in the 15 days preceding the date of sale of the Series 2010 Bond or (b) were sold or will be sold within the 15 days after the date of sale of the Series 2010 Bond, pursuant to a common plan of financing with the plan for the issuance of the Series 2010 Bond and payable out of substantially the same source of revenues.

The County does not expect that the proceeds of the Series 2010 Bond will be used in a manner that would cause it to be an arbitrage bond under Section 148 of the Code. The County does not expect that the proceeds of the Series 2010 Bond will be used in a manner that would cause the interest on the Series 2010 Bond to be includable in the gross income of the holder of the Series 2010 Bond under Section 103 of the Code.

**6. REBATE.** The County has established a Rebate Fund for the Series 2010 Bond and shall deposit moneys therein as required by the terms of the Arbitrage Rebate Statement attached hereto as Exhibit A. Moneys in the Rebate Fund shall be held in trust by the County and, subject to the provisions hereof, shall be held for the benefit of the United States Government as contemplated under the provisions hereof and shall not constitute part of the trust estate held for the benefit of the holder of the Series 2010 Bond or the County. The County acknowledges and agrees to comply with the terms of the Arbitrage Rebate Statement attached hereto as Exhibit A.

**7. AMENDMENTS.** The provisions hereof need not be observed and this Certificate may be amended or supplemented at any time by the County if, in each case, the County receives an opinion or opinions of Bond Counsel that the failure to comply with such provisions will not cause, and that the terms of such amendment or supplement will not cause, the Series 2010 Bond to become an arbitrage bond under Section 148 of the Code, or other applicable section of the Code, or otherwise cause interest on the Series 2010 Bond to become includable in gross income for federal income tax purposes under the Code.

**8. SERIES 2010 BOND NOT FEDERALLY GUARANTEED.** Payment of debt service on the Series 2010 Bond is not directly or indirectly guaranteed in whole or in part by the United States, within the meaning of Section 149(b) of the Code. None of the Original Proceeds will be invested directly or indirectly in federally insured deposits or accounts except for Original Proceeds invested during the applicable temporary periods described herein until such Original Proceeds are needed for the purpose for which the Series 2010 Bond is being issued.

**9. SERIES 2010 BOND NOT A HEDGE BOND.** It is reasonably expected that not less than 85% of the Original Proceeds of the Series 2010 Bond will be used to carry out the governmental purposes of the Series 2010 Bond within three years from the date of the issuance of the Series 2010 Bond. Not more than 50% of such proceeds will be invested in nonpurpose investments having a substantially guaranteed yield for four years or more (including but not limited to any investment contract or fixed yield investment having a maturity of four years or more). The reasonable expectations stated above are not based on and do not take into account any expectations or assumptions as to the occurrence of changes in market interest rates or of federal tax law or regulations or rulings thereunder. These reasonable expectations are not based on any prepayments of items other than items which are customarily prepaid.

**10. ADDITIONAL COVENANTS.** The County further agrees to (a) impose such limitations on the investment or use of moneys or investments related to the Series 2010 Bond, (b) make such rebate payments to the United States Treasury, (c) maintain such records, (d) perform such calculations, (e) enter into such agreements, and (f) perform such other acts as may be necessary under the Code to preserve the exclusion from gross income for purposes of federal income taxation of interest on the Series 2010 Bond, which it may lawfully do.

**11. INFORMATION.** The County agrees to file all information statements as may be required by the Code.

**12. VALUATION AND MARKET PRICE RULES.** In determining the amounts on deposit in any fund or account for purposes of this Certificate, the purchase price of the obligations, including accrued interest, shall be added together, and adding to or subtracting from such purchase prices any discount, computed ratably on an annual basis. With respect to any amounts required to be restricted as to yield, the "market price rules" set forth in Exhibit A attached hereto shall apply.

**13. NO REPLACEMENT.** No portion of the amounts received from issuance, conversion, sale or remarketing of the Series 2010 Bond will be used as a substitute for other funds which were otherwise to be used for the purposes for which the Series 2010 Bond is being issued or which were otherwise to be used to pay debt service on the Series 2010 Bond, and which have been or will be used to acquire, directly or indirectly, obligations producing a yield in excess of the 2010 Bond Yield. The weighted

average maturity of the Series 2010 Bond does not exceed 120% of the average reasonably expected economic life of the Project.

**14. RELIANCE.** The County has relied on certain representations made by Dunlap & Associates, Inc. in its certificate attached hereto as Exhibit B. The County is not aware of any facts or circumstances that would cause it to question the accuracy of such representations.

**15. NO ADVERSE ACTION.** The County has neither received notice that this Certificate may not be relied upon with respect to its issues, nor has it been advised that any adverse action by the Commissioner of the Internal Revenue Service is contemplated.

To the best of my knowledge and belief there are no facts, estimates or circumstances other than those expressed herein that materially affect the expectations herein expressed, and, to the best of my knowledge and belief, the County's expectations are reasonable. I further represent that the County expects and intends to be able to comply with the provisions and procedures set forth herein, including Section 148 of the Code.

**IN WITNESS WHEREOF**, I have hereunto set my hand as of the 26th day of May, 2010.

**LEE COUNTY, FLORIDA**

By: \_\_\_\_\_  
Chair, Board of County Commissioners

**ARBITRAGE REBATE STATEMENT**

This Arbitrage Rebate Statement ("Statement") is intended to set forth certain duties and requirements necessary for compliance with Section 148(f) of the Code to the extent necessary to preserve the tax-exempt treatment of interest on the \$18,000,000 Lee County, Florida Six Cents Local Option Gas Tax Revenue Bond, Series 2010 (the "Series 2010 Bond"). This Statement is based upon Section 148(f) of the Code and by analogy, to the Regulations. However, it is not intended to be exhaustive.

Since the requirements of such Section 148(f) are subject to amplification and clarification, it may be necessary to supplement or modify this Statement from time to time to reflect any additional or different requirements of such Section and the Regulations or to specify that action required hereunder is no longer required or that some further or different action is required to maintain or assure the exemption from federal income tax of interest with respect to the Series 2010 Bond.

For purposes hereof, any covenant relating to a fund, account or subaccount established under the Resolution shall be deemed to apply only to that portion of such fund, account or subaccount allocable to the Series 2010 Bond.

**SECTION 1. TAX COVENANTS.** Pursuant to the Resolution, the County has made certain covenants designed to assure that the interest with respect to the Series 2010 Bond is and shall remain excludable from gross income for purposes of federal income taxation. The County shall not, directly or indirectly, use or permit the use of any proceeds of the Series 2010 Bond or any other funds or take or omit to take any action that would cause the Series 2010 Bond to be an "arbitrage bond" within the meaning of Section 148 of the Code or that would cause interest on the Series 2010 Bond to be included in gross income for federal income tax purposes under the provisions of the Code. The County shall comply with all other requirements as shall be determined by Bond Counsel to be necessary or appropriate to assure that interest on the Series 2010 Bond will be excludable from gross income for purposes of federal income taxation. To that end, the County shall comply with all requirements of Section 148 of the Code to the extent applicable to the Series 2010 Bond.

**SECTION 2. DEFINITIONS.** Capitalized terms used herein, not otherwise defined herein, shall have the same meanings set forth in the Resolution and in the County's Certificate as to Arbitrage and Certain Other Tax Matters relating to the Series 2010 Bond.

**"Bond Counsel"** means Nabors, Giblin & Nickerson, P.A., Tampa, Florida or such other firm of nationally recognized bond counsel as may be selected by the County.

**"Bond Year"** means any one-year period (or shorter period from the Issue Date) ending on the close of business on the day preceding the anniversary of the Issue Date.

**"Code"** means the Internal Revenue Code of 1986, as amended.

**"Computation Date"** means each date selected by the County as a computation date pursuant to Section 1.148-3(e) of the Regulations and the Final Computation Date.

**"Fair Market Value"** means, when applied to a Nonpurpose Investment, the Fair Market Value of such Investment as determined in accordance with Section 4 hereof.

**"Final Computation Date"** means the date the Series 2010 Bond is discharged.

**"Gross Proceeds"** means, with respect to the Series 2010 Bond;

- (1) Amounts constituting Sale Proceeds of the Series 2010 Bond.
- (2) Amounts constituting Investment Proceeds of the Series 2010 Bond.
- (3) Amounts constituting Transferred Proceeds of the Series 2010 Bond.
- (4) Other amounts constituting Replacement Proceeds of the Series 2010 Bond, including Pledged Moneys.

**"Investment Proceeds"** means any amounts actually or constructively received from investing proceeds of the Series 2010 Bond.

**"Investment Property"** shall have the meaning as ascribed to such term in Section 148(b)(2) of the Code, which includes any security, obligation or other property held principally as a passive vehicle for the production of income, within the meaning of Section 1.148-1(e) of the Regulations.

**"Issue Date"** means May 26, 2010.

**"Net Proceeds"** means Sale Proceeds, less the portion of such Proceeds invested in a reasonably required reserve or replacement fund under the Code.

**"Nonpurpose Investment"** means any Investment Property in which Gross Proceeds are invested which is not acquired to carry out the governmental purpose of the Series 2010 Bond, e.g., obligations acquired with Gross Proceeds that are invested temporarily until needed for the governmental purpose of the Series 2010 Bond, that are used to discharge a prior issue, or that are invested in a reasonably required reserve or replacement fund, as referenced in Section 1.148-1(b) of the Regulations.

**"Nonpurpose Payments"** shall include the payments with respect to Nonpurpose Investments specified in Section 1.148-3(d)(1)(i)-(v) of the Regulations.

**"Nonpurpose Receipts"** shall include the receipts with respect to Nonpurpose Investments specified in Section 1.148-3(d)(2)(i)-(iii) of the Regulations.

