

**AGENDA REQUEST**

Date: March 30, 2010

PUBLIC HEARING \_\_\_\_\_ RESOLUTION \_\_\_\_\_ ORDINANCE \_\_\_\_\_  
CONSENT X OTHER BUSINESS \_\_\_\_\_ CORRESPONDENCE \_\_\_\_\_

**ITEM DESCRIPTION:**

City of Edgewater, non-revolving Line of Credit with Wachovia Bank not to exceed \$750,000

**BACKGROUND:**

The Line of Credit, the Loan, will be secured by Grant Proceeds received by the City for any project for which the proceeds of the subject loan were used and a Covenant to Budget and Appropriate from all Legally Available Non-Ad Valorem Revenues. The Line will mature two years from closing. Principal will be fully due and payable at maturity.

The grant funded Capital Improvement Projects subject to the use of the Line of Credit is as follows:

- |    |  |
|----|--|
|    | Project                                  |
| 1. | Southeast Water Storage and Pump Station |
| 2. | New Water Supply Wells                   |
| 3. | Amphitheater cover                       |
| 4. | Station 55 retrofit                      |
| 5. | Riverside Lift Station retrofit          |

The resolution and agreements will be brought to Council on Monday April 19, 2010 for execution.

**STAFF RECOMMENDATION:**

Authorize the City Manager to proceed with the Non-revolving Line of Credit with Wachovia Bank, not to exceed \$750,000.

**ACTION REQUESTED:**

Motion to authorize the City Manager to proceed with the Non-revolving Line of Credit with Wachovia Bank to provide funds for various grant funded capital improvement projects.

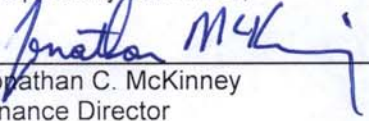
**FINANCIAL IMPACT:**

(FINANCE DIRECTOR) \_\_\_\_\_  
(SPECIFY IF BUDGET AMENDMENT IS REQUIRED) n/a


**PREVIOUS AGENDA ITEM:**  
DATE: \_\_\_\_\_


YES \_\_\_ NO X  
AGENDA ITEM NO. \_\_\_\_\_

Respectfully submitted,

  
Jonathan C. McKinney  
Finance Director

Concurrence:

  
Robin Matusick  
Paralegal

  
Tracey Barlow  
City Manager



# WACHOVIA

Wachovia Bank N.A.  
a Wells Fargo Company  
Government and Institutional Banking  
800 N. Magnolia Ave. 9<sup>th</sup> Floor FL2810  
Orlando, FL 32803

March 15, 2010

Mr. Jonathan McKinney  
Finance Director  
City of Edgewater  
104 North Riverside Drive  
Edgewater, Florida 32132

Dear Mr. McKinney:

Wachovia Bank, National Association (the "Bank") is pleased to submit the Commitment described below to the City of Edgewater, Florida (the "City") subject to the following terms and conditions:

Effective December 31, 2008, Wachovia Corporation merged with Wells Fargo & Company ("Wells Fargo"), with Wells Fargo as the surviving holding company. Upon consummation of the merger, Wachovia Bank, National Association ("Wachovia") became an indirect subsidiary of Wells Fargo. Wachovia will operate under its existing national bank charter until it is merged with Wells Fargo Bank, National Association. Upon such merger the Financing Documents (as defined below) shall automatically transfer to Wells Fargo Bank, National Association.

Borrower:	City of Edgewater, Florida (the "City")
Amount:	\$750,000.00
Facility:	Non-revolving Line of Credit (the "Line")
Purpose:	To provide funds for various capital improvement projects.
Term:	The Line will mature two years from closing. Interest will be due semi-annually commencing six months from closing. Principal will be fully due and payable at maturity. Interest on the outstanding balance of the loan will be calculated on a 30/360 day-year basis. Draws will be limited to one a month. Minimum draw of \$200,000 at closing.
Security:	The Loan will be secured by Grant Proceeds received by the City for any project for which the proceeds of the subject loan were used and a Covenant to Budget and Appropriate from all Legally Available Non-Ad Valorem Revenues (the "Pledged Revenues").

