

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

Blue Sheet No. 20041467

1. REQUESTED MOTION:

ACTION REQUESTED: Request Board of County Commissioners to adopt a resolution authorizing a new Commercial Paper Draw for \$320,000 related to the NE Hurricane Bay MSBU that matures on December 6, 2005 which replaces a loan for the same amount that expires on December 7, 2004. Also approve budget amendment.

WHY ACTION IS NECESSARY: The current Commercial Paper Draw (A-11-4) expires on December 7, 2004 and needs to be replaced with Draw A-11-5 that matures on December 6, 2005.

WHAT ACTION ACCOMPLISHES: Allows the Commercial Paper Draw maturity date for the NE Hurricane Bay MSBU to be extended.

**2. DEPARTMENTAL CATEGORY:
COMMISSION DISTRICT #**

CIB

3. MEETING DATE:

11-16-2004

4. AGENDA:

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

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

- STATUTE
- ORDINANCE
- ADMIN.
- CODE
- OTHER

6. REQUESTOR OF INFORMATION:

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

BY: Antonio Majul, Budget Director

[Signature]

BACKGROUND: On September 14, 1999 The Board of County Commissioners approved a resolution authorizing the borrowing of up to \$500,000 for NE Hurricane Bay. The project encompassed channel dredging approximately 8,300 cubic yards of material in Hurricane Bay, which lies between the Fort Myers mainland and San Carlos Island south of the Matanzas Bridge. An original loan for \$350,000 was borrowed with a maturity date of June 4, 2002 and extended to December 2, 2003. The maturity date was again extended from December 2, 2003 to December 7, 2004 and the principal amount reduced to \$320,000 with Blue Sheet #20031276 approved by the BOCC on November 18, 2003.

A new draw (A-11-5) must be issued which will repay the existing \$320,000 draw (A-11-4) and provide for the new maturity date. There will be no additional funds involved with this transaction.

8. MANAGEMENT RECOMMENDATIONS: Approve the resolution and budget amendment.

9. RECOMMENDED APPROVAL:

A Department Director	B Purchasing or Contracts	C Human Resources	D Other	E County Attorney	F Budget Services				G County Manager
<i>[Signature]</i> 11/3/04				<i>[Signature]</i> 11/3/04	OA <i>[Signature]</i>	OM <i>[Signature]</i> 11/4/04	Risk <i>[Signature]</i> 11/4/04	GC <i>[Signature]</i> 11/4/04	<i>[Signature]</i>

10. COMMISSION ACTION:

- APPROVED
- DENIED
- DEFERRED
- OTHER

Rec. by CoAtty
Date: 11/3/04
Time: 4:55
Forwarded To:
[Signature]
11/4/04

RECEIVED BY
COUNTY ADMIN: *[Signature]*
11/04/04
11/15/04
COUNTY ADMIN
FORWARDED TO:
3:30 PM
1/4

A RESOLUTION OF THE BOARD OF COUNTY COMMISSIONERS OF LEE COUNTY, FLORIDA, AUTHORIZING THE BORROWING OF NOT EXCEEDING \$320,000 FROM THE POOLED COMMERCIAL PAPER LOAN PROGRAM OF THE FLORIDA LOCAL GOVERNMENT FINANCE COMMISSION PURSUANT TO THE TERMS OF THE LOAN AGREEMENT BETWEEN THE COMMISSION AND THE COUNTY IN ORDER TO REFINANCE A LOAN PREVIOUSLY MADE TO THE COUNTY IN ORDER TO REFINANCE THE COSTS AND EXPENSES RELATED TO CERTAIN CHANNEL DREDGING WITHIN THE NORTHEAST HURRICANE BAY; AUTHORIZING THE EXECUTION OF A LOAN NOTE OR NOTES TO EVIDENCE SUCH BORROWING AND AGREEING TO SECURE SUCH BORROWING WITH A COVENANT TO BUDGET AND APPROPRIATE LEGALLY AVAILABLE NON-AD VALOREM REVENUES AS PROVIDED IN THE LOAN AGREEMENT; AUTHORIZING THE EXECUTION AND DELIVERY OF SUCH OTHER DOCUMENTS AS MAY BE NECESSARY TO EFFECT SUCH BORROWING; AND PROVIDING AN EFFECTIVE DATE.

BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF LEE COUNTY, FLORIDA:

SECTION 1. DEFINITIONS. Unless the context of use indicates another meaning or intent, the following words and terms as used in this Resolution shall have the following meanings. Capitalized terms not defined herein shall have the meanings ascribed thereto in the hereinafter defined Loan Agreement.

"Act" means, collectively, Part I, Chapter 125, Florida Statutes, Part I, Chapter 163, Florida Statutes, and all other applicable provisions of law.

"Additional Payments" means the payments required to be made by the County pursuant to Sections 5.02(b), 5.02(c), 5.02(d), 5.05 and 6.06(e) of the Loan Agreement.

"Board" means the Board of County Commissioners of the County.

"Chairman" means the Chairman or Vice Chairman of the Board and such other person as may be duly authorized to act on his or her behalf.

"Clerk" means the Clerk of the Circuit Court for Lee County, and ex-officio Clerk of the Board, and such other person as may be duly authorized to act on his or her behalf.

"Commission" means the Florida Local Government Finance Commission, and any assigns or successors thereto.

"County" means Lee County, Florida, a political subdivision of the State of Florida.

"Designated Revenues" means (1) Public Agency Moneys budgeted and appropriated for purposes of payment of the Loan Repayments and any other amounts due under the Loan Agreement, and (2) the proceeds of the Loan pending the application thereof.

"Draw Date" has the meaning set forth in the Loan Agreement.

"Loan No. A-11-4 " means the Loan designated as "Loan No. A-11-4" the proceeds of which were used to refinance a portion of the costs of Project A-11.

"Loan No. A-11-5" means the Loan designated as "Loan No. A-11-5" the proceeds of which shall be used to refinance Loan No. A-11-4.

"Loan" means the loan to be made by the Commission to the County from proceeds of the Series A Notes in accordance with the terms of this Resolution and of the Loan Agreement.

"Loan Agreement" means the Loan Agreement, dated as of April 12, 1991, between the County and the Commission, as the same may be amended and supplemented.

"Loan Rate" has the meaning set forth in the Loan Agreement.

"Loan Repayments" or **"Repayments"** means the payments of principal and interest at the Loan Rate on the Loan amounts payable by the County pursuant to the provisions of the Loan Agreement and all other payments, including Additional Payments, payable by the County pursuant to the provisions of the Loan Agreement.

"Non-Ad Valorem Revenues" means all legally available revenues of the County derived from any source whatsoever other than ad valorem taxation on real and personal property, which are legally available to make the Loan Repayments required in the Loan Agreement, but only after provision has been made by the County for the payment of

services and programs which are for essential public purposes affecting the health, welfare and safety of the inhabitants of the County or which are legally mandated by applicable law.

"Program" means the Pooled Commercial Paper Loan Program established by the Commission.

"Project A-11" means the Northeast Hurricane Bay Dredging Project, as described in Resolution No. 99-09-18 of the County adopted on September 14, 1999, as the same may be amended or modified from time to time.

"Public Agency Moneys" shall mean the moneys budgeted and appropriated by the County for payment of the Loan Repayments and any other amounts due hereunder from Non-Ad Valorem Revenues pursuant to the County's covenant to budget and appropriate such Non-Ad Valorem Revenues contained in Section 6.04 of the Loan Agreement.

"Resolution" means this Resolution, as the same may from time to time be amended, modified or supplemented.

"Series A Notes" means the Commission's Pooled Commercial Paper Notes, Series A (Governmental Issue), to be issued from time to time by the Commission.

The terms "herein," "hereunder," "hereby," "hereto," "hereof," and any similar terms, shall refer to this Resolution; the term "heretofore" shall mean before the date of adoption of this Resolution; and the term "hereafter" shall mean after the date of adoption of this Resolution.

Words importing the masculine gender include every other gender.

