

PUBLIC

JUN 24 1993

Our Ref. No. 93-254-CC
T. Rowe Price Tax-Free
Funds
File Nos. 811-4521,
et. al.

RESPONSE OF THE OFFICE OF CHIEF COUNSEL
DIVISION OF INVESTMENT MANAGEMENT

Your letter of May 7, 1993, requests assurance that we would not recommend that the Commission take enforcement action against T. Rowe Price Associates, Inc. or any of the T. Rowe Price Tax-Free Funds (the "Funds"), 1/ if the Funds treat an investment in a municipal bond refunded with escrowed U.S. Government securities, in the manner described in your letter, as an investment in the U.S. Government securities solely for purposes of Section 5(b)(1) of the Investment Company Act of 1940 ("1940 Act"). 2/

The Funds invest in municipal bonds. 3/ From time to time, a municipality may refund a bond that it has already issued prior to the original bond's call date by issuing a second bond, the proceeds of which are used to purchase securities. The securities are placed in an escrow account pursuant to an agreement between the municipality and an independent escrow agent. The principal and interest payments on the securities are then used to pay off the original bondholders.

Section 5(b)(1) limits the amount a diversified investment company may invest in any one issuer generally to five percent of

1/ The Funds currently consist of the following: T. Rowe Price Tax-Exempt Money Market Fund, Inc., T. Rowe Price Tax-Free Short-Intermediate Fund, Inc., T. Rowe Price Tax-Free Income Fund, Inc., T. Rowe Price Tax-Free High Yield Fund, Inc., T. Rowe Price Tax-Free Insured Intermediate Bond Fund, Inc., T. Rowe Price California Tax-Free Income Trust, and T. Rowe Price State Tax-Free Income Trust. Your letter also requests relief with respect to any additional tax-free funds created in the future that T. Rowe Price Associates, Inc. manages and sponsors.

2/ Section 5(b)(1) defines a diversified company as a management company that meets the following requirements:

at least 75 per centum of the value of its total assets is represented by cash and cash items (including receivables), Government securities, . . . and other securities for the purposes of this calculation limited in respect of any one issuer to an amount not greater in value than 5 per centum of the value of the total assets of such management company . . ."

3/ All of the Funds other than the State Tax-Free Income Trust are diversified, open-end companies. The State Tax Free Income Trust is a non-diversified, open-end company.

the investment company's assets. By the express terms of Section 5(b)(1), this limit does not apply to U.S. Government securities. 4/ You assert that where a municipal bond is refunded with escrowed U.S. Government securities in the manner described below, a Fund's investment in the bond should be deemed to be an investment in the U.S. Government securities for purposes of Section 5(b)(1), thereby relieving the Fund from the 5 percent limitation.

You specifically represent that the escrowed securities will consist exclusively of U.S. Government securities as defined in Section 2(a)(16) of the 1940 Act. 5/ The securities will not be redeemable prior to maturity. The deposit of the securities into the escrow account will be irrevocable and pledged only to the debt service on the original bonds. 6/ The escrow agent will hold an express first lien on, pledge of, and perfected security interest in the escrow securities and the interest income on the securities for the benefit of the bondholders. Disbursements from the escrow account to parties other than the bondholders will not be permitted, other than from excess securities. You represent that neither the preference provisions 7/ nor the automatic stay provisions 8/ of the Bankruptcy Code should affect the payment of the original bonds from the escrow account. Consequently, securities deposited in the escrow account will not be subject to the claims of creditors of the municipality, even in the case of economic defeasance. 9/

4/ See American Express Income Shares, Inc. (pub. avail. Nov. 14, 1979).

5/ Section 2(a)(16) defines "Government security" as "any security issued or guaranteed as to principal or interest by the United States, or by a person controlled or supervised by and acting as an instrumentality of the Government of the United States pursuant to authority granted by the Congress of the United States; or any certificate of deposit for any of the foregoing."

6/ Any escrow securities or funds remaining in the escrow account after the original bondholders are paid in full, however, may be applied to pay escrow agent fees or returned to the issuer.

7/ See 11 U.S.C. § 362 and 901(a).

8/ See 11 U.S.C. § 547 and 548.

9/ You note that refunded bonds generally fall into two categories: (1) bonds whose indentures contain express provisions permitting defeasance ("legal defeasance"), and (2) bonds whose indentures do not contain express defeasance

The escrow agent will not be an affiliated person of the issuer, or an affiliated person of an affiliated person of the issuer, within the meaning of Section 2(a)(3) of the 1940 Act. The escrow agent will have no lien of any type with respect to the escrow securities for payment of its fees or expenses except with respect to excess securities. The escrow agent's authority to substitute escrow securities under the escrow agreement will be severely limited. Substitute securities must be the same type as the securities being replaced and must be sufficient to adequately fund the debt service on the original bonds. An independent certified public accountant, counsel to holders of the original bond, or other party acceptable to a nationally recognized statistical rating agency, will verify at the time of the initial deposit of securities into the escrow account and at the time any substitute securities are deposited into the escrow account, that the securities will satisfy all scheduled principal, interest, and any applicable premiums on the original bonds. Finally, you represent that each of the Funds that is a diversified company will invest no more than 25% of its total assets in refunded bonds of the same municipal issuer.

On the basis of the facts and representations in your letter, and assuming appropriate prospectus disclosure, we would not recommend that the Commission take any enforcement action against T. Rowe Price Associates, Inc. or any of the Funds if the Funds treat an investment in a municipal bond refunded with escrowed U.S. Government securities as an investment in the U.S. Government securities solely for purposes of Section 5(b)(1). 10/ You should note that any different facts or representations might

provisions but are refunded by escrowed securities ("economic defeasance"). Where the indenture for the original bond provides for legal defeasance, a deposit of the securities into the escrow account legally discharges the municipality from all of its obligations with respect to the original bonds. The municipality has no beneficial interest in the escrow account. In the case of economic defeasance, the municipality remains responsible under the original bond. In both cases, the deposit of the securities removes the original bond from the liability portion of the municipality's balance sheet.

10/ You have not asked and we express no opinion regarding the status of bonds refunded with escrowed U.S. Government securities under any other provisions of the 1940 Act or the other federal securities laws.

require a different conclusion. Moreover, this response expresses the Division's position on enforcement action only and does not express any legal conclusions on the questions presented.

Jana M. Cayne
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Attorney

T.RowePrice

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Forrest R. Egan
Vice President and
Associate Legal Counsel

May 7, 1993

Thomas S. Harman, Esquire
Division of Investment Management
U.S. Securities and Exchange Commission
450 Fifth Street, N.W.
STOP 5-2
Washington, D.C. 20549

Act	ICA of 1940
Section	5(b)(1)
Rule	
Public	
Availability	6-24-93

Re: Restated and Resubmitted Request for No Action Relief
Purchase of Refunded Municipal
Bonds by T. Rowe Price Tax-Free Funds

Dear Mr. Harman:

In response to comments to our October 15, 1992 letter and various telephone conversations with your staff, we are restating and resubmitting our request for no action relief.

Summary of Request. We are writing to request assurance that the staff of the Division of Investment Management ("Staff") would not recommend enforcement action against any T. Rowe Price Tax-Free Fund (as described below and collectively the "Funds")¹ or T. Rowe Price Associates, Inc. ("Price Associates"), the investment manager and sponsor of the Funds, if any of the Funds were to invest in refunded municipal bonds as defined and in the manner described below. If the relief requested herein were granted, the Funds, for purposes of Section 5(b)(1) of the Investment Company Act of 1940 (the "Act"), would consider an investment in a municipal bond refunded with escrowed U.S. government securities to be an investment in the U.S. government securities instead of an investment in the municipal issuer. In our view, such a position is justified because refunding of the bond means the municipality is no longer looked to for payment of principal and interest but rather the escrowed account containing the U.S. government securities is considered the source of such payments.

¹ Currently, the T. Rowe Price Tax-Free Funds consist of the T. Rowe Price Tax-Exempt Money Fund, Inc., T. Rowe Price Tax-Free Short-Intermediate Fund, Inc., T. Rowe Price Tax-Free Income Fund, Inc., T. Rowe Price Tax-Free High Yield Fund, Inc., T. Rowe Price Tax-Free Insured Intermediate Bond Fund, Inc., T. Rowe Price California Tax-Free Income Trust, with two portfolios, and the T. Rowe Price State Tax-Free Income Trust, with six single state portfolios. All of the Funds are diversified, open-end management companies with the exception of the six portfolios of the State Tax-Free Income Trust which are non-diversified, open-end management companies. We also request that any relief granted in response to this letter include any additional tax-free funds created in the future and managed and sponsored by Price Associates.