**"Pledged Moneys"** means moneys that are reasonably expected to be used directly or indirectly to pay debt service on the Series 2010 Bond or as to which there is a reasonable assurance that such moneys or the earnings thereon will be available directly or indirectly to pay debt service on the Series 2010 Bond if the County encounters financial difficulties.

**"Pre-Issuance Accrued Interest"** means amounts representing interest that has accrued on an obligation for a period of not greater than one year before its issue date but only if those amounts are paid within one year after the Issue Date.

**"Proceeds"** means any Sale Proceeds, Investment Proceeds and Transferred Proceeds of the Series 2010 Bond.

**"Qualified Administrative Costs"** means reasonable, direct administrative costs, other than carrying costs, such as separately stated brokerage and selling commissions that are comparable to those charged nongovernmental entities in transactions not involving tax-exempt bond proceeds, but not legal and accounting fees, recordkeeping, custody or similar costs. In addition, with respect to a guaranteed investment contract or investments purchased for a yield restricted defeasance escrow, such costs will be considered reasonable if (1) the amount of the fee the County treats as a Qualified Administrative Cost does not exceed the lesser of (a) \$35,000 (for calendar year 2010), or (b) the greater of (x) .2% of the "computational base", or (y) \$4,000; and (2) the County does not treat as Qualified Administrative Costs more than \$100,000 (for calendar year 2010) in brokers' commissions or similar fees with respect to all guaranteed investment contracts and investments for yield restricted defeasance escrows purchased with Gross Proceeds of the issue. For purposes of this definition only, "computational base" shall mean, with respect to guaranteed investment contracts, the amount of Gross Proceeds the County reasonably expects, as of the date the contract is acquired, to be deposited in the guaranteed investment contract over the term of the contract and for investments other than guaranteed investment contracts, "computational base" shall mean the amount of Gross Proceeds initially invested in such investments. The above-described safe harbor dollar amounts shall be increased each calendar year for cost-of-living adjustments pursuant to Section 1.148-5(e) of the Regulations.

**"Rebatable Arbitrage"** means, as of any Computation Date, the excess of the future value of all Nonpurpose Receipts over the future value of all Nonpurpose Payments.

**"Rebate Fund"** means the Rebate Fund established pursuant to the Resolution and described in Section 3 hereof.

**"Regulations"** means Treasury Regulations Sections 1.148-0 through 1.148-11, 1.149(b)-1 and (d)-1, and 1.150-0 through 1.150-2, as amended, and any regulations amendatory, supplementary or additional thereto.

**"Replacement Proceeds"** means amounts that have a sufficiently direct nexus to the Series 2010 Bond or to the governmental purpose of the Series 2010 Bond to conclude that the amounts would have been used for that governmental purpose if the Proceeds of the Series 2010 Bond were not used or to be used for that governmental purpose. For this purpose, governmental purposes include the expected use of amounts for the payment of debt service on a particular date. The mere availability or preliminary earmarking of amounts for a governmental purpose, however, does not in itself establish a sufficient nexus to cause those amounts to be Replacement Proceeds. Replacement Proceeds include, but are not limited to, amounts held in a sinking fund or a pledged fund. For these purposes, an amount is pledged to pay principal of or interest on the Series 2010 Bond if there is reasonable assurance that the amount will be available for such purposes in the event that the County encounters financial difficulties.

**"Sale Proceeds"** means any amounts actually or constructively received by the County from the sale of the Series 2010 Bond, including amounts used to pay underwriter's discount or compensation and interest other than Pre-Issuance Accrued Interest. Sale Proceeds shall also include, but are not limited to, amounts derived from the sale of a right that is associated with the Series 2010 Bond and that is described in Section 1.148-4(b)(4) of the Regulations.

**"Tax-Exempt Investment"** means (i) an obligation the interest on which is excluded from gross income pursuant to Section 103 of the Code, (ii) United States Treasury-State and Local Government Series, Demand Deposit Securities, and (iii) stock in a tax-exempt mutual fund as described in Section 1.150-1(b) of the Regulations. Tax-Exempt Investment shall not include a specified private activity bond as defined in Section 57(a)(5)(C) of the Code. For purposes of this Statement, a tax-exempt mutual fund includes any regulated investment company within the meaning of Section 851(a) of the Code meeting the requirements of Section 852(a) of the Code for the applicable taxable year; having only one class of stock authorized and outstanding; investing all of its assets in tax-exempt obligations to the extent practicable; and having at least 98% of (1) its gross income derived from interest on, or gain from the sale of or other disposition of, tax-exempt obligations or (2) the weighted average value of its assets represented by investments in tax-exempt obligations.

**"Transferred Proceeds"** shall have the meaning provided therefor in Section 1.148-9 of the Regulations.

**"Universal Cap"** means the value of the then outstanding Series 2010 Bond.

**"Value" (of the Series 2010 Bond)** means with respect to the Series 2010 Bond issued with not more than two percent original issue discount or original issue premium, the outstanding principal amount, plus accrued unpaid interest; for any other Series 2010 Bond, its present value.

**"Value" (of an Investment)** shall have the following meaning in the following circumstances:

(1) General Rules. Subject to the special rules in the following paragraph, an issuer may determine the value of an investment on a date using one of the following valuation methods consistently applied for all purposes relating to arbitrage and rebate with respect to that investment on that date:

(a) an investment with not more than two percent original issue discount or original issue premium may be valued at its outstanding stated principal amount, plus accrued unpaid interest on such date;

(b) a fixed rate investment may be valued at its present value on such date; and

(c) an investment may be valued at its Fair Market Value on such date.

(2) Special Rules. Yield restricted investments are to be valued at present value provided that (except for purposes of allocating Transferred Proceeds to an issue, for purposes of the Universal Cap and for investments in a commingled fund other than a bona fide debt service fund unless it is a certain commingled fund):

(a) an investment must be valued at its Fair Market Value when it is first allocated to an issue, when it is disposed of and when it is deemed acquired or deemed disposed of, and provided further that;

(b) in the case of Transferred Proceeds, the Value of a Nonpurpose Investment that is allocated to Transferred Proceeds of a refunding issue on a transfer date may not exceed the Value of that investment on the transfer date used for purposes of applying the arbitrage restrictions to the refunded issue.

**"Yield on the Series 2010 Bond," "2010 Bond Yield" or "Bond Yield"** means, for all Computation Dates, the Yield expected as of the date hereof on the Series 2010 Bond over the term of such Series 2010 Bond computed by:

(1) using as the purchase price of the Series 2010 Bond, the amount at which such Series 2010 Bond was sold to the public within the meaning of Sections 1273 and 1274 of the Code; and

(2) assuming that the Series 2010 Bond will be paid at its scheduled maturity dates or in accordance with any mandatory redemption requirements.

**"Yield"** means, generally, the discount rate which, when used in computing the present value of all the unconditionally payable payments of principal and interest on an obligation and all the payments for qualified guarantees paid and to be paid with respect



to such obligation, produces an amount equal to the present value of the issue price of such obligation. Present value is computed as of the date of issue of the obligation. There are, however, many additional specific rules contained in the Regulations which apply to the calculation and recalculation of yield for particular obligations and such rules should be consulted prior to calculating the yield for the Series 2010 Bond on any Computation Date. Yield shall be calculated on a 360-day year basis with interest compounded semi-annually. For this purpose the purchase price of a Nonpurpose Investment or a Tax-Exempt Investment is its Fair Market Value, as determined pursuant to Section 4 of this Statement, as of the date that it becomes allocated to Gross Proceeds of the Series 2010 Bond.

### **SECTION 3. REBATE REQUIREMENTS.**

(a) The County shall pay to the United States Government at the times and in the amounts determined hereunder, the Rebatable Arbitrage. For purposes of determining the Rebatable Arbitrage, the County shall make such calculations or cause the calculations to be made by competent tax counsel or other financial or accounting advisors or persons to ensure correct application of the rules contained in the Code and the Regulations relating to arbitrage rebate.

(b) Pursuant to the Resolution, there has been established an account separate from any other fund or account established and maintained under the Resolution designated the "Rebate Fund." The County or its designated agent shall administer the Rebate Fund and continuously invest all amounts held in the Rebate Fund in Authorized Investments (as defined in the Resolution) or Tax-Exempt Investments.

(c) Within 30 days after any Computation Date, the County shall calculate or cause to be calculated the Rebatable Arbitrage or any penalty due pursuant to Section 3(f) hereof. Immediately following such calculations, but in no event later than 60 days following the Computation Date (90 days in the case of any penalty payment due pursuant to Section 3(f) hereof), the County shall remit an amount which when added to the future value of previous rebate payments shall not be less than 90% (100% with respect to the Computation Date on the final repayment or retirement of the Series 2010 Bond) of the Rebatable Arbitrage or 100% of any penalty due pursuant to Section 3(f) hereof as of the applicable Computation Date.

Each payment shall be accompanied by Internal Revenue Service Form 8038-T.

(d) The obligation to pay Rebatable Arbitrage to the United States, as described herein, shall be treated as satisfied with respect to the Series 2010 Bond if (i) Gross Proceeds are expended for the governmental purpose of the Series 2010 Bond by no later than the date which is six months after the Issue Date and if it is not anticipated that any other Gross Proceeds will arise during the remainder of the term of the Series 2010 Bond and (ii) the requirement to pay Rebatable Arbitrage, if any, to the United States with

respect to the portion of the Reserve Account allocable to the Series 2010 Bond is met. For purposes described above, Gross Proceeds do not include (i) amounts deposited in a bona fide debt service fund, so long as the funds therein constitute bona fide debt service funds, or a reasonably required reserve or replacement fund (as defined in Section 1.148-1 of the Regulations and meeting the requirements of Section 1.148-2(f) of the Regulations), (ii) amounts that, as of the Issue Date, are not reasonably expected to be Gross Proceeds but that become Gross Proceeds after the date which is six months after the Issue Date, (iii) amounts representing Sale or Investment Proceeds derived from any Purpose Investment (meeting the requirements of Section 1.148-2(f) of the Regulations) and earnings on those payments, and (iv) amounts representing any repayments of grants (as defined in Section 1.148-6(d)(4) of the Regulations). If Gross Proceeds are in fact expended by such date, then, except as to the Reserve Account, Rebatable Arbitrage with respect to such Gross Proceeds need not be calculated and no payment thereof to the United States Department of Treasury need be made. Use of Gross Proceeds to redeem the Series 2010 Bond shall not be treated as an expenditure of such Gross Proceeds.