Words importing the singular number include the plural number, and vice versa.

SECTION 2. AUTHORITY FOR RESOLUTION. This Resolution is adopted pursuant to the provisions of the Act.

SECTION 3. FINDINGS. It is hereby ascertained, determined and declared that:

(A) The Commission has been established for the principal purpose of issuing commercial paper notes in order to provide funds to loan to public agencies, such as the County, desiring to finance and refinance the cost of acquiring, constructing and equipping capital improvements and to finance and refinance other governmental needs.

(B) In furtherance of the foregoing, the Commission shall issue, from time to time, commercial paper notes to be known as "Florida Local Government Finance Commission Pooled Commercial Paper Notes, Series A (Governmental Issue)" and shall loan the proceeds of such Series A Notes to public agencies, including the County.

(C) Pursuant to the authority of the Act, the Commission has agreed to loan, from time to time, to the County such amounts as shall be authorized herein and in the Loan Agreement in order to enable the County to finance, reimburse or refinance the cost of acquisition, construction and equipping of capital improvements, including Project A-11.

(D) The proceeds of Loan No. A-11-4 were used to refinance a portion of the costs of Project A-11.

(E) The County desires to refinance the outstanding principal amount of Loan No. A-11-4, which comes due on December 7, 2004, in accordance with the terms hereof.

(F) The County hereby determines that the provision of funds by the Commission to the County in the form of Loan No. A-11-5 pursuant to the terms of the Loan Agreement and the refinancing of Loan No. A-11-4 will assist in the development and maintenance of the public welfare of the residents of the County, and shall serve a public purpose by improving the safety, health and living conditions, and providing governmental services, facilities and programs and will promote the most efficient and economical development of such services, facilities and programs.

(G) Loan No. A-11-5 shall be repaid solely from the Designated Revenues. Such Designated Revenues shall include moneys derived from a covenant to budget and appropriate legally available Non-Ad Valorem Revenues. The ad valorem taxing power of the County will never be necessary or authorized to make the Loan Repayments.

(H) Due to the potential volatility of the market for tax-exempt obligations such as the Note or Notes to be issued evidencing Loan No. A-11-5, the complexity of the transactions relating to such Note or Notes and the uniqueness of the Program, it is in the best interest of the County to deliver the Note or Notes to the Commission pursuant to the Program by a negotiated sale pursuant to Section 218.385(1), Florida Statutes, allowing the County to utilize the Program in which it participates from time to time and to enter the market at the most advantageous time, rather than at a specified advertised date, thereby permitting the County to obtain the best possible price, issuance costs and interest rate for such Note or Notes.

SECTION 4. TERMS OF LOAN. The County hereby approves the Loan in an aggregate amount of not exceeding \$320,000 for the purposes of providing the County with sufficient funds to refinance Loan No. A-11-4 which comes due on

December 7, 2004. The Chairman and the Clerk are hereby authorized to execute, seal and deliver on behalf of the County the Loan Note or Notes and other documents, instruments, agreements and certificates necessary or desirable to effectuate the Loan as provided in the Loan Agreement. The Loan Note with respect to Loan No. A-11-5 shall be dated December 7, 2004 and shall reflect the terms of such Loan and shall be substantially in the form attached to the Loan Agreement as Exhibit I. Loan No. A-11-5 shall mature in accordance with the provisions described in Schedule I attached hereto or in such other amounts and at such other times as the County Manager may determine. Loan No. A-11-5 shall bear interest at the Loan Rate in accordance with the terms of the Loan Agreement. The County further agrees to make all Loan Repayments required of it pursuant to the terms of the Loan Agreement. The Letter of Credit fees for the Loan shall be 35 basis points or such other amount as the County and Wachovia Bank may agree upon.

SECTION 5. AUTHORIZATION OF REFINANCING. The County does hereby authorize the refinancing of Loan No. A-11-4 in accordance with the terms of Loan No. A-11-5.