Thomas S. Harman, Esquire

May 7, 1993

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Refunded Bonds. The sequence of events leading to a refunded bond begins when a municipality, in the normal course of its operations, issues a bond (the "**Original or Refunded Bond**"), which is not callable for a specified period after the date of issuance. If interest rates fall significantly after the issuance of the Original Bond, or if the municipality believes it otherwise advantageous to refund the Original Bond, for example, to free itself of a restrictive covenant, then, prior to the first date the Original Bond is callable, the municipality may decide to refund the Original Bond in advance of that first call date by issuing a Second or Refunding Bond.²

The Escrow Securities. The proceeds of the Second Bond are used to purchase securities selected by the municipal issuer and are generally limited to securities which, under guidelines established by the major rating agencies, will permit the Original Bonds to secure AAA/Aaa ratings.³ Although the rating agencies may allow AAA/Aaa rated, non-U.S. government securities to be placed in the Escrow Account, the relief requested herein relates only to bonds which are refunded with "U.S. Government Securities" as defined in Section 2(a)(16) of the Act.

The Escrow Account. The securities purchased by the Second Bond are held by an escrow agent, unrelated to the municipality, in an Escrow Account pursuant to an Escrow Agreement between the municipality and the Escrow Agent. Attached as Exhibit A is an Escrow Agreement. It is my understanding that escrow agreements do not differ in any material respect for legally defeased and economically defeased bonds, as described below.

Under the terms of the Escrow Agreement, principal and interest payments on the Escrow Securities come due at such times and in such amounts as will be sufficient to pay the principal and interest on the Original Bonds. This is verified by a CPA or some other person acceptable to the rating agencies in a Verification Report submitted at the time of the establishment of the Escrow Fund. The Escrow Securities are irrevocably pledged only to the debt service on the Original Bonds and are not available for the payment of any other bonds, including the Second Bonds. The deposit of funds in the Escrow Account is irrevocable and for the equal and ratable benefit of all holders of the Original Bonds. Disbursements from the Escrow Account to parties other than the bondholders are not permitted (except to the extent there may be excess securities in the Escrow Account (see Excess Escrow Securities below).

Escrow Agent. The Escrow Agent must be independent of the Issuer. The Escrow Agent would not be an affiliate, or an affiliate of an affiliate, of the Issuer within the meaning of Section 2(a)(3) of the Act. The Escrow Agent's duties are set forth in the Escrow Agreement and it may act only pursuant to such agreement. None of the funds in the Escrow Account necessary to satisfy

²A bond issue refunded in advance of its first call date and slated to be called on that first call date is commonly referred to as "pre-refunded." Refunded bonds slated to be paid at maturity are termed "escrowed to maturity." For purposes of the issues described in this letter, there is no difference between "pre-refunded" and "escrowed to maturity" bonds and we are requesting the same relief for both.

³Importantly, however, not all Refunded Bonds receive a rating due to cost considerations and the willingness of the market to accept Refunded Bonds without a rating.

the debt service on the Original Bonds may be used to pay fees of the Escrow Agent, although amounts in excess of funds necessary for debt service may be so used ("Excess Securities"). The Escrow Agent has no lien of any type with respect to the Escrow Securities for the payment of its fees and expenses except to the extent there are Excess Securities.

Pledges and Liens. The Escrow Agreement provides that the Issuer grants and assigns to the Escrow Agent, solely in its capacity as Escrow Agent, for the equal and ratable benefit of the holders of the Original Bonds an express first lien on, pledge of and perfected security interest in the Escrow Securities and the interest income thereon. In the event of a fraudulent misappropriation of the Escrow Securities by the Escrow Agent, the Escrow Agent would remain liable to the holders of the Original Bonds.

Substitution of Escrow Securities. The Escrow Agreement may allow the Escrow Agent or Issuer limited authority to substitute Escrow Securities (Substitute Securities). This authority is severely proscribed and Substitute Securities must be of the same type as Escrow Securities and must be sufficient to adequately fund the debt service on the Original Bonds. There is no active management of the Escrow Account. The purchase of Substitute Securities by the Escrow Agent or Issuer is subject to the receipt of a Verification Report from an independent CPA or other acceptable person that the Escrow Securities, including any Substitute Securities, will be sufficient to satisfy the debt service on the Original Bonds.

Excess Escrow Securities. Any Escrow Securities or funds remaining in the Escrow Account after payment in full of the Original Bonds may be applied to pay fees due the Escrow Agent or returned to the Issuer.

Defeasance. Refunded bonds generally may be considered to fall into two broad categories. In the first, the Original Bond is issued with express provisions in its indenture permitting defeasance of the issuer's obligations. This type of situation is termed "legal defeasance" and typically can be found in revenue bond transactions that are secured by a lien on specific property, for example, a mortgage on hospital facilities or a pledge of a utility system's revenues. The rationale for providing for the possibility of defeasance in the Original Bond is that priority in the property secured cannot be given to the Second Bond's holders unless the lien under the Original Bond documents is released upon the creation of the Escrow Account. In addition, the borrower does not want the Original and Second Bonds to both be considered "outstanding" at the same time for purposes of coverage and other financial covenants usually present in bond documents. In this regard, where the indenture for the Original Bond provides for the possibility of legal defeasance, deposit of the Escrow Securities into the Escrow Account in satisfaction of the bond's defeasance requirements legally discharges the municipality from all of its obligations with respect to the Original Bonds.

In contrast, legal defeasance provisions generally are not found in general obligation bonds, which are secured by the issuer's unlimited covenant to levy and collect taxes to pay the debt. Because of the unlimited nature of this covenant, there is no need to remove it from the Original Bond in order to grant it to the Second Bond. Nevertheless, in these situations, deposit of the Escrow Securities into the Escrow Account has the effect of removing the Original Bond from the municipality's debt on its "balance sheet", even though the municipality remains technically

responsible under the Original Bond. This latter situation is referred to below as "**economic defeasance**".

Section 5(b)(1) of the Act. Section 5(b)(1) of the Act provides that a diversified company means a management company which meets the following requirements: at least 75% of the value of its total assets is represented by cash and cash items (including receivables), government securities, securities of other investments companies and other securities for the purposes of this calculation limited in respect of any one issuer to an amount not greater in value than 5% of the value of the total assets of such management company and to not more than 10% of the outstanding voting securities of such issuer.

The issue presented by our request is how to apply the diversification test of this section to the refunded bonds described above.

In American Express Income Shares, Inc. (available November 14, 1974), the Staff, took the position that the 5% diversification limitation in Section 5(b)(1) does not apply to a fund's holdings of U.S. government securities. Thus, for purposes of section 5(b)(1), if a fund's investment in a bond refunded with U.S. government securities were deemed to be an investment in the U.S. government securities rather than the municipality issuing the Original Bond, section 5(b)(1) diversification requirements essentially would not apply to the fund's investment in the bond.⁴

Guide 18 to Form N-1A. Guide 18 to Form N-1A provides as follows:

The identification of the issuer of a tax-exempt security for purposes of section 5(b)(1) of the 1940 Act depends on the terms and conditions of the security. When the assets and revenues of an agency, authority, instrumentality or other political subdivision are separate from those of the government creating the subdivision [the "**Separate Assets Test**"] and the security is backed only by the assets and revenues of the subdivision [the "**Sole Backing Test**"] such subdivision would be deemed to be the sole issuer for purposes of section 5(b)(1). Similarly, in the case of an industrial development bond, if that bond is backed only by the assets and revenues of the non-governmental user, then such non-governmental user would be deemed to be the sole issuer for purposes of section 5(b)(1). If however, in either case, the creating government or some other entity guarantees a security, such a guarantee would be considered a separate security which must be valued and included in the 5 percent limitation computation section 5(b)(1) subject to the limited exclusion allowed under rule 5b-2 of the Act.

Under Guide 18, there should be no question, for purposes of section 5(b)(1) diversification standards, that the Funds' investment in legally defeased bonds is an investment in the escrowed U. S. government securities. Where there is legal defeasance, the escrowed government securities clearly satisfy the Separate Assets Test and the Sole Backing Test. For purposes of these two tests, the Escrow Account obviously is separate from the municipality issuing the Original Bonds and

⁴If the relief requested herein is granted, we would anticipate seeking similar relief from the Internal Revenue Service with respect to the diversification requirements of Section 851 of the Internal Revenue Code.

holders of the Original Bonds look solely to the Escrow Account for payment of principal and interest on the Original Bonds at their designated redemption and maturity dates.