Notwithstanding the foregoing, if Gross Proceeds which were reasonably expected to be Gross Proceeds on the Issue Date actually become available after the date which is six months after the Issue Date, then the requirements described herein relating to the calculation of Rebatable Arbitrage and the payment thereof to the United States must be satisfied, except that no such calculation or payment need be made with respect to the initial six-month period. Any other amounts not described in this Section 3(d) which constitute proceeds of the Series 2010 Bond, other than a bona fide debt service fund, will be subject to rebate.

(e) As an alternative to Section 3(d) above, the obligation of the County to pay Rebatable Arbitrage to the United States, as described herein, shall be treated as satisfied with respect to the Series 2010 Bond if (i) the rebate requirement is met for all proceeds of the Series 2010 Bond other than Gross Proceeds (as defined in Section 3(d) hereof) and (ii) the Gross Proceeds of the Series 2010 Bond are expended for the governmental purposes of the issue within the periods set forth below:

(i) at least 15% of such Gross Proceeds of the Series 2010 Bond are spent within the six-month period beginning on the Issue Date;

(ii) at least 60% of such Gross Proceeds of the Series 2010 Bond are spent within the 1-year period beginning on the Issue Date; and

(iii) at least 100% of such Gross Proceeds of the Series 2010 Bond are spent within the 18-month period beginning on the Issue Date.

As set forth in Section 1.148-7(d)(2) of the Regulations, for purposes of the expenditure requirements set forth in this Section 3(e), 100% of the Gross Proceeds of the Series 2010 Bond shall be treated as expended for the governmental purposes of the issue

within the 18-month period beginning on the Issue Date if such requirement is met within the 30-month period beginning on the Issue Date and such requirement would have been met within such 18-month period but for a reasonable retainage (not exceeding 5% of the Net Proceeds of the Series 2010 Bond). If Gross Proceeds are in fact expended by such dates, then Rebataable Arbitrage need not be calculated and no payment thereof to the United States Department of Treasury need be made. Any failure to satisfy the final spending requirement shall be disregarded if the County exercises due diligence to complete the Project financed by the Series 2010 Bond and the amount of the failure does not exceed the lesser of (i) 3% of the issue price of the Series 2010 Bond or (ii) \$250,000. Use of Gross Proceeds to redeem the Series 2010 Bond shall not be treated as an expenditure of such Gross Proceeds. For purposes of this Section 3(e), "Gross Proceeds" shall be modified as described in Section 3(d) above.

(f) As an alternative to Sections 3(d) and (e) above, the obligation to pay Rebataable Arbitrage to the United States, as described herein, shall be treated as satisfied with respect to the Series 2010 Bond if the Available Construction Proceeds (as defined in Section 148(f)(4)(C)(vi) of the Code and described below) are expended for the governmental purposes of the issue within the periods set forth below:

(i) at least 10% of such Available Construction Proceeds are spent within the six-month period beginning on the Issue Date;

(ii) at least 45% of such Available Construction Proceeds are spent within the 1-year period beginning on the Issue Date;

(iii) at least 75% of such Available Construction Proceeds are spent within the eighteen-month period beginning on the Issue Date; and

(iv) at least 100% of such Available Construction Proceeds are spent within the 2-year period beginning on the Issue Date.

For purposes of this Section 3(f), the term Available Construction Proceeds means the Net Proceeds of the Series 2010 Bond, increased by earnings on such Net Proceeds, and earnings on all of the foregoing earnings, and reduced by the amount of such Net Proceeds deposited to the Reserve Account and amounts used to pay issuance costs. Any amounts which constitute proceeds of the Series 2010 Bond other than Available Construction Proceeds and amounts on deposit in a bona fide debt service fund will be subject to rebate.

As set forth in Section 148(f)(4)(C)(iii) of the Code, for purposes of the expenditure requirements set forth in this Section 3(f), 100% of Available Construction Proceeds of the Series 2010 Bond shall be treated as expended for the governmental purposes of the issue within the 2-year period beginning on the Issue Date if such requirement is met within the 3-year period beginning on the Issue Date and such

requirement would have been met within such 2-year period but for a reasonable retainage (not exceeding 5% of the Net Proceeds of the Series 2010 Bond). Use of Available Construction Proceeds to redeem the Series 2010 Bond shall not be treated as an expenditure of such Available Construction Proceeds.

Any failure to satisfy the final spending requirement shall be disregarded if the County exercises due diligence to complete the Project financed by the Series 2010 Bond and the amount of the failure does not exceed the lesser of (i) 3% of the issue price of the Series 2010 Bond or (ii) \$250,000.

For purposes of Section 148(f)(4)(C)(vii) of the Code, in the event the County fails to meet the expenditure requirements referred to above, the County may elect to pay, in lieu of the Rebatale Arbitrage otherwise required to be paid with respect to such Gross Proceeds, a penalty with respect to the close of each 6-month period after the Issue Date equal to 1.5% of the amount of the Available Construction Proceeds of the Series 2010 Bond which, as of the close of such period, are not spent as required by the expenditure provisions set forth above. The penalty referred to above shall cease to apply only after the Series 2010 Bond (including any refunding bonds issued with respect thereto) are no longer outstanding. The County makes no election in regard to the above-described penalty.

In order to qualify for the exemption from the obligation to pay Rebatale Arbitrage to the United States pursuant to this Section 3(f), at least 75% of the Available Construction Proceeds must be used for construction expenditures (as defined in Section 1.148-7(g) of the Regulations) with respect to property which is owned by a governmental unit or an organization described in Section 501(c)(3) of the Code. The term "construction" includes reconstruction and rehabilitation of existing property and rules similar to the rules of Section 142(b)(1)(B) of the Code shall apply. If only a portion of an issue is to be used for construction expenditures, such portion and the other portion of such issue may, at the election of the issuer, be treated as separate issues for purposes of this Section 3(f) (although the remaining portion may not be entitled to the benefits of Section 3(d) hereof). The County does not elect to treat any portion of the Series 2005A Bonds as a separate issue.

(g) The County shall keep proper books of records and accounts containing complete and correct entries of all transactions relating to the receipt, investment, disbursement, allocation and application of the moneys related to the Series 2010 Bond, including moneys derived from, pledged to, or to be used to make payments on the Series 2010 Bond. Such records shall, at a minimum, be adequate to enable the County or its consultants to make the calculations for payment of Rebatale Arbitrage as required by this Statement. The records required to be maintained under this Section 3(g) shall be retained by the County until six years after the retirement of the last obligation of the Series 2010 Bond or for such other period as the United States Treasury may by regulations otherwise provide. Such records shall at least specify the account or fund to

which each investment (or portion thereof) is to be allocated and shall set forth, in the case of each investment security, (i) its purchase price (including the amount of accrued interest to be stated separately), (ii) identifying information, including par amount, coupon rate, and payment dates, (iii) the amount received at maturity or its sale price, as the case may be, including accrued interest, (iv) the amounts and dates of any payments made with respect thereto, (v) the dates of acquisition and disposition or maturity, (vi) the amount of original issue discount or premium (if any), (vii) the frequency of periodic payments (and actual dates and amounts of receipts), (viii) the period of compounding, (ix) the transaction costs (e.g., commissions) incurred in acquiring, carrying or disposing of the Nonpurpose Investments, and (x) market price data sufficient to establish that the purchase price (disposition price) was not greater than (less than) the arm's-length price (see Section 4 below) on the date of acquisition (disposition) or, if earlier, on the date of a binding contract to acquire (dispose of) such Nonpurpose Investment.

**SECTION 4. MARKET PRICE RULES.** Except as provided below, the County agrees to comply with the requirements relating to the "Fair Market Value" of acquired Nonpurpose Investments, as defined in Section 1.148-5(d) of the Regulations ("Fair Market Value"). All investments required to be made pursuant to this Statement shall be made to the extent permitted by law. In this regard, the County agrees, among other things, that it will not acquire or cause to be acquired a Nonpurpose Investment (or any other investment acquired with Gross Proceeds or on deposit in the Rebate Fund) for a price in excess of its Fair Market Value or sell any such investment at a price (determined without any reduction for transaction costs) less than its Fair Market Value, except as provided below. For this purpose, the following rules shall apply:

(a) Established securities markets. Except as otherwise provided below, any market especially established to provide a security or obligation to an issuer of municipal obligations shall not be treated as an established market and shall be rebuttably presumed to be acquired or disposed of for a price that is not its Fair Market Value.

(b) Arm's-length price. Any transaction in which a Nonpurpose Investment is directly purchased with Gross Proceeds, or in which a Nonpurpose Investment allocable to Gross Proceeds is disposed of, shall be undertaken in an arm's-length manner, and no amount shall be paid to reduce the yield on the Nonpurpose Investment.