Interest Rate: NOTE: The City must indicate the closing date at the time of acceptance.

Bank Qualified Variable Rate: One Month LIBOR plus 150 basis points, adjusted monthly. As of March 15, the rate would have been 1.73%.

LIBOR is that rate as shown on the Telerate System, page 3750. The Initial Rate will be based on LIBOR two business days prior to closing. LIBOR will be reset monthly on the first day of the month based on LIBOR two business day prior to the first day of the month.

Prepayment: The loan may be prepaid at any time without penalty.

#### Conditions

1. The City, by official action, shall approve entering into this commitment and the loan facility described herein; it shall cause any borrowing under this facility to be designated as a "Qualified Tax-Exempt Obligation" pursuant to Section 265(b)(3)(B) Internal Revenue Code of 1986, as amended.

Should subsequent but currently unforeseen events cause any borrowing under this facility to be determined to be a "non-qualified" obligation pursuant to Section 265(b)(3)(B), Internal Revenue Code of 1986, as amended, the Bank shall adjust the interest rate on any outstanding hereunder so that it shall receive the same after tax yield equivalent contemplated as of the time of this commitment.

2. The interest rate on this Note shall be subject to adjustment as set forth below. If i) a "Determination of Taxability" (as defined below) shall occur or ii) state or federal tax laws or regulations are amended to cause the interest on the Note to be taxable, to be subject to a minimum tax or an alternative minimum tax or to otherwise decrease the after tax yield on the Note to the Lender (directly or indirectly, in whole or in part), then the interest on the Note shall be adjusted to cause the yield on the Note, after payment of any increase in tax, to equal what the yield on the Note would have been in the absence of such Determination of Taxability or change or amendment in tax laws or regulations.

For purposes hereof, "Determination of Taxability" means the circumstance of the interest on the Note becoming includable for federal income tax purposes in the gross income of the Lender, or the Note not being a "qualified tax-exempt obligation" under Section 265(b)(3)(B) of the Internal Revenue Code, regardless of whether caused by or within the control of the Issuer. A Determination of Taxability will be deemed to have occurred upon (i) the receipt by the Issuer or the Lender of an original or a copy of an Internal Revenue Service Technical Advice Memorandum or Statutory Notice of Deficiency; (ii) the issuance of any public or private ruling of the Internal Revenue Service; or (iii) receipt by the Issuer or Lender of an opinion of counsel experienced in tax matters relating to municipal bonds, in each case to the effect that the interest on the Note is not excluded from in the gross income of the Lender for federal income tax purposes or the Note is not a "qualified tax-exempt obligation".

The above adjustments shall be cumulative, but in no event shall the interest on the Note exceed the maximum permitted by law. The above adjustments to the interest rate on the Note shall be effective for all periods during which tax treatment of the interest on

the Note by the Lender is the affected. Proper partial adjustment shall be made if the tax law change is effective after the first day of the Lender's tax year or if the interest on the Note does not accrue for the entire tax year of the Lender. Adjustments which create a circular calculation because the interest on the Note is affected by the calculation shall be carried out sequentially, increasing the interest on the Note accordingly in each successive calculation using as the new value the increase in the interest rate on the Note, until the change on the interest rate on the note caused by the next successive calculation of the adjustment is de minimis.