The Guide 18 tests are also satisfied by the economically defeased bond. Again, as in the case of legally defeased bonds, the escrowed U.S. government securities satisfy the Separate Assets Test. The Sole Backing Test should also be deemed to be satisfied, although in a different manner than with a legally defeased bond. In the case of economic defeasance, the Original Bond holder has the right to look solely to the Escrow Account for satisfaction of the obligation. However, the Original Bond holder would also have the ability to look to the municipality for payment of the obligation if, for some reason, the Escrow Account could or did not pay. We know of no situation where this has occurred.

Importantly, in an economic defeasance, the municipality is not guaranteeing the Original Bond or standing behind it in any sense. Rather, simply because of the structure of the economically defeased bond, the municipality has not been technically removed as a potential source of payment. We do not believe this should make a difference in the staff's position under section 5(b)(1). In the case of legal and economic defeasance alike, the Original Bonds are removed from the "balance sheet" of the municipality and no longer considered in determining any applicable legal debt ceiling imposed on the municipality. The credit rating agencies consider both types of bonds to be of the highest credit rating and persons trading in the bonds make no distinction when valuing them. Under the circumstances described above, we believe Guide 18 mandates that both legally and economically defeased bonds escrowed with U.S. government securities be considered U.S. government securities for purposes of the diversification requirements of Section 5(b)(1).

Repurchase Agreements. The Commission's position on fully collateralized repurchase agreements compels the same result as Guide 18. The Commission is firmly committed to the position that a mutual fund's investment in repurchase agreements, collateralized by U.S. government securities, may be considered to be an investment in the U.S. government securities rather than the broker/dealer or bank which is the counterparty to the repurchase agreement. (See Note 30 and accompanying text to Release 33-6882 adopting revisions to rules regulating money market funds (February 29, 1991)). The rationale for the Commission's position with respect to repurchase agreements would seem to be that collateralization with U.S. government securities effectively converts the fund's investment from one in the counterparty to the repurchase agreement to one in the U.S. government securities held as collateral.

We believe the logic applied to repurchase agreements fully collateralized by U.S. government securities applies with equal force to the refunded bonds described above. In one case, the obligation of the municipality is legally defeased -- a situation which does not exist in collateralized repurchase agreements. Obviously, the holder of such a bond has just as much, if not a greater, right to the escrowed U.S. government securities as the holder of a repurchase agreement has to the collateral for the repurchase agreement. In the case of bonds which are economically defeased, the holder of the bond still has the absolute right to look to the Escrow Account for payment of principal and interest. Again, this situation is at least as secure as the repurchase agreement where the holder of a repurchase agreement can only collect on the collateral upon default of the counterparty.

As described above and pursuant to the Escrow Agreement, there are no circumstances (absent fraud or misappropriation by the Escrow Agent or Municipality) under which payments from the Escrow Account would not be sufficient, or would not be required, to satisfy the debt service on the Original Bonds. The only remaining issue is what, if any, effect on an Escrow Account would result from the bankruptcy of the issuer within a short time of the deposit of the Escrow Securities in the Escrow Account.

The Bankruptcy Reform Act of 1978, as amended, Title 11, United States Code (the "Bankruptcy Code"). The treatment of the escrowed funds under the federal bankruptcy laws lends further support to our position that a refunded bond should not be treated as an investment in the municipal issuer. Upon the commencement of a case under the Bankruptcy Code, subject to the provisions of 11 U.S.C. §§547 and 548, the beneficial interest in the dedicated escrowed account is not deemed property of the estate as defined in 11 U.S.C. §902 (1).⁵ Consequently, the securities deposited in the dedicated escrow account are not subject to the claims of creditors of the municipality. Likewise, "the automatic stay that becomes effective against creditors of a municipality is made inapplicable to the payment of principal and interest on municipal bonds paid from pledged revenues. In this context, 'pledged revenues' includes funds in the possession of the bond trustee as well as other pledged revenues." Senate Report No. 100-506, 100th Cong., 2d Sess. 13 (1988).⁶

Prior to the 1988 municipal bankruptcy amendments, establishment and funding of an escrow account under a refunding issue or payment of pledged revenues within 90 days preceding the commencement of the case might have been adjudicated a preference under section 547 of the Bankruptcy Code. Section 926 now makes section 547 inapplicable to municipal bonds.⁷ This section is intended to allow municipalities and their holders of notes and bonds to have the same rights under state law and constitutional provisions as to transfers and benefits conferred regardless

⁵Under a legally defeased bond, the municipality has no beneficial interest in the escrowed account.

⁶Sections 901 and 922 make section 362, which sets forth provisions regarding the automatic stay which arises on the filing of a petition, applicable in the bankruptcy case of a municipality. Subsection 922(d) provides a carve-out with respect to payment of pledged revenues:

(d) Notwithstanding section 362 of this title and subsection (a) of this section, a petition filed under this chapter does not operate as a stay of application of pledged special revenues in a manner consistent with section 927 of this title to payment of indebtedness secured by such revenues.

11 U.S.C. § 922 (d)

⁷Section 926 provides in pertinent part: "(b) A transfer of property of the debtor to or for the benefit of any holder of a bond or note, on account of such bond or note, may not be avoided under section 547 of this title". 11 U.S.C. §926.

of the institution of a Chapter 9 case. Senate Report No. 100-506, 100th Cong., 2d Sess. 22 (1988). The legislators clearly intended that, notwithstanding the bankruptcy of the municipality, provided the establishment of the account was not fraudulent, the ability of the holder of an economically defeased bond to collect from the escrow account will remain inviolate.⁸ This is directly analogous to the Code's treatment of a properly executed and collateralized repurchase agreement. The insolvency of the repo vendor will not affect the ability of the counterparty to the repo to retain and collect upon the collateral. Bevell, Bresler & Schulman Asset Management Corp. v. Spencer Savings and Loan Assn., 878 F2d 742 (3rd Cir. 1989). On the basis of reasoned analysis of the foregoing statutory provisions and reported case law in existence as of the date hereof, neither the preference provision of 11 U.S.C. § 547 nor the automatic stay provisions of 11 U.S.C. § 362 or 901(a) should affect the payment of refunded bonds from the Escrow Account.

The Escrow Account is Not an Issuer nor an Investment Company under the 1940 Act. The Escrow Account is not an issuer nor an investment company under the 1940 Act. It is a passive account much like any other type of escrow or custodial account whose sole purpose is to hold the Escrow Securities in safekeeping for the benefit of the holders of the Original Bonds. The amounts due the holders of the Original Bonds are determined by reference to the Original Bonds and not to the Escrow Account. Under section 2(a)(22) of the 1940 Act, an issuer is, as here relevant, any person who issues a security. The only securities involved here are the Refunding and Refunded Bonds and the Escrow Securities. There is no other interest in the Escrow Account which could or should reasonably be considered to be a security. Because the Escrow Account does not issue a security, it can not be an investment company under Section 3(a) of the 1940 Act.

Our position would appear consistent with a series of no-action letters issued by the Staff involving Centex Corporation. Centex Corporation (October 10, 1986) (Centex I); Centex Corporation (November 20, 1986) (Centex II); and Stephen B. Flood (February 2, 1987) (Centex III). The ultimate conclusion in these three letters seems to have been that the Staff would not recommend enforcement action if an escrow deposit account, created to satisfy the obligations of certain Debentures defeased under the terms of an Indenture, was not registered as an investment company under the 1940 Act.

In the Centex letters, a Trust Fund Deposit was created which would hold U.S. government securities and cash in sufficient quantity "to pay and discharge the principal of, and premium, if any, and interest on [certain] Debentures" when due. The Trust Fund Deposit was to be substituted for or joined with the issuer of the Debentures as the obligor on the Debentures. The Trust Fund Deposit would be structured so that funds would be available to the Trustee on each payment date in sufficient quantity to pay in full the principal, premium, if any, and or interest when due without the Trustee being required to invest or reinvest any amounts in the Trust Fund Deposit.

The Escrow Account at issue here is structured in a manner essentially identical to the Centex Trust Fund Deposit - U.S. government securities are deposited in sufficient quantity and in

⁸See Senate Report No. 100-506, 100th Cong., 2d Sess. 22 (1988): "There is not likely to be a high incidence of preferential treatment of these creditors and, where there is an actual intent to hinder, delay or defraud other creditors, section 548 would apply."

such a manner to pay principal, premium, if any, and interest when due. The only difference would seem to be that in Centex, the issuer remained a co-obligor with the Trust Fund Account. This would differ from a legal defeasance where the issuer's obligations are terminated but be somewhat similar to "economic defeasance" where the issuer remains technically, although not practically, liable for satisfying obligations under the Original Bond.

