

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

Blue Sheet No. 20061561

1. ACTION REQUESTED/PURPOSE: Request Board of County Commissioners to adopt a resolution authorizing the borrowing of up to \$2,300,000 from the Tax Exempt Commercial Paper Program for the upgrading of selected roads in the Western Acres subdivision.

2. WHAT ACTION ACCOMPLISHES: MSBU projects must be included in a resolution prior to funding the improvements with Commercial Paper.

3. MANAGEMENT RECOMMENDATION:
Approve.

4. Departmental Category: CIA		5. Meeting Date: December 5, 2006
6. Agenda: <input checked="" type="checkbox"/> Consent <input type="checkbox"/> Administrative <input type="checkbox"/> Appeals <input type="checkbox"/> Public <input type="checkbox"/> Walk-On	7. Requirement/Purpose: (specify)	
	<input type="checkbox"/> Statute	
	<input type="checkbox"/> Ordinance	
	<input type="checkbox"/> Admin. Code	
	<input type="checkbox"/> Other	
		8. Request Initiated: Commissioner _____ Department County Administration Division Budget Services By: Dina Lewis, Admin Services Dir

9. Background: On November 9, 2004, the BOCC approved an authorization to borrow up to \$1,000,000 from the Tax Exempt Commercial Paper Program (Resolution 04-11-11) for road improvements in the Western Acres subdivision. The Western Acres MSBU was created on March 23, 2004 (Resolution 04-03-34) along with a reimbursement resolution (Resolution 04-03-35).

Bids have been received on this project and the borrowing requirement needs to be raised from \$1,000,000 to \$2,300,000 due to the increased costs of construction. Because the Resolution 04-11-11 is over two years old, a new resolution has been drafted that reflects an authorization of up to \$2,300,000.

The funds will be used for the upgrading of roadways in the Western Acres subdivision located in North Fort Myers just off US41 in Lee County near the Lee/Charlotte County line. There are three roads in this project. Western Acres Road is 0.3 miles. North Road is 1.6 miles and South Road is 1.7 miles. These roads will be brought to County Standards using swales as the drainage system.

10. Review for Scheduling:

Department Director	Purchasing or Contracts	Human Resources	Other	County Attorney	Budget Services				County Manager/P.W. Director
					Analyst	Risk	Grants	Mgr.	
				 11/20/06	 11/21/06	 11/21/06		 11-21-06	

11. Commission Action:
 Approved
 Deferred
 Denied
 Other

Rec. by CoAtty

Date: 11/20/06

Time: 2:30pm

Forwarded To:

11/20/06 4:10pm

A RESOLUTION OF THE BOARD OF COUNTY COMMISSIONERS OF LEE COUNTY, FLORIDA, AUTHORIZING THE BORROWING OF NOT EXCEEDING \$2,300,000 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 FINANCE A PORTION OF THE COSTS AND EXPENSES RELATED TO CERTAIN TRANSPORTATION IMPROVEMENTS FOR WESTERN ACRES, INCLUDING THE REIMBURSEMENT OF CERTAIN EXPENSES INCURRED BY THE COUNTY IN CONNECTION THEREWITH, IF NECESSARY; 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" means the borrowing of money under the Loan Agreement in accordance with Article III thereof.

"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 No. A-28" means the Loan designated as "Loan No. A-28" the proceeds of which shall be used to finance a portion of the costs of Project A-28.

"Loan Note" means a note of the County evidencing the obligations incurred under the Loan Agreement by the County on account of a Draw made in regard to a Loan, which shall be in substantially the form provided in Exhibit I to the Loan Agreement.

"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-28" means various transportation improvements for Western Acres to bring the roads up to County standards, including, but not limited to, paving Western Acres Road for 0.3 miles, North Road for 1.6 miles and South Road for 1.7 miles, as the same may be amended or modified from time to time, and as more particularly described in the plans and specifications on file with the County.

"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-28.

(D) There is presently a need by the County to finance the acquisition and construction of Project A-28 and, if necessary, to reimburse the County for certain costs incurred in connection therewith, and the most cost effective means by which to finance Project A-28 is by use of moneys obtained pursuant to the Program by means of Loan No. A-28.

(E) The County hereby determines that the provision of funds by the Commission to the County in the form of Loan No. A-28 pursuant to the terms of the Loan Agreement and the financing of a portion of the costs of Project A-28 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.

(F) Loan No. A-28 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.

(G) 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-28, 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 \$2,300,000 for the purposes of providing the County with sufficient funds to finance a portion of Project A-28. The Chairman and the Clerk are hereby authorized to execute, seal and deliver on behalf of the County the Loan Note and other documents, instruments, agreements and certificates necessary or desirable to effectuate the Loan as provided in the Loan Agreement. The Loan Note or Notes with respect to Loan No. A-28 shall reflect the terms of such Loan and shall be substantially in the form attached to the Loan Agreement as Exhibit I. The County Manager shall determine the date of funding of Loan No. A-28 and the amount thereof in accordance with the terms of the Loan Agreement as appropriate to finance Project A-28 and is permitted by the Loan Agreement. The Loan shall mature on such date as the County Manager may determine prior to the issuance of the Loan Note for Loan No. A-28; provided, however, the final maturity of the Loan may not be later than the expiration date of the Letter of Credit (as defined in the Loan Agreement) at the time of the Draw. Loan No. A-28 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 may be agreed between the County and Wachovia Bank.

SECTION 5. AUTHORIZATION OF PROJECT A-28. The County does hereby authorize the financing of Project A-28 and the reimbursement of any costs incurred by the County with respect to the Project A-28 that are approved by Bond Counsel to the Program.

SECTION 6. SECURITY FOR THE LOAN. The County's obligation to repay Loan No. A-28 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. RESOLUTION TO CONSTITUTE CONTRACT. In consideration of the making of the Loan by the Commission, this Resolution shall be deemed to be and shall constitute a contract between (i) the County and (ii) the Commission and its successors and assigns (the Commission and its successors and assigns hereinafter referred to as the "Lender"). The pledge and agreements of the County herein set forth shall be for the benefit, protection and security of the Lender.

SECTION 8. 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 9. 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 10. REPEAL OF INCONSISTENT RESOLUTIONS. All resolutions or parts thereof in conflict herewith are hereby superseded and repealed to the extent of such conflict.

SECTION 11. EFFECTIVE DATE. This Resolution shall take effect immediately upon its adoption.

The foregoing Resolution was offered by Commissioner _____, who moved its adoption. The motion was seconded by Commissioner _____ and, being put to a vote, the vote was as follows:

ROBERT P. JANES	_____
BRIAN BIGELOW	_____
RAY JUDAH	_____
TAMMARA HALL	_____
FRANK MANN	_____

DULY ADOPTED this 5th day of December, 2006.

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

(SEAL)

By: _____
Chairman

ATTEST:

Clerk

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY

County Attorney