3. All legally available Non-Ad Valorem Revenues shall mean all revenues of the City derived from any source whatsoever, other than Ad Valorem taxation on real and personal property and are legally available to make the loan repayments required under this proposal, but only after provision has been made by the City for payment of services and programs which are for essential public purpose affecting the health welfare and safety of the inhabitants of the City or which are legally mandated by applicable law. So long as there are legally available Non-Ad Valorem Revenues, the City may not fail to budget and appropriate debt service in order to balance its budget. The foregoing covenant to budget and appropriate shall be deemed to require appropriation, in the manner set forth above, of Non-Ad Valorem Revenues ratably to pay the obligations hereunder and all other Additional Covenant Debt. The Issuer will not enter into any covenant to budget and appropriate from Non-Ad Valorem revenues which is in any manner prior or senior to its obligations hereunder. Additional Covenant Debt shall mean indebtedness of the Issuer heretofore or hereafter issued which contains a covenant by the Issuer to budget and appropriate from Non-Ad Valorem Revenues amount sufficient to pay the principal, interest and premium, if any, on such debt as same becomes due and payable, all in a form similar to the covenant described herein.
4. For each fiscal year during the term of the loans, and prior to the incurrence of Additional debt secured by a Covenant to Budget and Appropriate from all Legally Available Non-Ad Valorem Revenues, the average of the prior two years Legally Available Non Ad Valorem Revenues as defined above, must cover existing and projected maximum annual debt service on debt secured by and/or payable from such Revenues by at least 1.5x, For purposes of calculating maximum annual debt service, variable rate debt shall be assumed to bear interest at the higher of 6% per annum or the actual interest rate borne by the loan for the month preceding the date of calculation. Moreover the subject facility shall be assumed to be amortized over a five year period.
5. Loan documents relating to this facility shall be prepared by bond counsel listed in The Bond Buyer's Municipal Marketplace (the "Red Book") and acceptable to the Bank. The Bank will receive a standard opinion of bond counsel as to the due authorization and enforceability of the documents and as to tax-exemption under state and federal law, and an opinion of the issuer's attorney as to litigation and other matters. The loan documents and such opinions shall be in form and content acceptable to the Bank. Documents shall be available for review at least 5 business days prior to closing. The Bank will retain counsel to prepare the loan documents and to provide the bond counsel opinion or, if the issuer has bond counsel, to review the documents on behalf of the Bank. Bank counsel will charge a fee of \$7,000.00 to prepare the documents and provide the bond counsel opinion or a fee of \$3,000.00 to review documents prepared by the issuer's bond counsel. All costs relating to the preparation of documents and to otherwise complete this transaction, including the Bank counsel fee, will be paid by the City (whether or not the transaction closes).

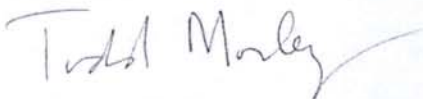
6. On an ongoing basis, the City agrees that it shall deliver to the Bank printed copies of, when available, or within 180 days of each fiscal year end, whichever is sooner, a Comprehensive Annual Financial Report, a Current Year Operating Budget as soon as it is completed and a Capital Improvement Plan and any other such information as reasonably requested by Bank. Additionally, the City shall annually provide an Anti-Dilution Certificate, (Exhibit B attached), certifying that it is in compliance with the required ratio as set forth in condition (4) above. **Prior to closing the attached Exhibit B must be signed** and returned to the Bank.
7. This Commitment shall remain in full force and effect through 3:00 p.m., local time, March 26, 2010, at which time, if not accepted by execution of the acceptance clause below and mailed to the Bank at its 800 N. Magnolia Ave, 7<sup>h</sup> Floor, Orlando, FL 32803 office to my attention, this Commitment shall expire and shall not be enforceable by either the Bank or the City unless extended by the Bank in writing. Unless extended by the Bank in writing, this facility must close on or prior to May 26, 2010 after which this commitment shall expire.
8. If the Bank chooses to waive any covenant, paragraph, or provision of this Commitment, or if any covenant, paragraph, or provision of this Commitment is construed by a court of competent jurisdiction to be invalid, it shall not affect the applicability, validity or enforceability of the remaining covenants, paragraphs or provisions.
9. The preceding terms and conditions are not exhaustive. Any final documents will include other covenants, terms and closing conditions as are customarily required by the Bank for similar transactions including but not limited to a Cross Default with other debt, Default Rate of the higher of the Note Rate + 3% or Prime + 3%, Events of Default, Acceleration upon Default and waiver of jury trial, most favored nation provision, such that more restrictive covenants, ratios and tests, and greater remedies under the Obligor's other like secured debt instruments shall be automatically deemed incorporated, mutatis mutandis, into the loan documents, and prohibitions on the use of bond proceeds for leveraged or margined investments and on speculative derivative transactions, in each case without the prior written consent of the Bank. To the extent permitted by law the loan documents will include customary interest rate recapture ("clawback") language allowing the Bank to recover interest in excess of any maximum interest rate imposed by law. This Commitment Letter shall not survive closing.
10. To ensure current pricing the Obligor must maintain their primary depository and operating accounts and treasury services with the Bank. Should the Obligor discontinue their principal depository and treasury services relationship with the Bank, a review and change of the facility fee may be required by the Bank.
11. The City represents and agrees that all information provided to the Bank is correct and complete. No material adverse change may occur in the business condition, operations, or performance of the City nor may any adverse circumstance be discovered as to, the financial condition of the City prior to closing. The Bank's obligations under this Commitment are conditioned on the fulfillment to the Bank's sole satisfaction of each term and condition referenced by this Commitment. No change may occur in any law, rule or regulation (or their interpretation or administration), that, in each case, may adversely affect the consummation of the transaction, to be determined in the Bank's sole discretion;
12. This Commitment supersedes all prior Commitments and proposals with respect to this