In Centex III, however, the Staff specifically stated that the fact that the issuer remained as a co-obligor under Centex II was not a necessary component of its ruling in Centex II that it would not recommend enforcement action if the Trust Fund Deposit did not register as an investment company. Hence, it would appear that it should not matter whether an Escrow Account holds legally or economically defeased bonds for purposes of determining whether the Escrow Account is an investment company.

The arguments set forth in Centex III against considering the Trust Deposit Account as an investment company are equally applicable to the Escrow Account at issue here. We would only add that there are and have been countless bonds which have been defeased under circumstances similar or identical to those described in the Centex letters and herein. For the reasons described in Centex III, a finding that the escrow or deposit accounts created as a result of these defeasance provisions were investment companies under the Act would serve no public purpose, offer no additional protection to investors, and significantly disrupt market practices which have been in place for years without problem.

Conditions for Relief. Subject to the conditions described below, for purposes of section 5(b)(1) of the 1940 Act, we request that the staff consider an investment in a Refunded Bond as an investment in U.S. Government Securities. The conditions are as follows:

- The Escrow Securities, and any Substitute Securities, are U.S. Government Securities as defined in Section 2(a)(16) of the Act.
- The Escrow Securities are deposited in an Escrow Account subject to an irrevocable Escrow Agreement which establishes that the Escrow Securities are irrevocably pledged only to the debt service on the Refunded Bonds, except to the extent there are Excess Securities, as described above.
- Principal and interest on the Escrow Securities, and any Substitute Securities, will be sufficient to satisfy all scheduled principal, interest and any applicable premiums on the Refunded Bonds.
- A Verification Report prepared by an independent CPA, or other party acceptable to a nationally recognized statistical rating agency, or counsel to holders of the Refunded Bond, verifies, at the time of the initial deposit of the Escrow Securities in the Escrow Account and at the time any Substitute Securities are deposited into the Escrow Account, that the Escrow Securities, including any Substitute Securities, are adequate to satisfy all scheduled principal, interest and any applicable premiums on the Refunded Bonds.

Thomas S. Harman, Esquire

May 7, 1993

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- The Escrow Agreement provides that the Issuer grants and assigns to the Escrow Agent, solely in its capacity as Escrow Agent, for the equal and ratable benefit of the holders of the Refunded Bonds an express first lien on, pledge of and perfected security interest in the Escrow securities and the interest income thereon.
- The Escrow Agent has no lien of any type with respect to the Escrow securities for payment of its fees or expenses except to the extent there are Excess Securities, as described above.
- Any of the Funds which is a diversified investment management company within the meaning of Section 5(b)(1) of the Act and which relies on the relief provided herein will not invest more than 25% of its total assets in pre-refunded bonds of the same municipal issuer.

We would be happy to discuss these matters with you further. Please let us know if there is any additional information that you require in order to consider this request.

Sincerely,



Forrest R. Foss

FRF/les

Attachment

cc: Larry Stadulis, SEC
Jana Cayne, SEC

les\Harman.SEC

ESCROW DEPOSIT AGREEMENT

This ESCROW DEPOSIT AGREEMENT, dated as of May 1, 1992, between Anne Arundel County, Maryland, a body politic and corporate and a political subdivision of the State of Maryland (the "County"), and The First National Bank of Maryland, a national banking association, as escrow deposit agent (the "Escrow Deposit Agent") under this Escrow Deposit Agreement.

RECITALS

The County, (i) pursuant to Article 25A of the Annotated Code of Maryland (1990 Replacement Volume and 1991 Supplement) ("Article 25A"), The Anne Arundel County Charter (the "Charter"), and Bill No. 98-79 ("Bill 98-79") passed by the County Council of Anne Arundel County (the "County Council") on August 6, 1979, approved by the County Executive on August 8, 1979 and effective on September 22, 1979, issued, sold and delivered \$18,000,000 aggregate principal amount of its bonds designated "Consolidated General Improvements Series, 1980" (the "General Improvements Bonds") (the \$7,200,000 aggregate principal amount of the General Improvements Bonds outstanding on the date hereof being referred to herein as "General Improvements Refunded Bonds"); (ii) pursuant to Article 25A, the Charter and Bill No. 107-82 ("Bill 107-82") passed by the County Council on August 2, 1982, approved by the County Executive on August 3, 1982 and effective on September 17, 1982, issued, sold and delivered \$12,000,000 aggregate principal amount of its bonds designated "Consolidated Water and Sewer Series, 1983" (the "Water and Sewer Bonds") (the \$8,750,000 aggregate principal amount of the Water and Sewer Bonds outstanding on the date hereof and stated to mature on or after March 15, 1994 being referred to herein as the "Water and Sewer Refunded Bonds"). The General Improvements Refunded Bonds and the Water and Sewer Refunded Bonds are collectively referred to herein as the "Refunded Bonds."

The County, pursuant to Section 24 of Article 31 of the Annotated Code of Maryland (1990 Replacement Volume and 1991 Supplement), Article 25A, the Charter and Bill No. 13-92 (the "Authorizing Ordinance") passed by the County Council on March 2, 1992, approved by the County Executive on March 5, 1992, and effective March 5, 1992, is issuing, selling and delivering \$7,555,000 aggregate principal amount of its bonds designated "Consolidated General Improvements Series, 1992 Refunding Series" and \$8,795,000 aggregate principal amount of its bonds designated "Consolidated Water and Sewer Series, 1992 Refunding Series".

The County, pursuant to the Authorizing Ordinance has determined to provide for the payment of the Refunded Bonds by depositing with the Escrow Deposit Agent immediately available funds sufficient to purchase noncallable, non-prepayable direct obligations of, or noncallable non-prepayable obligations the timely payment of the principal of and the interest on which are unconditionally guaranteed by, the United States of America which mature at stated fixed prices as to principal and interest at such times so that sufficient moneys will be available from such maturing principal and interest (i) to redeem on July 1, 1992, at the redemption price of 101% of the principal amount of, and to pay interest accrued to July 1, 1992 on the \$7,200,000 aggregate principal amount of the General Improvements Bonds stated to mature on and after February 15, 1993, (ii) to redeem on March 15, 1993, at the redemption price of 102% of the principal amount thereof, the \$8,750,000 aggregate principal amount of the Water and Sewer Bonds stated to mature on and after March 15, 1994.

NOW, THEREFORE, the County and the Escrow Deposit Agent, intending to be legally bound hereby and in consideration of the mutual covenants hereinafter contained, do hereby agree as follows:

ARTICLE I

DEFINITIONS

Section 1.01. Definitions. All terms defined in the Recitals to this Escrow Deposit Agreement shall have the meanings set forth therein. In addition, the following terms used in this Escrow Deposit Agreement shall have the meanings hereinafter provided for such terms, unless a different meaning clearly appears from the context:

"Bond Counsel" means an attorney at law or firm of attorneys at law selected by the County regularly rendering opinions of general acceptance in the municipal bond market.

"Business Day" means a day other than a Saturday, Sunday or day on which banking institutions under the laws of the state governing the Escrow Deposit Agent are authorized or obligated by law or required by executive order to remain closed.

"County" means Anne Arundel County, Maryland, a body politic and corporate and a political subdivision of the State of Maryland.

"Escrow Deposit Agent" means The First National Bank of Maryland, a national banking association, as Escrow Deposit Agent under this Escrow Deposit Agreement.

"Escrow Deposit Agreement" means this Escrow Deposit Agreement dated as of May 1, 1992, pertaining to the Consolidated General Improvements Series, 1992 Refunding Series and the Consolidated Water and Sewer Series, 1992 Refunding Series, executed by and between the County and the Escrow Deposit Agent.

"Escrow Deposit Fund" means each of the General Improvements Escrow Deposit Fund and the Water and Sewer Escrow Deposit Fund.

"Escrowed Government - Obligations" means Government Obligations on deposit from time to time to the credit of the Escrow Deposit Fund created and established by this Escrow Deposit Agreement.

"General Improvements Bonds" means the bonds of the County designated "Consolidated General Improvements Series, 1980", dated February 15, 1980 and issued in the aggregate principal amount of \$18,000,000 pursuant to Bill 98-79.