(c) Safe harbor for establishing Fair Market Value for guaranteed investment contracts and Nonpurpose Investments purchased for a yield restricted defeasance escrow. In the case of a guaranteed investment contract or Nonpurpose Investments purchased for a yield restricted defeasance escrow, the purchase price shall not be considered to be an arm's-length price unless all the following conditions are met:

(i) The County makes a bona fide Request for Bids ("Bona Fide Request for Bids") for the purchase of the investment that satisfies all of the following requirements:

(1) The bid specifications are in writing and are timely forwarded to potential providers;

(2) The bid specifications include all terms of the bid that may directly or indirectly affect the yield or the cost of the investment;

(3) The bid specifications include a statement notifying potential providers that submission of a bid is a representation that the potential provider did not consult with any other potential provider about its bid, that the bid was determined without regard to any other formal or informal agreement that the potential provider has with the County or any other person (whether or not in connection with the bond issue), and that the bid is not being submitted solely as a courtesy to the County or any other person for purposes of satisfying these requirements;

(4) The terms of the bid specifications are such that there is a legitimate business purpose for each term other than to increase the purchase price or reduce the yield of the investment (e.g., for Request for Bids of Nonpurpose Investments for a yield restricted defeasance escrow, the hold firm period must be no longer than the County reasonably requires);

(5) For purchases of guaranteed investment contracts only, the terms of the Request for Bids take into account the County's reasonably expected deposit and draw down schedule for the amounts to be invested;

(6) All potential providers have an equal opportunity to bid (e.g., no potential provider is given the opportunity to review other bids before providing a bid); and

(7) At least three providers are solicited for bids that have an established industry reputation as a competitive provider of the type of investments being purchased.

(ii) The bids received by the County must meet all of the following requirements:

(1) The County receives at least three bids from providers that the County solicited under a Bona Fide Request for Bids and that do not have a material financial interest in the issue. A lead underwriter in a negotiated underwriting transaction is deemed to have a material financial interest in the issue until 15 days after the issue date of the issue. In addition, any entity acting as a financial advisor with respect to the purchase of the investment at the time the bid specifications are forwarded

to potential providers has a material financial interest in the issue. A provider that is a related party to a provider that has a material financial interest in the issue is deemed to have a material financial interest in the issue.

(2) At least one of the three bids described in paragraph (c)(ii)(1) above is from a provider that has an established industry reputation as a competitive provider of the type of investments being purchased; and

(3) If the County uses an agent to conduct the bidding process, the agent did not bid to provide the investment.

(iii) The winning bid must meet the following requirements:

(1) *Guaranteed investment contracts.* If the investment is a guaranteed investment contract, the winning bid is the highest yielding bona fide bid (determined net of any broker's fees).

(2) *Other Nonpurpose Investments.* If the investment is not a guaranteed investment contract, the following requirements are met:

(A) The winning bid is the lowest cost bona fide bid (including any broker's fees). The lowest bid is either the lowest cost bid for the portfolio or, if the County compares the bids on an investment-by-investment basis, the aggregate cost of a portfolio comprised of the lowest cost bid for each investment. Any payment received by the County from a provider at the time a guaranteed investment contract is purchased (e.g., an escrow float contract) for a yield restricted defeasance escrow under a bidding procedure meeting these requirements is taken into account in determining the lowest cost bid.

(B) The lowest cost bona fide bid (including any broker's fees) is not greater than the cost of the most efficient portfolio comprised exclusively of State and Local Government Series Securities from the United States Department of the Treasury, Bureau of Public Debt. The cost of the most efficient portfolio of State and Local Government Series Securities is to be determined at the time that bids are required to be submitted pursuant to the terms of the bid specifications. If such State and Local Government Series Securities are not available for purchase on the day that bids are required to be submitted because sales of those securities have been suspended, the cost comparison described in this paragraph is not required.

(iv) The provider of the investments or the obligor on the guaranteed investment contract certifies the administrative costs that it pays (or expects to pay) to third parties in connection with supplying the investment.

(d) The County shall retain certificates and records documenting compliance with the above requirements until three years after the last outstanding Series 2010 Bond is redeemed including, but not limited to, the following:

(i) For purchases of guaranteed investment contracts, a copy of the contract, and for purchases of Nonpurpose Investments other than guaranteed investment contracts, the purchase agreement or confirmation;

(ii) The receipt or other record of the amount actually paid by the County for the investments, including a record of any administrative costs paid by the County and the certification required in paragraph (c)(iv) above;

(iii) For each bid that is submitted, the name of the person and entity submitting the bid, the time and date of the bid, and the bid results;

(iv) The bid Request for Bids form and, if the terms of the purchase agreement or the guaranteed investment contract deviated from the bid Request for Bids form or a submitted bid is modified, a brief statement explaining the deviation and stating the purpose for the deviation; and

(v) For purchase of Nonpurpose Investments other than guaranteed investment contracts, the cost of the most efficient portfolio of State and Local Government Series Securities, determined at the time that the bids were required to be submitted.

**SECTION 5. MODIFICATION UPON RECEIPT OF BOND COUNSEL OPINION.** Notwithstanding any provision of this Statement, if the County shall receive an opinion of Bond Counsel that any specified action required under this Statement is no longer required or that some further or different action is required to maintain or assure the exclusion from federal gross income of interest with respect to the Series 2010 Bond, the County may conclusively rely on such opinion in complying with the requirements of this Statement and the covenants herein shall be deemed to be modified to that extent. This Statement shall be amended or modified by the parties hereto in any manner which is necessary to comply with such regulations as may be promulgated by the United States Treasury Department from time to time.

**SECTION 6. ACCOUNTING FOR GROSS PROCEEDS.** In order to perform the calculations required by the Code and the Regulations, it is necessary to track the investment and expenditure of all Gross Proceeds. To that end, the County must adopt reasonable and consistently applied methods of accounting for all Gross Proceeds.



Appendix I hereto sets forth a description of the required allocation and accounting rules with which the County agrees to comply.

**SECTION 7. ADMINISTRATIVE COSTS OF INVESTMENTS.**

Except as otherwise provided in this Section 7, an allocation of Gross Proceeds to a payment or receipt on a Nonpurpose Investment is not adjusted to take into account any costs or expenses paid, directly or indirectly, to purchase, carry, sell or retire the Nonpurpose Investment (administrative costs). Thus, administrative costs generally do not increase the payments for, or reduce the receipts from, Nonpurpose Investments.

In determining payments and receipts on Nonpurpose Investments, Qualified Administrative Costs are taken into account by increasing payments for, or reducing the receipts from, the Nonpurpose Investments. Qualified Administrative Costs are reasonable, direct administrative costs, other than carrying costs, such as separately stated brokerage or selling commissions, but not legal and accounting fees, recordkeeping, custody and similar costs. General overhead costs and similar indirect costs of the County such as employee salaries and office expenses and costs associated with computing Rebutable Arbitrage are not Qualified Administrative Costs.

Allocation and accounting rules are provided in Appendix I attached hereto.

**ALLOCATION AND ACCOUNTING RULES**

(a) General Rule. Any issuer may use any reasonable, consistently applied accounting method to account for Gross Proceeds, investments and expenditures of an issue. An accounting method is "consistently applied" if it is applied uniformly within a Fiscal Period (as hereinafter defined) and between Fiscal Periods to account for Gross Proceeds of an issue and any amounts that are in a commingled fund.

(b) Allocation of Gross Proceeds to an Issue. Amounts are allocable to only one issue at a time as Gross Proceeds. Amounts cease to be allocated to an issue as Proceeds only when those amounts (i) are allocated to an expenditure for a governmental purpose; (ii) are allocated to Transferred Proceeds of another issue of obligations; or (iii) cease to be allocated to that issue at retirement of the issue or under the Universal Cap.

(c) Allocation of Gross Proceeds to Investments. Upon the purchase or sale of a Nonpurpose Investment, Gross Proceeds of an issue are not allocated to a payment for that Nonpurpose Investment in an amount greater than, or to a receipt from that Nonpurpose Investment in an amount less than, the Fair Market Value of the Nonpurpose Investment as of the purchase or sale date. The Fair Market Value of a Nonpurpose Investment is adjusted to take into account Qualified Administrative Costs allocable to the investment. Thus, Qualified Administrative Costs increase the payments for, or decrease the receipts from, a Nonpurpose Investment.

(d) Allocation of Gross Proceeds to Expenditures. Reasonable accounting methods for allocating funds from different sources to expenditures for the same governmental purpose include a "specific tracing" method, a "gross-proceeds-spent-first" method, a "first-in-first-out" method or a ratable allocation method, so long as the method used is consistently applied. An allocation of Gross Proceeds of an issue to an expenditure must involve a current outlay of cash for a governmental purpose of the issue. A current outlay of cash means an outlay reasonably expected to occur not later than five banking days after the date as of which the allocation of Gross Proceeds to the expenditure is made.

(e) Commingled Funds. Any fund or account that contains both Gross Proceeds of an issue and amounts in excess of \$25,000 that are not Gross Proceeds of that issue if the amounts in the fund or account are invested and accounted for collectively, without regard to the source of the funds deposited therein, constitutes a "commingled fund." All payments and receipts (including deemed payments and receipts) on investments held by a commingled fund must be allocated (but not necessarily distributed) among each different source of funds invested in the commingled fund in accordance with a consistently applied, reasonable ratable allocation method. Reasonable ratable allocation methods include, without limitation, methods that allocate payments and receipts in proportion to either (i) the average daily balances of the amounts in the

commingled fund from each different source of funds during any consistent time period within its fiscal year, but at least quarterly (the "Fiscal Period"); or (ii) the average of the beginning and ending balances of the amounts in the commingled fund from each different source of funds for a Fiscal Period that does not exceed one month.

Funds invested in the commingled fund may be allocated directly to expenditures for governmental purposes pursuant to a reasonable consistently applied accounting method. If a ratable allocation method is used to allocate expenditures from the commingled fund, the same ratable allocation method must be used to allocate payments and receipts on investments in the commingled fund.