SECTION 6. SECURITY FOR THE LOAN. The County's obligation to repay the Loan will be secured by a pledge of and lien upon the Designated Revenues in accordance with the terms of the Loan Agreement. The obligation of the County to repay the Loan shall not be deemed a pledge of the faith and credit or taxing power of the County and such obligation shall not create a lien on any property whatsoever of or in the County other than the Designated Revenues.

SECTION 7. GENERAL AUTHORITY. The members of the Board and the officers, attorneys and other agents or employees of the County are hereby authorized to do all acts and things required of them by this Resolution and the Loan Agreement, or desirable or consistent with the requirements of this Resolution and the Loan Agreement, for the full punctual and complete performance of all the terms, covenants and agreements contained in this Resolution and the Loan Agreement, and each member, employee, attorney and officer of the County or its Board is hereby authorized and directed to execute and deliver any and all papers and instruments and to do and cause to be done any and all acts and things necessary or proper for carrying out the transactions contemplated by this Resolution and the Loan Agreement.

SECTION 8. SEVERABILITY. If any one or more of the covenants, agreements or provisions herein contained shall be held contrary to any express provision of law or contrary to the policy of express law, though not expressly prohibited, or against public policy, or shall for any reason whatsoever be held invalid, then such covenants, agreements or provisions shall be null and void and shall be deemed separable from the remaining covenants, agreements or provisions and shall in no way affect the validity of any of the other provisions hereof.

SECTION 9. REPEAL OF INCONSISTENT RESOLUTIONS. All resolutions or parts thereof in conflict herewith are hereby superseded and repealed to the extent of such conflict.

SECTION 10. EFFECTIVE DATE. This Resolution shall take effect immediately upon its adoption.

DULY ADOPTED this ____ day of November, 2004.

**BOARD OF COUNTY COMMISSIONERS
OF LEE COUNTY, FLORIDA**

(SEAL)

By: _____
Chairman

ATTEST:

Clerk

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY

County Attorney

SCHEDULE I

PROPOSED LOAN REPAYMENT SCHEDULE

The principal of the Loan shall be repaid as follows (or on such other date or dates and in such amounts as the Clerk shall determine):

<u>Date</u>	<u>Principal Repayment</u>
December 6, 2005 (or in such other amounts as is borrowed under the resolution pursuant to which this schedule is attached)	\$320,000

Interest on the Loan shall be paid monthly in accordance with the terms and provisions of the Loan Agreement. Additional Payments shall also be made in accordance with the Loan Agreement.

RESOLUTION

Amending the NE Hurricane Bay, Draw, Fund 35207, to incorporate the unanticipated receipts into Estimated Revenues and Appropriations for the fiscal year 2004-2005.

WHEREAS, in compliance with Florida Statutes 129.06(2), it is the desire of the Board of County Commissioners of Lee County, Florida, to amend the NE Hurricane Bay, Draw, Fund 35207, for \$320,000 of the unanticipated revenue from Commercial Paper Proceeds, and an appropriation of a like amount for Principal expenditures and;

WHEREAS, the NE Hurricane Bay, Draw, Fund 35207, shall be amended to include the following amounts which were previously not included.

ESTIMATED REVENUES

Prior Total:		\$0
Additions		
80855235207.384000.9003	Commercial Paper Proceeds	\$320,000
Amended Total Estimated Revenues		\$320,000

APPROPRIATIONS

Prior Total:		\$0
Additions		
80855235207.507110	Principal	\$320,000
Amended Total Appropriations		\$320,000

NOW, THEREFORE, BE IT RESOLVED by the Board of County Commissioners of Lee County, Florida, that the NE Hurricane Bay, Draw, Fund 35207, is hereby amended to show the above additions to its Estimated Revenue and Appropriation Accounts.

Duly voted upon and adopted in Chambers at a regular Public Hearing by the Board of County Commissioners on this ____ day of _____, 2004.

ATTEST:
CHARLIE GREEN, EX-OFFICIO CLERK

BOARD OF COUNTY COMMISSIONERS
LEE COUNTY, FLORIDA

BY: _____
DEPUTY CLERK

CHAIRMAN

APPROVED AS TO FORM

OFFICE OF COUNTY ATTORNEY