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

13. The Bank will make the loan for its own account and not with the intent to distribute the loan or interests therein. However, the Bank may in the future enter into participation agreements or securitization transactions with respect to the loan. No transfer restrictions will apply to the loan. If requested, the Bank will deliver an appropriate investor letter at closing.

Wachovia Bank, National Association appreciates the opportunity to submit this Commitment to you and looks forward to your favorable response. Should you have any questions, please do not hesitate to contact me at 407-649-5638.

Best Regards,  
WACHOVIA BANK, NATIONAL ASSOCIATION



Todd Morley, CFA  
Senior Vice President  
Government Banking

#### ACCEPTANCE

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

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

By:

Date:

Its:

## EXHIBIT "A"

In addition to principal, interest and any other amounts due under this Note, Borrower shall on demand pay to Bank any "Breakage Fee" due hereunder for each Break Event. "Break Event" means any voluntary or mandatory prepayment or acceleration, in whole or in part, of principal of this Note occurring prior to the date such principal would, but for that prepayment or acceleration, have become due ("Scheduled Due Date"). For each date on which a Break Event occurs ("Break Date"), a Breakage Fee shall be due only if the rate under "A" below exceeds the rate under "B" below and shall be determined as follows:

Breakage Fee = the Present Value of  $((A-B) \times C)$  + LIBOR Breakage, where:

- A = The rate per annum equal to the sum of (i) the bond equivalent yield (bid side) of the U.S. Treasury security with a maturity closest to the Maturity Date as reported by the Wall Street Journal (or other published source) on the date the Interest Rate of this Note was set ("Lock in Date"), plus (ii) the corresponding swap spread of Bank on the Lock in Date for a fixed rate payor to pay Bank the fixed rate side of an interest rate swap of that maturity, plus (iii) .25%.
- B = A rate per annum equal to the sum of (i) the bond equivalent yield (bid side) of the U.S. Treasury security with a maturity closest to the Maturity Date as reported by the Wall Street Journal (or other published source) on the Break Date, plus (ii) the corresponding swap spread that Bank determines another swap dealer would quote to Bank on the Break Date for paying to Bank the fixed rate side of an interest rate swap of the maturity.
- C = The sum of the products of (i) each Affected Principal Amount for each Affected Principal Period, times (ii) the number of days in that Affected Principal Period divided by 360 (if this Note uses the Actual/360 Computation) or the actual number of days in the year (if this Note uses the Actual/Actual Computation).