Generally a commingled fund must treat all its investments as if sold at Fair Market Value either on the last day of the fiscal year or on the last day of each Fiscal Period. The net gains or losses from these deemed sales of investments must be allocated to each different source of funds invested in the commingled fund during the period since the last allocation. This mark-to-market requirement does not apply if (i) the remaining weighted average maturity of all investments held by a commingled fund during a particular fiscal year does not exceed 18 months, and the investments held by the commingled fund during that fiscal year consist exclusively of obligations; or (ii) the commingled fund operated exclusively as a reserve fund, sinking fund or replacement fund for two or more issues of the same issuer. Subject to the Universal Cap limitation, and the principle that amounts are allocable to only one issue at a time as Gross Proceeds, investments held by a commingled fund must be allocated ratably among the issues served by the commingled fund in proportion to either (i) the relative values of the bonds of those issues; (ii) the relative amounts of the remaining maximum annual debt service requirements on the outstanding principal amounts of those issues; or (iii) the relative original stated principal amounts of the outstanding issues.

(f) Universal Cap. Amounts that would otherwise be Gross Proceeds allocable to an issue are allocated (and remain allocated) to the issue only to the extent that the Value of the Nonpurpose Investments allocable to those Gross Proceeds does not exceed the Value of all outstanding bonds of the issue. Nonpurpose Investments allocated to Gross Proceeds in a bona fide debt service fund for an issue are not taken into account in determining the Value of the Nonpurpose Investments, and those Nonpurpose Investments remain allocated to the issue. To the extent that the Value of the Nonpurpose Investments allocable to the Gross Proceeds of an issue exceed the Value of all outstanding bonds of that issue, an issuer should seek the advice of Bond Counsel for the procedures necessary to comply with the Universal Cap.

(g) Expenditure for Working Capital Purposes. Subject to certain exceptions, the Proceeds of an issue may only be allocated to "working capital expenditures" as of any date to the extent that those expenditures exceed "available amounts" as of that date (i.e., "proceeds-spent-last").

For purposes of this section, "working capital expenditures" include all expenditures other than "capital expenditures." "Capital expenditures" are costs of a type properly chargeable (or chargeable upon proper election) to a capital account under general federal income tax principles. Such costs include, for example, costs incurred to acquire, construct or improve land, buildings and equipment having a reasonably expected useful life in excess of one year. Thus, working capital expenditures include, among other things, expenditures for current operating expenses and debt service.

For purposes of this section, "available amount" means any amount that is available to an issuer for working capital expenditure purposes of the type financed by the issue. Available amount excludes Proceeds of the issue but includes cash, investments and other amounts held in accounts or otherwise by an issuer for working capital expenditures of the type being financed by the issue without legislative or judicial action and without a legislative, judicial or contractual requirement that those amounts be reimbursed. Notwithstanding the preceding sentence, a "reasonable working capital reserve" is treated as unavailable. A working capital reserve is reasonable if it does not exceed five percent of the actual working capital expenditures of an issuer in the fiscal year before the year in which the determination of available amounts is made. For purpose of the preceding sentence only, in determining the working capital expenditures of an issuer for a prior fiscal year, any expenditures (whether capital or working capital expenditures) that are paid out of current revenues may be treated as working capital expenditures.

The proceeds-spent-last requirement does not apply to expenditures to pay (i) any Qualified Administrative Costs; (ii) fees for qualified guarantees of the issue or payments for a qualified hedge for the issue; (iii) interest on the issue for a period commencing on the Issue Date and ending on the date that is the later of three years from the Issue Date or one year after the date on which the financed Project is placed in service; (iv) the United States for yield reduction payments (including rebate payments) or penalties for the failure to meet the spend down requirements associated with certain spending exceptions to the rebate requirement; (v) costs, other than those described in (i) through (iv) above, that do not exceed five percent of the Sale Proceeds of an issue and that are directly related to capital expenditures financed by the issue (e.g., initial operating expenses for a new capital Project); (vi) principal or interest on an issue paid from unexpected excess sale or Investment Proceeds; (vii) principal or interest on an issue paid from investment earnings on a reserve or replacement fund that are deposited in a bona fide debt service fund; and (viii) principal, interest or redemption premium on a prior issue and, for a crossover refunding issue, interest on that issue. Notwithstanding the preceding paragraph, the exceptions described above do not apply if the allocation merely substitutes Gross Proceeds for other amounts that would have been used to make those expenditures in a manner that gives rise to Replacement Proceeds.

**FINANCIAL ADVISOR'S CERTIFICATE**

The undersigned, acting on behalf of Dunlap & Associates, Inc., Financial Advisor with respect to the \$18,000,000 Lee County, Florida Six Cents Local Option Gas Tax Revenue Bond, Series 2010 (the "Series 2010 Bond"), hereby certifies to Lee County, Florida (the "County") that the 2010 Bond Yield as described in the hereafter defined Arbitrage Certificate is accurate as of the date hereof.

We understand that the representations set forth above are being relied on by the County in the County's Certificate as to Arbitrage and Certain Other Tax Matters (the "Arbitrage Certificate"). Capitalized terms not otherwise defined herein shall have the meanings ascribed thereto in the Arbitrage Certificate.

Dated: May 26, 2010.

**DUNLAP & ASSOCIATES, INC.**

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

**CERTIFICATE AS TO SPECIMEN BOND**

I, Charlie Green, the undersigned Clerk of the Circuit Court of Lee County and Ex-Officio Clerk to the Board of County Commissioners of Lee County, Florida (the "County"), **DO HEREBY CERTIFY** that attached hereto as Exhibit A is a specimen of the \$18,000,000 Lee County, Florida Six Cents Local Option Gas Tax Revenue Bond, Series 2010 (the "Series 2010 Bond"), dated as of May 26, 2010, which specimen is identical in all respects with said Series 2010 Bond this day delivered to the initial purchaser thereof.

**IN WITNESS WHEREOF**, I have hereunto set my hand as of this 26th day of May, 2010.

---

Clerk of the Circuit Court of Lee County and  
Ex-Officio Clerk to the Board of County  
Commissioners of Lee County, Florida

No. R-<sup>[^]</sup>1 \$18,000,000.00

**UNITED STATES OF AMERICA  
STATE OF FLORIDA  
LEE COUNTY, FLORIDA  
SIX CENTS LOCAL OPTION  
GAS TAX REVENUE BOND, SERIES 2010**

<u>Interest Rate</u>	<u>Maturity Date</u>	<u>Date of Original Issue</u>
<sup>[^]</sup> ____%	October 1, 2013	May 26, 2010

Registered Holder: BANC OF AMERICA PUBLIC CAPITAL CORP

Principal Amount: EIGHTEEN MILLION <sup>[^]</sup>AND 00/100 DOLLARS

**KNOW ALL MEN BY THESE PRESENTS**, Lee County, Florida, a political subdivision of the State of Florida (the "Issuer"), for value received, hereby promises to pay, solely from the Pledged Funds hereinafter described, to the Registered Holder identified above, or registered assigns as hereinafter provided, on the Maturity Date identified above, the Principal Amount identified above and to pay interest on such Principal Amount from the Date of Original Issue identified above or from the most recent interest payment date to which interest has been paid at the Interest Rate per annum identified above on April 1 and October 1 of each year commencing October 1, 2010 until such Principal Amount shall have been paid, except as the provisions hereinafter set forth with respect to redemption prior to maturity may be or become applicable hereto.

Such Principal Amount and interest and the premium, if any, on this Bond are payable in any coin or currency of the United States of America which, on the respective dates of payment thereof, shall be legal tender for the payment of public and private debts. This Bond shall be payable as to principal, premium, if any, and interest by check, draft, bank wire transfer or in such other manner as is agreed to between the Issuer and the Registered Holder in whose name this Bond shall be registered on the registration books maintained by the Issuer as of the close of business on the fifteenth day (whether or not a business day) of the calendar month next preceding each interest payment date; provided, that the Registered Holder of this Bond shall present and surrender this Bond to the Issuer for the final payment of the principal of this Bond or shall provide evidence

that such Bond has been paid and canceled; and provided further, that the Registered Holder shall not credit payments against this Bond until the Registered Holder has actual receipt of such payments. Interest on this Bond shall be calculated on the basis of a 360-day year consisting of twelve 30-day months.

This Bond is issued to finance the acquisition and construction of a new two lane bascule bridge over the Matlacha Pass in Charlotte Harbor to replace the existing Matlacha Bridge, in and for the Issuer, under the authority of and in full compliance with the Constitution and laws of the State of Florida, particularly Chapter 125, Florida Statutes, Section 336.025, Florida Statutes, as amended, Ordinance No. 89-21, enacted by the Board of County Commissioners (the "Board") on June 21, 1989, [^]and other applicable provisions of law (the "Act"), and Resolution No. [^]10-R-\_\_ duly adopted by the Board on May 18, 2010, as the same may be amended and supplemented from time to time (the "Resolution"), and is subject to all the terms and conditions of the Resolution.

This Bond and the interest hereon are payable solely from and secured by a lien upon and a pledge of (1) the Six Cents Local Option Gas Tax Revenues (as defined in the Resolution) and (2) until applied in accordance with the provisions of the Resolution, all moneys, including investments thereof, in certain of the funds and accounts established by the Resolution, all in the manner and to the extent described in the Resolution (collectively, the "Pledged Funds").

It is expressly agreed by the Registered Holder of this Bond that the full faith and credit of the Issuer, the State of Florida, or any political subdivision thereof, are not pledged to the payment of the principal of, premium, if any, and interest on this Bond and that such Holder shall never have the right to require or compel the exercise of any taxing power of the Issuer, the State of Florida, or any political subdivision thereof, to the payment of such principal, premium, if any, and interest. This Bond and the obligation evidenced hereby shall not constitute a lien upon any property of the Issuer, but shall constitute a lien only on, and shall be payable solely from, the Pledged Funds in accordance with the terms of the Resolution. The Issuer may issue additional obligations on parity with the Bonds in accordance with the terms of the Resolution.