"General Improvements Escrow Deposit Fund" means the fund so designated which is created and established by this Escrow Deposit Agreement.

"General Improvements Refunded Bonds" means the General Improvements Bonds which mature on or after February 15, 1993.

"General Improvements Refunding Bonds" means the bonds of the County designated "Consolidated General Improvements Series, 1992 Refunding Series", dated May 1, 1992, in the aggregate principal amount of \$7,555,000, issued for the purpose, among others, of refunding the General Improvements Refunded Bonds.

"Government Obligations" means noncallable, non-prepayable direct obligations of, or noncallable, non-prepayable obligations the timely payment of the principal of and the interest on which are unconditionally guaranteed by, the United States of America. Such obligations may not include obligations of money market funds that invest in like instruments.

"Refunded Bonds" means each of the General Improvements Refunded Bonds and the Water and Sewer Refunded Bonds.

"Refunding Bonds" means the General Improvements Refunding Bonds and the Water and Sewer Refunding Bonds.

"Water and Sewer Bonds" means the bonds of the County designated "Consolidated Water and Sewer Series, 1983", dated March 15, 1983 and issued in the aggregate principal amount of \$12,000,000 pursuant to Bill 107-82.

"Water and Sewer Escrow Deposit Fund" means the fund so designated which is created and established by this Escrow Deposit Agreement.

"Water and Sewer Refunded Bonds" means the Water and Sewer Bonds which mature on or after March 15, 1994.

"Water and Sewer Refunding Bonds" means the bonds of the County designated "Consolidated Water and Sewer Series, 1992 Refunding Series," dated May 1, 1992, in the aggregate principal amount of \$8,795,000, issued for the purpose, among others, of refunding the Water and Sewer Refunded Bonds.

ARTICLE II

ESCROW FOR REFUNDED BONDS

Section 2.01. Receipt of Ordinances. The Escrow Deposit Agent hereby acknowledges receipt of (a) copies of Bill No. 98-79, Bill No. 107-82 and Bill No. 13-92, each certified by the Administrative Officer of the County as being true and correct, and (b) a specimen of each of the General Improvements Refunded Bonds and the Water and Sewer Refunded Bonds, each certified as being true and correct by the Controller of the County.

Section 2.02. Establishment of Escrow Deposit Fund. (a) There is hereby created and established with the Escrow Deposit Agent a special and irrevocable escrow deposit fund designated "Anne Arundel County, Maryland Escrow Deposit Fund - General Improvements Bonds" (the "General Improvements Escrow Deposit Fund") to be held in trust by the Escrow Deposit Agent separate and apart from other funds of the County and of the Escrow Deposit Agent.

(b) Simultaneously with the receipt of the proceeds of the sale of the General Improvements Refunding Bonds, the County shall deliver to the Escrow Deposit Agent for deposit in the General Improvements Escrow Deposit Fund immediately available funds aggregating \$7,432,178.12 to be applied solely

as provided in this Escrow Deposit Agreement. The County represents that, based on the verification report of KPMG Peat Marwick, dated May 27, 1992 (the "Verification Report"), such funds will be sufficient to purchase Government Obligations that will mature in principal amounts at such times and bear interest at a rate or rates so that sufficient moneys will be available from such maturing principal and interest and any cash balance to redeem on July 1, 1992, at the redemption price of 101% of the principal amount thereof, the \$7,200,000 aggregate principal amount of the General Improvements Refunded Bonds stated to mature on and after February 15, 1993. The County further represents that such funds are derived from the net proceeds of the sale of the General Improvements Refunding Bonds.

(c) There is hereby created and established with the Escrow Deposit Agent a special and irrevocable escrow deposit fund designated "Anne Arundel County, Maryland Escrow Deposit Fund - Water and Sewer Bonds" (the "Water and Sewer Escrow Deposit Fund") to be held in trust by the Escrow Deposit Agent separate and apart from other funds of the County and of the Escrow Deposit Agent.

(d) Simultaneously with the receipt of the proceeds of the sale of the Water and Sewer Refunding Bonds, the County shall deliver to the Escrow Deposit Agent for deposit in the Water and Sewer Escrow Deposit Fund immediately available funds aggregating \$8,650,000 to be applied solely as provided in this Escrow Deposit Agreement. The County represents that, based on the Verification Report, such funds will be sufficient to purchase Government Obligations that will mature in principal amounts at such times and bear interest at a rate or rates so that sufficient moneys will be available from such maturing principal and interest and any cash balance to pay on March 15, 1993 the redemption price of the \$8,750,000 aggregate principal amount of the Water and Sewer Refunded Bonds stated to mature on and after March 15, 1994, at the redemption price of 102% of the principal amount thereof. The County further represents that such funds are derived from the net proceeds of the sale of the Water and Sewer Refunding Bonds.

Section 2.03. Deposit Irrevocable. The deposit of funds in the Escrow Deposit Fund shall constitute an irrevocable deposit of such funds for the equal and ratable benefit of the holders of the Refunded Bonds. The principal of the Escrowed Government Obligations deposited in each of the Escrow Deposit Funds, interest earned thereon and any proceeds from the sale thereof shall be held in escrow and shall be applied, as hereinafter set forth, solely to the payment of the principal

and redemption price of and interest on the respective Refunded Bonds, or as described in Section 2.10.

Section 2.04. Investment. (a) The Escrow Deposit Agent hereby acknowledges creation and establishment of the Escrow Deposit Funds and acknowledges receipt of the sums described in Section 2.02 of this Escrow Deposit Agreement. Simultaneously with the receipt of and deposit of the funds described in Section 2.02 hereof, the Escrow Deposit Agent shall apply \$7,432,100 of such funds on deposit in the General Improvements Escrow Deposit Fund to the purchase of the Government Obligations described in Schedule A from the United States Department of the Treasury. Simultaneously with the receipt of and deposit of the funds described in Section 2.02 hereof, the Escrow Deposit Agent shall apply \$8,650,300 of such funds on deposit in the Water and Sewer Escrow Deposit Fund to the purchase of the Government Obligations described in Schedule A from the United States Department of the Treasury. The balance of such funds shall be held by the Escrow Deposit Agent in cash.

(b) The Escrow Deposit Agent shall hold the Government Obligations described in Schedule A and apply amounts received from the maturing principal and interest thereof in any manner prescribed by Bond Counsel, in order to comply with the requirements of Section 2.04(e) hereof, subject to the requirement that the Escrow Deposit Agent shall make payments from each Escrow Deposit Fund required to be made on account of the respective Refunded Bonds pursuant to Section 2.02 hereof.

(c) Notwithstanding Subsection 2.04(b), the Escrow Deposit Agent may dispose of any or all of the Government Obligations described in Schedule A and invest the net proceeds derived from the sale thereof in Government Obligations to be deposited in the Escrow Deposit Fund to which such Government Obligations relate subject to the requirement that the Escrow Deposit Agent shall have received an opinion of a nationally recognized firm of certified public accountants to the effect that the maturing principal of and interest on Government Obligations on deposit in the respective Escrow Deposit Fund, after such sale and purchase of Government Obligations, shall be sufficient without reinvestment to enable the Escrow Deposit Agent to make payments from the Escrow Deposit Fund required to be made on account of the respective Refunded Bonds pursuant to Section 2.02, and subject to the further requirement that the Escrow Deposit Agent shall have received an opinion of nationally recognized Bond Counsel to the effect that, subsequent to any such disposition and purchase of Government Obligations as aforesaid, the Government Obligations on deposit in the respective Escrow Deposit Funds comply with the requirements set forth in Section 2.04(e) hereof.

(d) Except as otherwise expressly provided in this Section 2.04 or Section 2.05, the Escrow Deposit Agent shall have no power or duty to invest any moneys held hereunder or to make substitutions of Escrowed Government Obligations held hereunder.

(e) The County hereby covenants that no part of the moneys or funds at any time in either Escrow Deposit Fund shall be used directly or indirectly to acquire any securities or obligations the acquisition of which would cause the Refunding Bonds to be "arbitrage bonds" within the meaning of Section 148 of the Internal Revenue Code of 1986, as amended, and the applicable regulations thereunder.