"Affected Principal Amount" for an Affected Principal Period is the principal amount of this Note scheduled to be outstanding during that Affected Principal Period determined as of the relevant Break Date before giving effect to the Break Event on that Break Date, and for any prepayment, multiplying each such principal amount times the Prepayment Fraction.

"Affected Principal Period" is each period from and including a Scheduled Due Date to but excluding the next succeeding Scheduled Due Date, provided that the first such period shall begin on and includes the Break Date.

"LIBOR Breakage" is any additional loss, cost or expense that Bank may incur with respect to any hedge for the fixed rate of this Note based on the difference between the London interbank offered rate (for U.S. dollar deposits of the relevant maturity) available in the London interbank market at the beginning of the interest period in which the Break Date occurs and that which is available in that market on the Break Date.

"Maturity Date" is the date on which the final payment of principal of this Note would, but for any Break Event, have become due.

"Prepayment Fraction" is a fraction equal to the principal amount being prepaid over the principal amount of this Note outstanding immediately prior to that prepayment on the Break Date.

"Present Value" is determined as of the Break Date using "B" above as the discount rate.

In addition, a Break Event shall be deemed to occur hereunder if, on any date ("Borrowing Date") after the date hereof but prior to any acceleration of this Note, any advance of principal under this Note is scheduled to be made and that advance fails to be made on that Borrowing Date (whether due to Borrower's default, Borrower's failure to borrow, the termination of any loan commitment, any unsatisfied condition precedent, or otherwise), in which case that Borrowing Date shall be a Break Date, the Affected Principal Amount for that Break Event shall be based on the amount of the failed advance, and the Borrower shall on demand pay to the Bank any Breakage Fee due hereunder for that Break Event.

Breakage Fees are payable as liquidated damages, are a reasonable pre-estimate of the losses, costs and expenses Bank would incur in the event of any prepayment or acceleration of this Note, are not a penalty, will not require claim for, or proof of, actual damages, and Bank's determination thereof shall be conclusive and binding in the absence of manifest error. For any Break Event hereunder, the foregoing Breakage Fee provisions supersede any breakage compensation agreement that Borrower and Bank may have executed with respect to this Note.

## EXHIBIT B

### ANTI-DILUTION CERTIFICATE

The City hereby certifies to Wachovia Bank that it is in compliance with the required covenant as follows:

1. All legally available Non-Ad Valorem Revenues shall mean all revenues of the City derived from any source whatsoever, other than Ad Valorem taxation on real and personal property and are legally available to make the loan repayments required under this proposal, but only after provision has been made by the City for payment of services and programs which are for essential public purpose affecting the health welfare and safety of the inhabitants of the City or which are legally mandated by applicable law. So long as there are legally available Non-Ad Valorem Revenues, the City may not fail to budget and appropriate debt service in order to balance its budget. The foregoing covenant to budget and appropriate shall be deemed to require appropriation, in the manner set forth above, of Non-Ad Valorem Revenues ratably to pay the obligations hereunder and all other Additional Covenant Debt. The Issuer will not enter into any covenant to budget and appropriate from Non-Ad Valorem revenues which is in any manner prior or senior to its obligations hereunder. Additional Covenant Debt shall mean indebtedness of the Issuer heretofore or hereafter issued which contains a covenant by the Issuer to budget and appropriate from Non-Ad Valorem Revenues amount sufficient to pay the principal, interest and premium, if any, on such debt as same becomes due and payable, all in a form similar to the covenant described herein.
  
2. For each fiscal year during the term of the loans, and prior to the incurrence of Additional debt secured by a Covenant to Budget and Appropriate from all Legally Available Non-Ad Valorem Revenues, the average of the prior two years Legally Available Non Ad Valorem Revenues as defined above, must cover existing and projected maximum annual debt service on debt secured by and/or payable from such Revenues by at least 1.5x, For purposes of calculating maximum annual debt service, variable rate debt shall be assumed to bear interest at the higher of 6% per annum or the actual interest rate borne by the loan for the month preceding the date of calculation. Moreover the subject facility shall be assumed to be amortized over a five year period.