The transfer of this Bond is registrable in accordance with the terms of the Resolution only upon the books of the Issuer kept for that purpose or by his attorney duly authorized in writing, upon the surrender of this Bond together with a written instrument of transfer satisfactory to the Registrar duly executed by the Registered Holder or his attorney duly authorized in writing, and thereupon a new Bond in the same aggregate principal amount shall be issued to the transferee in exchange therefor, and upon the payment of the charges, if any, therein prescribed. This Bond is issuable in the form of one fully registered Bond in the denomination of \$[^]18,000,000. The Issuer, the Registrar and any Paying Agent may treat the Registered Holder of this Bond as the absolute owner hereof for all purposes, whether or not this Bond shall be overdue, and shall not be affected by any notice to the contrary. The Issuer and the Registrar shall not



be obligated to make any exchange or transfer of this Bond during the 15 days next preceding an interest payment date or, in the case of any proposed redemption of this Bond, during the 15 days next preceding the date of the first mailing of notice of such redemption. The Issuer, acting through the Clerk of the Circuit Court of Lee County and Ex-Officio Clerk to the Board of County Commissioners of Lee County, Florida, is serving as the initial Registrar and Paying Agent for this Bond.

This Bond may be redeemed at any time on or after February 1, 2012, at the option of the Issuer, from any moneys legally available therefore, in whole or in part on any date, by paying to the Registered Holder of this Bond the principal portion of the Bond to be redeemed, together with the unpaid interest accrued on such principal amount to the date of such redemption, plus a premium equal to the product determined by multiplying one percent (1.00%) of the principal amount to be redeemed by the number of years or fraction thereof between the date of redemption and the Maturity Date.

Each redemption of this Bond shall be made on such date and in such principal amount as shall be specified by the Issuer in a written notice delivered to the Registered Holder not less than ten (10) days prior thereto specifying the principal amount of the Bond to be redeemed and the date of such redemption. So long as the Issuer provides such notice of redemption, the provisions of Section 3.03 of the Resolution shall not apply with respect to this Bond. Upon any redemption as provided herein, the Registered Holder and the Issuer shall mutually agree to a revised amortization schedule for the remaining principal amount, if any, of such Bond and the Registered Holder shall provide the Issuer with evidence of such revised amortization.

This Bond is subject to mandatory sinking fund redemption prior to maturity at a redemption price equal to the principal amount thereof, plus accrued interest thereon to the date fixed for redemption, commencing October 1, 2010 and on each October 1 thereafter, without premium, in the following Amortization Installments (as defined in the Resolution):

Year (October 1)	Amortization Installment
2010	\$ _____
2011	_____
2012	_____
2013*	_____

\_\_\_\_\_  
\*Maturity

Reference to the Resolution and any and all resolutions supplemental thereto and modifications and amendments thereof and to the Act is made for a description of the pledge and covenants securing this Bond, the nature, manner and extent of enforcement

of such pledge and covenants, and the rights, duties, immunities and obligations of the Issuer.

It is hereby certified and recited that all acts, conditions and things required to exist, to happen and to be performed precedent to and in the issuance of this Bond, exist, have happened and have been performed, in regular and due form and time as required by the laws and Constitution of the State of Florida applicable thereto, and that the issuance of the Bonds does not violate any constitutional or statutory limitations or provisions.

Neither the members of the Board of County Commissioners of the Issuer nor any person executing this Bond shall be liable personally hereon or be subject to any personal liability or accountability by reason of the issuance hereof.

This Bond shall not be valid or become obligatory for any purpose until the certificate of authentication hereon shall have been signed by the Registrar.

**IN WITNESS WHEREOF**, Lee County, Florida has issued this Bond and has caused the same to be executed by the manual signature of the [^][Chair](#) of the Board of County Commissioners of Lee County, Florida and to be countersigned and attested by the manual signature of the Clerk of the Circuit Court of Lee County and Ex-Officio Clerk to the Board of County Commissioners of Lee County, Florida and its official seal to be affixed or reproduced hereon, all as of the Date of Original Issue.

**LEE COUNTY, FLORIDA**

(SEAL)

---

[^][Chair](#), Board of County Commissioners  
of Lee County, Florida

ATTEST:

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Clerk of the Circuit Court of Lee County  
and Ex-Officio Clerk to the Board of  
County Commissioners of Lee County,  
Florida

**CERTIFICATE OF AUTHENTICATION**

This Bond is one of the Bonds of the Issue described in the within-mentioned Resolution.

DATE OF AUTHENTICATION:

\_\_\_\_\_

**LEE COUNTY, FLORIDA**  
as Registrar

By: \_\_\_\_\_  
Clerk of the Circuit Court of Lee  
County and Ex-Officio Clerk to the  
Board of County Commissioners of  
Lee County, Florida

Unless this certificate is presented by an authorized representative of The Depository Trust Company to the Issuer or its agent for registration of transfer, exchange or payment, and any certificate issued is registered in the name of Cede & Co. or such other name as requested by the authorized representative of The Depository Trust Company and any payment is made to Cede & Co., ANY TRANSFER, PLEDGE OR OTHER USE HEREOF FOR VALUE OR OTHERWISE BY OR TO ANY PERSON IS WRONGFUL since the registered owner hereof, Cede & Co., has an interest herein.

**ASSIGNMENT**

**FOR VALUE RECEIVED**, the undersigned sells, assigns and transfers unto

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Insert Social Security or Other Identifying Number of Assignee

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(Name and Address of Assignee)

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the within Bond and does hereby irrevocably constitute and appoint \_\_\_\_\_, as attorneys to register the transfer of the said Bond on the books kept for registration thereof with full power of substitution in the premises.

Dated: \_\_\_\_\_

Signature guaranteed:

---

**NOTICE:** Signature(s) must be guaranteed by an institution which is a participant in the Securities Transfer Agent Medallion Program (STAMP) or similar program.

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**NOTICE:** The signature to this assignment must correspond with the name of the Registered Holder as it appears upon the face of the within Bond in every particular, without alteration or enlargement or any change whatever and the Social Security or other identifying number of such assignee must be supplied.

The following abbreviations, when used in the inscription on the face of the within Bond, shall be construed as though they were written out in full according to applicable laws or regulations:

TEN COM -- as tenants in common

TEN ENT -- as tenants by the entireties

JT TEN -- as joint tenants with right of survivorship and not as tenants in common

UNIF TRANS MIN ACT -- \_\_\_\_\_  
(Cust.)

Custodian for \_\_\_\_\_

under Uniform Transfers to Minors Act of \_\_\_\_\_  
(State)

Additional abbreviations may also be used though not in list above.

**CERTIFICATE OF DELIVERY AND PAYMENT**

I, Charlie Green, Clerk of the Circuit Court of Lee County and Ex-Officio Clerk to the Board of County Commissioners of Lee County, Florida (the "County"), **DO HEREBY CERTIFY** as follows:

That on the date hereof I caused to be delivered for the account of Banc of America Public Capital Corp (the "Purchaser") the \$18,000,000 Lee County, Florida Six Cents Local Option Gas Tax Revenue Bond, Series 2010, and received for the County's account on this date from the Purchaser in full payment therefor, the sum of \$18,000,000.00.

**IN WITNESS WHEREOF**, I have hereunto set my hand as of the 26th day of May, 2010.

---

Clerk of the Circuit Court of Lee County and  
Ex-Officio Clerk to the Board of County  
Commissioners of Lee County, Florida

**CROSS-RECEIPT**

May 26, 2010

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

Dear Commissioners:

We have transferred to you herewith an amount equal to \$18,000,000.00, being payment of the purchase price for your Six Cents Local Option Gas Tax Revenue Bond, Series 2010 (the "Bond"), received today from you by the undersigned. Of such amount, \$18,000,000.00 will be wired to the County's account at Bank of America, N.A. The undersigned hereby acknowledges delivery of said Bond.

**BANC OF AMERICA PUBLIC CAPITAL  
CORP**

By: \_\_\_\_\_  
Charles Maguire, Senior Vice President

Please acknowledge receipt of the foregoing deposit by signing and returning the original or a counterpart of this letter.

**LEE COUNTY, FLORIDA**

\_\_\_\_\_  
Clerk of the Circuit Court of Lee County,  
Florida

<b>Part I Reporting Authority</b>		If Amended Return, check here <input type="checkbox"/>	
1 Issuer's name	2 Issuer's employer identification number		
3 Number and street (or P.O. box if mail is not delivered to street address)	Room/suite	4 Report number	3
5 City, town, or post office, state, and ZIP code		6 Date of issue	
7 Name of issue		8 CUSIP number	
9 Name and title of officer or legal representative whom the IRS may call for more information		10 Telephone number of officer or legal representative ( )	

**Part II Type of Issue (check applicable box(es) and enter the issue price)** See instructions and attach schedule

11 <input type="checkbox"/> Education	11
12 <input type="checkbox"/> Health and hospital	12
13 <input type="checkbox"/> Transportation	13
14 <input type="checkbox"/> Public safety	14
15 <input type="checkbox"/> Environment (including sewage bonds)	15
16 <input type="checkbox"/> Housing	16
17 <input type="checkbox"/> Utilities	17
18 <input type="checkbox"/> Other. Describe	18
19 If obligations are TANs or RANs, check box <input type="checkbox"/> If obligations are BANs, check box <input type="checkbox"/>	
20 If obligations are in the form of a lease or installment sale, check box <input type="checkbox"/>	

**Part III Description of Obligations.** Complete for the entire issue for which this form is being filed.

(a) Final maturity date	(b) Issue price	(c) Stated redemption price at maturity	(d) Weighted average maturity	(e) Yield
21	\$	\$	years	%

**Part IV Uses of Proceeds of Bond Issue (including underwriters' discount)**

22 Proceeds used for accrued interest	22
23 Issue price of entire issue (enter amount from line 21, column (b))	23
24 Proceeds used for bond issuance costs (including underwriters' discount)	24
25 Proceeds used for credit enhancement	25
26 Proceeds allocated to reasonably required reserve or replacement fund	26
27 Proceeds used to currently refund prior issues	27
28 Proceeds used to advance refund prior issues	28
29 Total (add lines 24 through 28)	29
30 Nonrefunding proceeds of the issue (subtract line 29 from line 23 and enter amount here)	30