Section 2.05 Use of Funds and Payment of the Refunded Bonds and Fees; Deposit of Interim Balances. The Escrow Deposit Agent shall deposit, as received, all maturing principal of and interest on Escrowed Government Obligations purchased with the proceeds of the Refunding Bonds to the credit of the Escrow Deposit Fund to which such Government Obligations relate. To the extent available, (i) on July 1, 1992, the Escrow Deposit Agent shall pay to the paying agent for the General Improvements Refunded Bonds, from cash on hand in the General Improvements Escrow Deposit Fund, a sum sufficient to pay the redemption price of and interest on the General Improvements Refunded Bonds on such date as set forth in Schedule B attached hereto, and (ii) on March 15, 1993, the Escrow Deposit Agent shall pay to the paying agent for such Water and Sewer Refunded Bonds, from cash on hand in the Water and Sewer Escrow Deposit Fund, a sum sufficient to pay the redemption price of the Water and Sewer Refunded Bonds payable on such date as set forth in Schedule B attached hereto. Any cash on deposit in an Escrow Deposit Fund constituting proceeds of the maturing principal of or interest on Escrowed Government Obligations set forth on Schedule A hereto (and any Government Obligations deposited in an Escrow Deposit Fund in substitution for such Escrowed Government Obligations pursuant to Section 2.04(c) hereof) shall be held in cash and not invested, unless (i) the County shall direct in writing the investment thereof in Government Obligations and (ii) the County shall provide to the Escrow Deposit Agent an opinion of Bond Counsel satisfactory to the Escrow Deposit Agent to the effect that such investment is in compliance with applicable law and will not adversely affect the exemption from federal income taxation of interest on the Refunded Bonds or the Refunding Bonds.

Section 2.06. Pledges and Liens. The County hereby assigns and pledges to the Escrow Deposit Agent for the benefit of the holders of the Refunded Bonds and grants to the Escrow Deposit Agent for the benefit of such holders of the Refunded

Bonds a security interest in the Escrowed Government Obligations and funds on deposit in the Escrow Deposit Funds and the interest income thereon. The Escrow Deposit Agent shall have an express first lien on, pledge of and security interest in all funds, Escrowed Government Obligations and income earned then on deposit in or credited to the Escrow Deposit Funds until such funds, Escrowed Government Obligations and income are used and applied in accordance with this Escrow Deposit Agreement, all for the benefit of the holders of the Refunded Bonds.

Section 2.07. Redemption (a) The County represents that it has irrevocably elected to redeem on July 1, 1992, at the redemption price of 101% of the principal amount of, and to pay interest accrued and unpaid to July 1, 1992 on the \$7,200,000 aggregate principal amount of the General Improvements Bonds stated to mature on and after February 15, 1993.

(b) The County hereby directs the Escrow Deposit Agent to mail notice of redemption with respect to the General Improvements Refunded Bonds substantially in the form set forth in Exhibit A attached hereto, by first class mail, postage prepaid, at least thirty (30) days prior to July 1, 1992, to all registered owners of such General Improvements Refunded Bonds at their addresses as they appear on the registration books maintained by the bond registrar for the General Improvements Bonds.

(c) In addition, the Escrow Deposit Agent shall publish a notice of redemption with respect to the General Improvements Refunded Bonds, substantially in the form set forth in Exhibit A attached hereto, at least once in each of four successive calendar weeks, the first such publication to be made not less than thirty (30) days prior to July 1, 1992, in (i) a financial journal or daily newspaper of general circulation in the Borough of Manhattan, New York, New York and (ii) a newspaper of general circulation in the County.

(d) The County represents that it has irrevocably elected to redeem on March 15, 1993, at the redemption price of 102% of the principal amount of, and to pay interest accrued and unpaid to March 15, 1993, on the \$8,750,000 aggregate principal amount of Water and Sewer Refunded Bonds stated to mature on and after March 15, 1994.

(e) The County hereby directs the Escrow Deposit Agent to mail notice of redemption with respect to the Water and Sewer Refunded Bonds stated to mature on and after March 15, 1994, substantially in the form set forth in Exhibit B attached hereto, by first class mail, postage prepaid, at least thirty (30) days prior to March 15, 1993, to all registered owners of

such Water and Sewer Refunded Bonds at their addresses as they appear on the registration books maintained by the bond registrar for the Water and Sewer Bonds.

(f) In addition, the Escrow Deposit Agent shall publish a notice of redemption with respect to the Water and Sewer Refunded Bonds, substantially in the form set forth in Exhibit B attached hereto, at least once in each of four successive calendar weeks, the first such publication to be made not less than thirty (30) days prior to March 15, 1993, in a financial journal or daily newspaper of general circulation in the Borough of Manhattan, New York, New York.

(g) The cost of the notices described in subparagraphs 2.07(b), (c), (e) and (f) shall be paid by the County pursuant to Section 2.12 hereof.

Section 2.08. Fees and Expenses of Escrow Deposit Agent.

The County shall pay the Escrow Deposit Agent the fees set forth on Exhibit D attached hereto. The County will provide for the payment of the reasonable out-of-pocket expenses incurred by the Escrow Deposit Agent in the performance of its duties under this Escrow Deposit Agreement, including, as provided in Section 2.12, the cost of publishing notices under Section 2.07 and 2.11 hereof. No fees and expenses of the Escrow Deposit Agent other than those described in this Section 2.08 are anticipated. However, if the Escrow Deposit Agent incurs any unusual or extraordinary expenses, or undertakes any unusual or extraordinary services, not anticipated at the time of the execution and delivery of this Escrow Deposit Agreement, the Escrow Deposit Agent may request payment of its reasonable fees and expenses in connection therewith from the County. The Escrow Deposit Agent shall have no lien whatsoever upon any of the moneys in the Escrow Deposit Fund for the payment of its fees and expenses.

Section 2.09. Liability and Duties of Escrow Deposit Agent.

(a) The Escrow Deposit Agent and its respective successors, assigns, agents and servants, absent negligence or willful misconduct, shall not be held to any personal liability whatsoever, in tort, contract or otherwise, in connection with the execution and delivery of this Escrow Deposit Agreement, the establishment of the Escrow Deposit Fund, the acceptance of the moneys deposited therein, the purchase of Escrowed Government Obligations, the retention of the Escrowed Government Obligations or the proceeds thereof, or any payment, transfer or other application of moneys or securities by the Escrow Deposit Agent in accordance with the provisions of this Escrow Deposit Agreement.

(b) This Escrow Deposit Agreement sets forth exclusively the duties of the Escrow Deposit Agent with respect to any and all matters pertinent hereto and no implied duties or obligations shall be read into this Escrow Deposit Agreement against the Escrow Deposit Agent. The Escrow Deposit Agent may act in reliance upon any instrument or signature believed by it to be genuine and may assume that any person purporting to give any writing, notice, advice or direction in connection with the provisions hereof has been duly authorized to do so.

Section 2.10. Term; Disposition of Surplus Funds. This Escrow Deposit Agreement shall become effective upon its execution and delivery and shall terminate when all the Refunded Bonds and the interest due thereon have been paid and discharged.

Upon the redemption of the General Improvements Refunded Bonds from funds on deposit in the Escrow Deposit Fund and after payment of any unpaid expenses of the Escrow Deposit Agent relating to the redemption of the General Improvements Refunded Bonds, any moneys and Escrowed Government Obligations remaining in the General Improvements Escrow Deposit Fund shall be paid and delivered by the Escrow Deposit Agent to the County or to a depository designated by the County, to be applied at the County's discretion in a manner consistent with Bill No. 13-92 and Section 2.04(e) hereof.

Upon the payment of the redemption price of the Water and Sewer Refunded Bonds from funds on deposit in the Water and Sewer Escrow Deposit Fund and after payment of any unpaid expenses of the Escrow Deposit Agent relating to the redemption of the Water and Sewer Refunded Bonds, any moneys and Escrowed Government Obligations remaining in the Water and Sewer Escrow Deposit Fund shall be paid and delivered by the Escrow Deposit Agent to the County or to a depository designated by the County, to be applied at the County's discretion in a manner consistent with Bill No. 13-92 and Section 2.04(e) hereof.

Section 2.11. Notice of Refunding. Within thirty (30) days after the delivery of and payment for the Refunding Bonds, the Escrow Deposit Agent shall cause a notice of refunding, substantially in the form set forth in Exhibit C hereto, to be published once in a financial trade journal or daily newspaper of general circulation in the Borough of Manhattan, New York, New York.

Section 2.12. Costs of Notices. The Escrow Deposit Agent shall submit to the County for payment by the County all receipts and invoices for costs and expenses related to the

publications and mailings described in Section 2.07 and Section 2.11 hereof.

Section 2.13. Replacement of Escrow Deposit Agent. The Escrow Deposit Agent may resign by notice in writing given to the County and published once in a financial trade journal or daily newspaper of general circulation in the Borough of Manhattan, New York, New York, not less than sixty (60) days before such resignation is to take effect. The cost of such publication shall be the responsibility of the Escrow Deposit Agent. Such resignation shall take effect only upon the appointment and qualification of and the acceptance of duties by a successor Escrow Deposit Agent, as described below. The Escrow Deposit Agent may be removed at any time for any breach of trust or failure to comply with the terms of this Escrow Deposit Agreement by any court of competent jurisdiction upon the application of the County or the registered holders of not less than ten percent (10%) in aggregate principal amount of the outstanding Refunded Bonds.

Upon resignation or removal of the Escrow Deposit Agent, a successor Escrow Deposit Agent (which shall be a commercial bank, trust company or national banking association having a combined capital and surplus of at least \$50,000,000 and which shall be subject to supervision or examination by federal or state authority) shall be appointed by the County or, if the County shall fail to make such appointment within forty-five (45) days following removal or receipt of notice of resignation of the predecessor Escrow Deposit Agent, by any court of competent jurisdiction upon the petition of any registered holder of any of the outstanding Refunded Bonds. Such successor Escrow Deposit Agent shall agree in writing to assume all of the duties and obligations of the Escrow Deposit Agent under this Escrow Deposit Agreement and, upon such agreement, without any further act, deed or conveyance, shall immediately become vested with all the moneys, estates, properties, rights, powers, trusts, duties and obligations of its predecessor Escrow Deposit Agent.

Upon the resignation or removal of the initial Escrow Deposit Agent hereunder, The First National Bank of Maryland will refund to the County a pro rata portion of the fee paid to the Escrow Deposit Agent pursuant to Section 2.08 hereof, such pro rata portion representing the fee payable with respect to the remaining unexpired term of this Escrow Deposit Agreement.

Section 2.14. Amendments. This Escrow Deposit Agreement shall not be amended without the consent of the parties hereto and all the holders of the Refunded Bonds then outstanding; provided, however, that the County and the Escrow Deposit Agent

may, without the consent of, or notice to, such holders, enter into such agreements supplemental to this Escrow Deposit Agreement (the "Amendments" or "Amendment") as shall not adversely affect the rights of such holders and as shall not be inconsistent with the terms and provisions of this Escrow Deposit Agreement, for any one or more of the following purposes:

- (i) to cure any ambiguity or formal defect or omission in this Escrow Deposit Agreement;
- (ii) to grant to, or confer upon the Escrow Deposit Agent for the benefit of such holders any additional rights, remedies, powers or authority that may lawfully be granted to, or conferred upon, such holders or the Escrow Deposit Agent; and
- (iii) to make any other amendment deemed necessary by the County and the Escrow Deposit Agent to sever any clause or provision in this Agreement deemed to be illegal or unenforceable.

The Escrow Deposit Agent shall not undertake or execute any Amendment unless it has received an opinion of nationally recognized bond counsel that (A) if such Amendment had been adopted on the date of issuance of the Refunding Bonds, such Amendment would not have caused the Refunding Bonds to be "arbitrage bonds" within the meaning of Section 148 of the Internal Revenue Code of 1986, as amended, and the regulations and rulings thereunder applicable to the Refunding Bonds on the date of the Amendment; (B) the Amendment will not cause any of the Refunded Bonds to be "arbitrage bonds;" and (C) the Amendment complies with this Section.

Prior to any amendment or revocation of this Agreement, the Escrow Deposit Agent shall give notice and provide draft legal documents to (i) Moody's Investors Service, Inc. at Moody's Investors Service, Inc., Public Finance Rating Desk/Refunded Bonds, 99 Church Street, New York, New York 10007, (ii) Standard & Poor's Corporation, 25 Broadway, New York, New York 10004, and (iii) Fitch Investors Services, Inc., One State Street Plaza, New York, New York 10004. Failure to give the notices required in this paragraph, however, shall not constitute an event of default hereunder.

Section 2.15. Reports by Escrow Deposit Agent. Within ten (10) days of each June 30 and December 31 during the term of this Agreement, beginning June 30, 1992, the Escrow Deposit Agent shall forward to the County a statement describing the

Escrowed Government Obligations and cash held at the beginning of business on each such date in each Escrow Deposit Fund, including the income earned therefrom and the maturities thereof, and any withdrawals of money from either Escrow Deposit Fund since the last statement furnished pursuant to this Section.

ARTICLE III

MISCELLANEOUS

Section 3.01. Entire Agreement. This Escrow Deposit Agreement constitutes the entire agreement, and supersedes all prior agreements and understandings, both written and oral, between the parties with respect to the subject matter hereof and may be executed simultaneously in several counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

Section 3.02. Section and Paragraph Headings. The County and the Escrow Deposit Agent agree that the Section and paragraph headings have been prepared for convenience only and are not part of this Escrow Deposit Agreement and shall not be taken as an interpretation of any provision of this Escrow Deposit Agreement.

Section 3.03. Severability. If any clause, provision or Section of this Escrow Deposit Agreement is held illegal or invalid by any court, the invalidity of such clause, provision or Section shall not affect any of the remaining clauses, provisions or Sections hereof, and this Escrow Deposit Agreement shall be construed and enforced as if such illegal or invalid clause, provision or Section had not been contained herein. In case any agreement or obligation contained in this Escrow Deposit Agreement is held to be in violation of law, then such agreement or obligation shall be determined to be the agreement or obligation of the County or the Escrow Deposit Agent, as the case may be, only to the full extent permitted by law. Immediately after such occurrence, the Escrow Deposit Agent shall notify Moody's Investors Service, Inc., Standard & Poor's Corporation and Fitch Investors Services, Inc. at their addresses provided in Section 2.14.

Section 3.04. Maryland Law. This Escrow Deposit Agreement is executed and delivered with the intent that the laws of the State of Maryland shall govern.

Section 3.05. Escrow Deposit Agreement Constitutes Security Agreement. The County executes this Escrow Deposit Agreement as a debtor under the Maryland Uniform Commercial

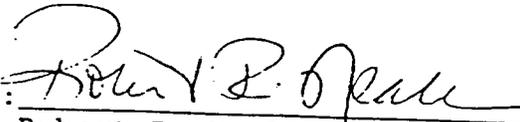
Code and the Escrow Deposit Agent executes this Escrow Deposit Agreement as a secured party under the Maryland Uniform Commercial Code, it being intended by the parties hereto that this Escrow Deposit Agreement shall constitute and be a security agreement under the laws of the State of Maryland.

Section 3.06. Representations. The County hereby represents that (a) the County was duly created by and is in existence under the laws of the State of Maryland, and the County possesses the authority under Bill No. 13-92 to enter into the transactions contemplated by this Escrow Deposit Agreement; (b) the County is not in default under any of the provisions of the laws of the State of Maryland which would affect its existence or its power referred to in the preceding clause (a); and (c) the County has taken due and proper action to authorize the execution and delivery of this Escrow Deposit Agreement.

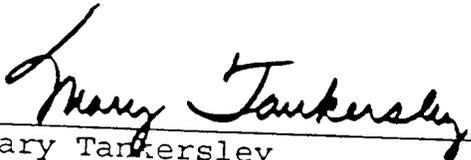
IN WITNESS WHEREOF, the parties hereto have caused this Escrow Deposit Agreement to be duly executed, sealed and delivered as of the day and year first written above.

ANNE ARUNDEL COUNTY, MARYLAND

(SEAL)

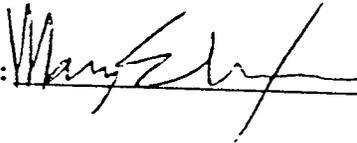
By: 
Robert R. Neall,
County Executive

Attest:

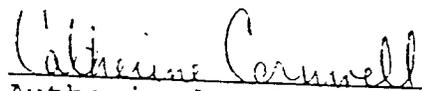

Mary Tankersley

THE FIRST NATIONAL BANK OF
MARYLAND
as Escrow Deposit Agent

(SEAL)

By: 

Attest:


Authorized Officer

STATE OF MARYLAND, ANNE ARUNDEL COUNTY, TO WIT:

I HEREBY CERTIFY, that on this 21st day of May in the year 1992, before the subscriber, a Notary Public in and for the State of Maryland, personally appeared Robert R. Neall, County Executive of Anne Arundel County, Maryland, a body politic and corporate and political subdivision of the State of Maryland, and on behalf of the said County acknowledged the foregoing Escrow Deposit Agreement to be the act and deed of Anne Arundel County, Maryland.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal.