**Part V Description of Refunded Bonds (Complete this part only for refunding bonds.)**

31 Enter the remaining weighted average maturity of the bonds to be currently refunded  years

32 Enter the remaining weighted average maturity of the bonds to be advance refunded  years

33 Enter the last date on which the refunded bonds will be called

34 Enter the date(s) the refunded bonds were issued

**Part VI Miscellaneous**

35 Enter the amount of the state volume cap allocated to the issue under section 141(b)(5)  35

36a Enter the amount of gross proceeds invested or to be invested in a guaranteed investment contract (see instructions)  36a

b Enter the final maturity date of the guaranteed investment contract

37 Pooled financings: a Proceeds of this issue that are to be used to make loans to other governmental units  37a

b If this issue is a loan made from the proceeds of another tax-exempt issue, check box  and enter the name of the issuer  and the date of the issue

38 If the issuer has designated the issue under section 265(b)(3)(B)(i)(III) (small issuer exception), check box

39 If the issuer has elected to pay a penalty in lieu of arbitrage rebate, check box

40 If the issuer has identified a hedge, check box

Under penalties of perjury, I declare that I have examined this return and accompanying schedules and statements, and to the best of my knowledge and belief, they are true, correct, and complete.

**Sign Here**

Signature of issuer's authorized representative \_\_\_\_\_ Date \_\_\_\_\_ Type or print name and title \_\_\_\_\_





**STATE OF FLORIDA - DIVISION OF BOND FINANCE LOCAL BOND  
MONITORING**[Home](#)[Logout](#)**NOTICE OF SALE STATUS**

Notice of Sale submission successful.

**SUBMIT DATE: 05/06/2010**

**BOND ISSUE NAME:** Lee County, Florida Six Cents Local Option Gas Tax  
Revenue Bond, Series 2010  
**SALE DATE:** 5/26/2010  
**CLOSING DATE:** 5/26/2010

[Print this page](#)

**NAME OF GOVERNMENTAL UNIT**  
**Lee County, Florida**

**MAILING ADDRESS OF GOVERNMENTAL UNIT OR ITS MANAGER**  
 Address(1) **2115 Second Street**  
 Address(2)  
 City **Fort Myers**  
 State **FL**  
 Zip **33901**

**COUNT(IES) IN WHICH GOVERNMENTAL UNIT HAS JURISDICTION**  
**Lee**

**TYPE OF ISSUER**  
**County**

**IS THE ISSUER A COMMUNITY DEVELOPMENT DISTRICT?**

ISSUE NAME	AMOUNT	INTEREST CALCULATION	YIELD
Lee County, Florida Six Cents Local Option Gas Tax Revenue Bond, Series 2010	\$18,000,000.00	Arbitrage Yield	0.00

**AMOUNT AUTHORIZED**  
**\$18,000,000.00**

**DATED DATE (MM/DD/YYYY)**  
**05/26/2010**

**SALE DATE (MM/DD/YYYY)**  
**05/26/2010**

**DELIVERY DATE (MM/DD/YYYY)**  
**05/26/2010**

**LEGAL AUTHORITY FOR ISSUANCE**  
**Ch. 125, F.S.; Ch. 336.025(1)(a) F.S.**

**TYPE OF ISSUE**  
**Revenue**

**IS THIS A PRIVATE ACTIVITY BOND (PAB)?**   
 Did This Issue Receive a PAB Allocation?   
 Amount of Allocation  
**\$0.00**

**SPECIFIC REVENUES(S) PLEDGED**  
 Primary  
**Local Option Gas Tax**  
 Secondary  
  
 Other

**PURPOSE(S) OF THE ISSUE**

Primary

Transportation

Secondary

Other

IS THIS A REFUNDING ISSUE? 

REFUNDED DEBT HAS BEEN

-

DID THE REFUNDING ISSUE CONTAIN NEW MONEY? 

APPROXIMATELY WHAT PERCENTAGE OF PROCEEDS IS NEW MONEY?

TYPE OF SALE

Negotiated Private Placement

INSURANCE/ENHANCEMENTS

No Credit Enhancement

RATING(S)

Moody's

NR

S &amp; P

NR

Fitch

NR

Other

DEBT SERVICE SCHEDULE PROVIDED BY

E-mail

OPTIONAL REDEMPTION PROVISIONS PROVIDED BY

E-mail

PROVIDE THE NAME AND ADDRESS OF THE SENIOR MANAGING UNDERWRITER OR SOLE PURCHASER

**Underwriter** Banc of America Public Capital Corp

Address(1) Mail Code: VA2-300-18-02

Address(2) 111 East Main Street 18th Floor

City Richmond

State VA

Zip 23219

**CO-Underwriter** None

Address(1)

Address(2)

City

State -

Zip

PROVIDE THE NAME(S) AND ADDRESS(ES) OF ANY ATTORNEY OR FINANCIAL CONSULTANT WHO ADVISED THE UNIT OF LOCAL GOVERNMENT WITH RESPECT TO THE BOND ISSUE.

**Bond Counsel** Nabors, Giblin & Nickerson  
 Address(1) 2502. N. Rocky Point Drive  
 Address(2) Suite 1060  
 City Tampa  
 State FL  
 Zip 33607

**CO-Bond Counsel** None

Address(1)  
 Address(2)  
 City  
 State -  
 Zip

**Financial Advisor/Consultant** Dunlap & Associates. Inc.

Address(1) 1146 Keyes Avenue  
 Address(2)  
 City Winter Park  
 State FL  
 Zip 32789

**CO-Financial Advisor/Consultant** None

Address(1)  
 Address(2)  
 City  
 State -  
 Zip

**Other Professionals** Foley & Lardner LLP

Address(1) One Independent Drive  
 Address(2) Suite 1300  
 City Jacksonville  
 State FL  
 Zip 32202

**PAYING AGENT**

Lee County

**REGISTRAR**

Lee County

**BF2004-A AND BF2004-B**

NOTE: The following items are required to be completed in full for all bond issues except those sold pursuant to Section 154 Part III, Sections 159 Parts II, III, or V; or Section 243 Part I, Florida Statutes.

**HAS ANY FEE, BONUS, OR GRATUITY BEEN PAID BY ANY UNDERWRITER OR FINANCIAL CONSULTANT, IN CONNECTION WITH THE BOND ISSUE, TO ANY PERSON NOT REGULARLY EMPLOYED OR ENGAGED BY SUCH UNDERWRITER OR CONSULTANT? IF YES, PLEASE PROVIDE THE FOLLOWING INFORMATION WITH RESPECT TO EACH SUCH UNDERWRITER OR CONSULTANT.**

**HAVE ANY OTHER FEES BEEN PAID BY THE UNIT OF LOCAL GOVERNMENT WITH RESPECT TO THE BOND ISSUE, INCLUDING ANY FEE PAID TO ATTORNEYS OF FINANCIAL CONSULTANTS? IF YES, PLEASE PROVIDE THE TOTAL FEES PAID TO APPLICABLE PARTICIPANTS.**

Total Bond Counsel Fees Paid

\$20,000.00

Total Financial Advisor Fees Paid

\$15,000.00

Other Fees Paid

**FILING OF THIS FORM HAS BEEN AUTHORIZED BY THE OFFICIAL OF THE ISSUER IDENTIFIED BELOW**

Name

James Lewin, Fiscal Analyst

Title

Governmental Officer primarily responsible for coordinating issuance of the bonds

**FEES CHARGED BY UNDERWRITER**

Management Fee (Per Thousand Par Value)

0

Private Placement Fee

\$0.00

**UNDERWRITER'S EXPECTED GROSS SPREAD (PER THOUSAND PAR VALUE)**

0

**FOR ADDITIONAL INFORMATION, THE DIVISION OF BOND FINANCE SHOULD CONTACT:**

Name Steven E. Miller, Esq.  
 Title Bond Counsel  
 Phone 813-281-2222  
 Company Nabors, Giblin & Nickerson, PA  
 Address(1) 2502 N. Rocky Point Drive  
 Address(2) Suite 1060  
 City Tampa  
 State FL  
 Zip 33607

**INFORMATION RELATING TO PARTY COMPLETING THIS FORM (IF DIFFERENT FROM ABOVE)**

Name  
 Title  
 Phone - -  
 Company  
 Address(1)  
 Address(2)  
 City  
 State -  
 Zip

In order to better serve local governments, the Division of Bond Finance will remind issuers as their deadlines approach for filing continuing disclosure information required by SEC Rule 15c2-12, based on the following information:

**IF THE ISSUER IS REQUIRED TO PROVIDE CONTINUING DISCLOSURE INFORMATION IN ACCORDANCE WITH SEC RULE 15c2-12, DO YOU WANT THE DIVISION OF BOND FINANCE TO REMIND YOU OF YOUR FILING DEADLINE?**

**ON WHAT DATE IS THE CONTINUING DISCLOSURE INFORMATION REQUIRED TO BE FILED? (MM/DD)**

**PROVIDE THE FOLLOWING INFORMATION REGARDING THE PERSON(S) RESPONSIBLE FOR FILING CONTINUING DISCLOSURE INFORMATION REQUIRED BY SEC RULE 15c2-12 AND THE CONTINUING DISCLOSURE AGREEMENT (INCLUDING OTHER OBLIGATED PARTIES, IF APPROPRIATE).**

Name  
 Title  
 Phone - -

Company	
Address(1)	
Address(2)	
City	
State	-
Zip	
Fax	- -
Email	

## SCHEDULE I

<u>MATURITY DATE</u> <u>(MO/DAY/YR)</u>	<u>COUPON/</u> <u>INTEREST RATES</u>	<u>ANNUAL</u> <u>INTEREST PAYMENTS</u>	<u>PRINCIPAL</u> <u>PAYMENTS</u>
10/1/2010			
10/1/2011			
10/1/2012			
10/1/2013			

### **Optional Redemption Provisions.**

This Bond may be redeemed at any time on or after February 1, 2012, at the option of the Issuer, from any moneys legally available therefore, in whole or in part on any date, by paying to the Registered Holder of this Bond the principal portion of the Bond to be redeemed, together with the unpaid interest accrued on such principal amount to the date of such redemption, plus a premium equal to the product determined by multiplying one percent (1.00%) of the principal amount to be redeemed by the number of years or fraction thereof between the date of redemption and the Maturity Date.

May 26, 2010

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

Ladies and Gentlemen:

We have examined a record of proceedings relating to the issuance of \$18,000,000 aggregate principal amount of the Lee County, Florida Six Cents Local Option Gas Tax Revenue Bond, Series 2010 (the "Series 2010 Bond").

The Series 2010 Bond is issued under and pursuant to the Laws of the State of Florida, including, particularly, Chapter 125, Florida Statutes, Section 336.025, Florida Statutes, Ordinance No. 89-21 of the County adopted on June 21, 1989 (the "Gas Tax Ordinance"), and pursuant to Resolution No. 10-05-\_\_ of the County adopted on May 18, 2010 (the "Resolution"). All capitalized terms used but not otherwise defined herein shall have the meanings ascribed to such terms in the Resolution.

The Series 2010 Bond is dated and shall bear interest from its date of delivery, except as otherwise provided in the Resolution. The Series 2010 Bond will mature on October 1, 2013 and will bear interest at the rate per annum, as provided in the Resolution. Interest on the Series 2010 Bond shall be payable on April 1 and October 1 of each year, commencing on October 1, 2010. The Series 2010 Bond is subject to redemption prior to maturity as provided in the Resolution.

The Series 2010 Bond is issued for the principal purpose of financing the acquisition and construction of a new two-lane bascule bridge over the Matlacha Pass in Charlotte Harbor within the County, as more specifically described in the Resolution.

As to questions of fact material to our opinion, we have relied upon the representations of the County contained in the Resolution and the Gas Tax Ordinance and the certified proceedings relating thereto and to the issuance of the Series 2010 Bond and other certifications of public officials furnished to us in connection therewith without undertaking to verify the same by independent investigation.



Based on the foregoing, we are of the opinion that:

1. The County is a duly created and validly existing political subdivision of the State of Florida.

2. The County has the right and power under the Constitution and Laws of the State of Florida to adopt the Resolution, and the Resolution has been duly and lawfully adopted by the County, is in full force and effect in accordance with its terms and is valid and binding upon the County and enforceable in accordance with its terms, and no other authorization for the Resolution is required. The Resolution creates the valid pledge which it purports to create of the Pledged Funds (as such term is defined in the Resolution), subject to the provisions of the Resolution permitting the application thereof for the purposes and on the terms and conditions set forth in the Resolution.

3. The County is duly authorized and entitled to issue the Series 2010 Bond, and the Series 2010 Bond has been duly and validly authorized and issued by the County in accordance with the Constitution and Laws of the State of Florida and the Resolution. The Series 2010 Bond constitutes a valid and binding obligation of the County as provided in the Resolution, is enforceable in accordance with its terms and the terms of the Resolution and is entitled to the benefits of the Resolution and the laws pursuant to which it is issued. The Series 2010 Bond does not constitute a general indebtedness of the County or the State of Florida or any agency, department or political subdivision thereof, or a pledge of the faith and credit of such entities, but is payable solely from the Pledged Funds in the manner and to the extent provided in the Resolution. No holder of the Series 2010 Bond shall ever have the right to compel the exercise of any ad valorem taxing power of the County or the State of Florida or any political subdivision, agency or department thereof to pay the Series 2010 Bond.

4. Under existing statutes, regulations, rulings and court decisions, the interest on the Series 2010 Bond (a) is excluded from gross income for federal income tax purposes and (b) is not an item of tax preference for purposes of the federal alternative minimum tax imposed on individuals and corporations. The opinion set forth in this paragraph is subject to the condition that the County comply with all requirements of the Internal Revenue Code of 1986, as amended, that must be satisfied subsequent to the issuance of the Series 2010 Bond in order that interest thereon be (or continues to be) excluded from gross income for federal income tax purposes. Failure to comply with certain of such requirements could cause the interest on the Series 2010 Bond to be so included in gross income retroactive to the date of issuance of the Series 2010 Bond. The

County has covenanted to comply with all such requirements. Ownership of the Series 2010 Bond may result in collateral federal tax consequences to certain taxpayers. We express no opinion regarding such federal tax consequences arising with respect to the Series 2010 Bond.

It should be noted that we have not been engaged or undertaken to review the compliance with any federal or state law with regard to the sale or distribution of the Series 2010 Bond and we express no opinion relating thereto.

The opinions expressed in paragraphs 2 and 3 hereof are qualified to the extent that the enforceability of the Resolution and the Series 2010 Bond may be limited by any applicable bankruptcy, insolvency, moratorium, reorganization or other similar laws affecting creditors' rights generally, or by the exercise of judicial discretion in accordance with general principles of equity.

We have examined the form of the Series 2010 Bond and, in our opinion, the form of the Series 2010 Bond is regular and proper.

This opinion is given as of the date hereof and we assume no obligation to update, revise or supplement this opinion to reflect any facts and circumstances that may hereafter come to our attention or any changes in law that may hereafter occur.

Respectfully submitted,

May 26, 2010

Banc of America Public Capital Corp  
Richmond, Virginia

Re: \$18,000,000 Lee County, Florida Six Cents Local Option Gas Tax  
Revenue Bond, Series 2010

Dear Sir or Madam:

We have this date delivered to Lee County, Florida our approving opinion as Bond Counsel in connection with the issuance of the above-captioned Bond. This letter will confirm that you are entitled to rely upon such opinion as if such opinion were addressed to you.

Sincerely,

May 26, 2010

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

Banc of America Public Capital Corp  
Richmond, Virginia

Re: \$18,000,000 Lee County, Florida Six Cents Local Option Gas Tax  
Revenue Bond, Series 2010

Ladies and Gentlemen:

I am the County Attorney for Lee County, Florida (the "County"), and have served in such capacity in connection with the issuance and sale by the County of its Six Cents Local Option Gas Tax Revenue Bond, Series 2010 (the "Series 2010 Bond"). All terms not otherwise defined herein shall have the meanings ascribed thereto in Resolution No. 10-05-\_\_, adopted by the Board of County Commissioners of the Issuer on May 18, 2010 (the "Resolution"). All capitalized terms used but not otherwise defined herein shall have the meanings ascribed thereto in the Resolution.

I have examined, among other things, the Act, the Resolution, the Gas Tax Ordinance and the proceedings of the County with respect to the authorization and issuance of the Series 2010 Bond, the proceedings of the County relating to the Initial Project, and certificates and other documents relating to the County, the Series 2010 Bond, the Gas Tax Ordinance and the Resolution, and have made such other examination of applicable Florida law as I have deemed necessary in giving this opinion.

Based upon the foregoing, I am of the opinion that:

1. the County is a political subdivision of the State of Florida duly organized and validly existing under the Constitution and laws of the State of Florida with full power and authority to enact the Gas Tax Ordinance, to adopt the Resolution and to authorize and issue the Series 2010 Bond and to acquire and construct the Initial Project.

2. The Resolution has been duly adopted by the County, the Gas Tax Ordinance has been duly enacted by the County and the Resolution and the Gas Tax Ordinance are each in full force and effect and constitutes a valid, legal and binding obligation of the County enforceable in accordance with its respective terms.

3. The adoption of the Resolution, the enactment of the Gas Tax Ordinance and the execution and delivery of the Series 2010 Bond, and compliance with the provisions thereof, will not conflict with or constitute a material breach of or default under any existing law, administrative regulation, court decree or, to the best of my knowledge, any resolution or agreement to which the County is subject.

4. To the best of my knowledge after due inquiry with respect thereto, no litigation or other proceedings are pending or threatened in any court or other tribunal of competent jurisdiction, State or Federal, in any way (1) restraining or enjoining the issuance, sale or delivery of the Series 2010 Bond or the acquisition and construction of the Initial Project, or (2) questioning or affecting the validity of the Series 2010 Bond, the Resolution, or the pledge by the County of the Pledged Funds as provided in the Resolution or the acquisition and construction of the Initial Project; or (3) questioning or affecting the validity of any of the proceedings for the authorization, sale, execution, registration, issuance or delivery of the Series 2010 Bond and the security therefor or the acquisition and construction of the Initial Project; or (4) questioning or affecting (a) the organization or existence of the County or the Board or the title to office of the officers thereof, or (b) the power or authority of the County to levy the Six Cents Local Option Gas Tax; or (5) which could materially adversely affect the operations of the County or the financial condition of the County.

5. To the best of my knowledge, all approvals, consents, authorizations and orders of any governmental authority or agency having jurisdiction in any matter which would constitute a condition precedent to the performance by the County of its obligations under the Resolution, the Series 2010 Bond and the other documents relating to the Series 2010 Bond have been obtained and are in full force and effect.

All of the above opinions as to enforceability of the legal obligations of the County may be subject to and limited by bankruptcy, insolvency, reorganization, moratorium and similar laws, in each case relating to or affecting the enforcement of creditors rights generally, and other general principles of equity.

Board of County Commissioners  
of Lee County, Florida  
Banc of America Public Capital Corp  
Page 3

May 26, 2010

The letter is addressed to you and is not to be used, circulated, quoted or otherwise referred to for any other purpose without, in each case, my express written consent.

Respectfully submitted,