Carol Hall
Notary Public

My Commission Expires: 11/1/93

STATE OF MARYLAND, CITY OF BALTIMORE, TO WIT:

I HEREBY CERTIFY, that on this 26 day of May in the year 1992, before the subscriber, a Notary Public in and for the State of Maryland, personally appeared MARY E WEXLER, ASSISTANT VICE PRESIDENT of The First National Bank of Maryland, a national banking association having its principal office in the City of Baltimore, Maryland, and on behalf of the said association acknowledged the foregoing Escrow Deposit Agreement to be the act and deed of The First National Bank of Maryland.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal.



Notary Public

My Commission Expires: 10/10/93

EXHIBIT A
to Escrow Deposit Agreement

NOTICE OF REDEMPTION
ANNE ARUNDEL COUNTY, MARYLAND

GENERAL OBLIGATION BONDS

CONSOLIDATED GENERAL IMPROVEMENTS SERIES, 1980

Dated February 15, 1980

NOTICE IS HEREBY GIVEN of the election by Anne Arundel County, Maryland, to redeem on July 1, 1992, \$7,200,000 aggregate principal amount of its Consolidated General Improvements Series, 1980 stated to mature on February 15 in each of the years 1993 through 2000, inclusive, and bearing the following CUSIP numbers: _____.

The above bonds will become due and will be redeemed on July 1, 1992, at the redemption price of 101% (expressed as a percentage of the principal amount of the bonds to be redeemed), together with interest accrued to July 1, 1992, upon presentation and surrender thereof, together with all coupons appurtenant thereto maturing after the redemption date, at the principal corporate trust office of The First National Bank of Maryland, Baltimore, Maryland (the "Paying Agent"). From and after July 1, 1992, interest will cease to accrue on the above bonds called for redemption.

As of January 1, 1984, under the Interest and Dividend Tax Compliance Act of 1983, the Paying Agent is required to withhold 20% of any gross payments to holders who fail to provide the Paying Agent with a valid Taxpayer Identification Number (Employee Identification Number or Social Security Number, as appropriate) on or before the date the bonds are presented for redemption. Holders are subject to a penalty of \$50 for such failure. Please therefore provide a valid Taxpayer Identification Number when presenting your Bonds for redemption.

Dated: _____, 1992

ANNE ARUNDEL COUNTY, MARYLAND

NOTICE OF REDEMPTION
ANNE ARUNDEL COUNTY, MARYLAND
GENERAL OBLIGATION BONDS
CONSOLIDATED WATER AND SEWER SERIES, 1983
Dated March 15, 1983

NOTICE IS HEREBY GIVEN of the election by Anne Arundel County, Maryland, to redeem on March 15, 1993, \$8,750,000 aggregate principal amount of its Consolidated Water and Sewer Series, 1983 stated to mature on March 15 in each of the years 1994 through 2013, inclusive, and bearing the following CUSIP numbers: _____.

The above bonds will become due and will be redeemed on March 15, 1993, at the redemption price of 102% (expressed as a percentage of the principal amount of the bonds to be redeemed), together with interest accrued to March 15, 1993, upon presentation and surrender thereof, together with all coupons appurtenant thereto maturing after the redemption date, at the principal corporate trust office of The First National Bank of Maryland, Baltimore, Maryland (the "Paying Agent"). From and after March 15, 1993, interest will cease to accrue on the above bonds called for redemption.

As of January 1, 1984, under the Interest and Dividend Tax Compliance Act of 1983, the Paying Agent is required to withhold 20% of any gross payments to holders who fail to provide the Paying Agent with a valid Taxpayer Identification Number (Employee Identification Number or Social Security Number, as appropriate) on or before the date the bonds are presented for redemption. Holders are subject to a penalty of \$50 for such failure. Please therefore provide a valid Taxpayer Identification Number when presenting your bonds for redemption.

Dated: _____, 199__

ANNE ARUNDEL COUNTY, MARYLAND

NOTICE OF REFUNDING

ANNE ARUNDEL COUNTY, MARYLAND

CONSOLIDATED GENERAL IMPROVEMENTS SERIES, 1980
(Dated February 15, 1980)

CONSOLIDATED WATER AND SEWER SERIES, 1983
(Dated March 15, 1983)

NOTICE IS HEREBY GIVEN that there have been deposited in trust with the undersigned Escrow Deposit Agent direct obligations of the United States of America, designated United States Treasury Obligations, State and Local Government Series (the "Government Obligations").

The projected principal and interest payments to be derived from the Government Obligations will be held in trust by the undersigned Escrow Deposit Agent and will be applied by the Escrow Deposit Agent (i) to the redemption on July 1, 1992 of the \$7,200,000 aggregate principal amount of the Consolidated General Improvements Series, 1980 (the "General Improvements Bonds") maturing on or after February 15, 1993, (ii) to the payment of interest on such General Improvements Bonds maturing on and after February 15, 1993, and (iii) to the payment of the redemption price on March 15, 1993 of the \$8,750,000 aggregate principal amount of the Consolidated Water and Sewer Series, 1983 (the "Water and Sewer Bonds") maturing on or after March 15, 1994. The projected principal and interest payments to be derived from the Government Obligations have been calculated to be adequate to make these payments. Such payments to the holders of the General Improvements Bonds and the Water and Sewer Bonds being refunded shall be made at the places, in the manner, in such medium of payment, by the paying agents and otherwise as provided, with respect to the General Improvements Bonds, in the General Improvements Bonds and Bill No. 98-79 passed by the County Council of Anne Arundel County (the "County") on August 6, 1979 and, with respect to the Water and Sewer Bonds, in the Water and Sewer Bonds and Bill No. 107-82 passed by the County Council of the County on August 2, 1982.

The First National Bank of Maryland
as Escrow Deposit Agent

EXHIBIT D
to Escrow Deposit Agreement

FEEES OF ESCROW DEPOSIT AGENT

May 20, 1992

Anne Arundel County
ATTN: Mr. Alfred E. Warfield
Assistant Controller
P.O. Box 2700 MS1309
Annapolis, MD 21404

Dear Mr. Warfield:

The following will confirm our discussion concerning the fees to be charged for the Escrow Deposit Agreement for the upcoming Anne Arundel County bonds that are being refunded.

- | | |
|---|---------|
| 1. Initial Review and Set Up | \$1,000 |
| 2. Annual Administration | |
| a) First year which includes
cost of issue account | \$1,750 |
| b) Subsequent years | \$1,500 |
| 3. Out-of-Pocket Expense | |

These charges are the basic charges and are subject to change. They do not include counsel fees, or any out-of-pocket expenses such as postage, shipping charges, wire charges, cost of checks, governmental reporting, publications, etc. These expenses will be billed in addition to the quoted fees.

I believe the Escrow Deposit covers the fact that any cost of publishing notices will be borne by Anne Arundel County. As we discussed, Catherine Cornwell will be the Administrator on this account. Thank you for your continued confidence in First National.

Sincerely,

Ronald J. Kruppa
Assistant Vice President

RJK:jlb/4608T

SCHEDULE A
to Escrow Deposit Agreement

GENERAL IMPROVEMENTS ESCROW DEPOSIT FUND

<u>Maturity Date</u>	<u>Amount of Principal Amount</u>	<u>Interest Rate</u>	<u>Cost of Security</u>	<u>Type of Security</u>
7/1/92	\$7,432,100	3.37%	\$7,432,100	State and Local Government Series

WATER AND SEWER ESCROW DEPOSIT FUND

<u>Maturity Date</u>	<u>Amount of Principal Amount</u>	<u>Interest Rate</u>	<u>Cost of Security</u>	<u>Type of Security</u>
3/15/93	\$8,650,300	3.97%	\$8,650,300	State and Local Government Series

SCHEDULE B
to Escrow Deposit Agreement

DEBT SERVICE REQUIREMENTS:
GENERAL IMPROVEMENTS REFUNDED BONDS

<u>Date Payable</u>	<u>Principal</u>	<u>Interest</u>	<u>Total</u>
7/1/92	\$7,272,000*	\$184,195	\$7,456,195

*Includes Redemption Premium of \$72,000.

DEBT SERVICE REQUIREMENTS:
WATER AND SEWER REFUNDED BONDS

<u>Date Payable</u>	<u>Principal</u>	<u>Interest</u>	<u>Total</u>
3/15/92	\$8,925,000**	\$0	\$8,925,000

**Includes Redemption Premium of \$175,000.