

RESOLUTION 2004-279

A RESOLUTION OF THE BOARD OF COUNTY COMMISSIONERS OF BROWARD COUNTY, FLORIDA, AMENDING EXHIBIT 22.D TO SECTION 22.124 OF THE BROWARD COUNTY ADMINISTRATIVE CODE; PROVIDING FOR THE ADOPTION OF AN INTEREST RATE SWAP AGREEMENT POLICY; PROVIDING FOR SEVERABILITY; PROVIDING FOR INCLUSION IN THE CODE; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the Board of County Commissioners of Broward County, Florida, desires to enter into an Interest Rate Swap Agreement in order to facilitate the refinancing of a portion of the \$135,360,000 Broward County, Florida Professional Sports Facilities Tax and Revenue Bonds, Series 1996A (Broward County Civic Arena Project) and a portion of the \$48,740,000 Broward County, Florida Professional Sports Facilities Tax and Revenue Bonds, Series 1996B (Broward County Civic Arena Project); and

WHEREAS, the Fiscal Policy for Capital Expenditures and Debt Financing for Broward County, Florida (the "Fiscal Policy"), is set forth in the County's Administrative Code in Section 22.124 as Exhibit 22.D attached thereto and incorporated therein; and

WHEREAS, the Fiscal Policy does not set forth any guidelines with respect to interest rate swap agreements; and

WHEREAS, the Board of County Commissioners has, therefore, determined that there is a need, and it is in the best interest of Broward County, Florida to have a comprehensive policy that sets forth guidelines and/or identifies objectives with respect to interest rate swap agreements; and

WHEREAS, Section 3.04 of the Broward County Charter provides that the Board of County Commissioners shall review and adopt the Administrative Code and any amendments thereto.

NOW THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF BROWARD COUNTY, FLORIDA:

SECTION 1. Chapter 22, Part XVII, entitled "FISCAL POLICY FOR CAPITAL EXPENDITURES AND DEBT FINANCING FOR BROWARD COUNTY," Section 22.124, entitled "Policy," Exhibit 22.D attached thereto and incorporated therein, entitled "FISCAL POLICY FOR CAPITAL EXPENDITURES AND DEBT FINANCING," of the Broward County Administrative Code is hereby amended to include in Paragraph III, entitled "Debt Financing," a subsection C., which shall read as follows:

C. Interest Rate Swap Agreement Policy:

This policy is promulgated by the County to govern the use of Interest Rate Swap Agreements. "Interest Rate Swap Agreement" shall mean a written contract, entered into in connection with the issuance of debt by the County or in connection with County debt already outstanding, with a counterparty to provide for an exchange of payments based upon fixed and/or variable interest rates. "Swaps" shall be inclusive of Swaptions which are options on forward dated Swaps. The failure by the County to comply with any provision of this policy will not invalidate or impair any Interest Rate Swap Agreement.

The Conditions Under Which Interest Rate Swap Agreements May Be Entered

Purposes

Interest Rate Swap Agreements may be used for the following purposes only:

1. To achieve significant savings as compared to other, non-derivative type products available in the bond market.
2. to enhance investment returns within prudent risk guidelines if authorized by the County's Investment Policy.
3. to prudently hedge risk in the context of a particular financing or the overall asset/liability management of the County.
4. to incur variable rate exposure within prudent guidelines.
5. to achieve more flexibility in meeting overall financial objectives than available in conventional markets.
6. To accomplish a financial objective not otherwise obtainable using traditional financing methods (e.g., synthetic advance refundings of private activity (AMT) bonds).

Legality

The County must receive an opinion acceptable to the market from a nationally recognized law firm that the Interest Rate Swap Agreement is a legal, valid and binding obligation of the County and the transaction is not prohibited by any applicable law.

Speculation

Interest Rate Swap Agreements shall not be used for speculative purposes. Associated risks will be prudent risks that are appropriate for the County to take.

Methods By Which Such Contracts Shall Be Solicited And Procured

In general, the County should procure Interest Rate Swap Agreements by competitive bidding, with at least three firms solicited. The County shall determine which parties it will allow to participate in a competitive transaction by taking into consideration, among other factors, the credit ratings of the swap counterparties. The County may procure Interest Rate Swap Agreements by negotiated methods if it makes a determination that, due to the size or complexity of a particular swap, a negotiated transaction would result in the most favorable pricing and terms or that doing so will promote its interests by encouraging and rewarding innovation. The County will consider on a transactional basis if it will accept a matching of bids in order to decrease counterparty risk or other risk considerations. The County should use a financial advisory firm experienced in the use of swaps in the municipal marketplace to assist in the price negotiations, in the development of terms and in risk assessment. The County's Financial Advisor will be prohibited from participation in fees other than contractually authorized fees. If procured through negotiation, the County shall obtain an independent opinion from its Financial Advisor that the terms and conditions of the Interest Rate Swap Agreement reflect a fair market value of such agreement as of the date of its execution.

Form and Content of Interest Rate Swap Agreements

To the extent possible, the Interest Rate Swap Agreements entered into by the County shall contain the terms and conditions set forth in the International Swap and Derivatives Association, Inc. ("ISDA") Master Agreement, including the schedule, credit support annex and confirmation. The schedule should be modified to reflect specific legal requirements and business terms desired by the County.

The County shall consider including provisions that permit the County to assign its rights and obligations under the Interest Rate Swap Agreement and to optionally terminate the agreement at its market value at any time. In general, the counterparty shall not have the right to optionally terminate an agreement. The counterparty shall have the right to assign an agreement to another counterparty under the condition that the new counterparty fulfills the rating criteria outlined below in the section entitled, "Counterparty Selection Criteria."

The Agreement shall include the following events of default of a counterparty:

1. Failure to make payments when due,
2. material breach of representations and warranties,
3. illegality,
4. failure to comply with downgrade provisions, and
5. failure to comply with any other provisions of the agreement after a specified notice period.

The County will have the right to terminate the agreement upon an event of default by the counterparty. Upon such termination, the counterparty will be the “defaulting party” for purposes of calculating the termination payment owed.

Aspects of Risk Exposure Associated with Such Contracts

Before entering into an Interest Rate Swap Agreement, the County shall evaluate all the risks inherent in the transaction. These risks to be evaluated could include: counterparty risk, termination risk, rollover risk, basis risk, tax event risk, credit risk and amortization risk. The County shall endeavor to diversify its exposure to counterparties. To that end, before entering into a transaction, it should determine its exposure to the relevant counterparty or counterparties and determine how the proposed transaction would affect the exposure. The exposure should not be measured solely in terms of notional amount, but rather how changes in interest rates would affect the County’s exposure (“Value at Risk”). The Value at Risk should be based on all outstanding derivative transactions by the County. Evaluation of risks will also include the following considerations:

1. Uncertainty with respect to the County’s future debt obligations;
2. effect on the County’s credit quality;
3. cumulative exposure to all risk factors identified;
4. the difficulty and costs associated with terminations; and
5. limitations in the ability to refund the swap’s underlying bonds.

Counterparty Selection Criteria

The County may enter into an Interest Rate Swap Agreement if the counterparty has at least two long term unsecured credit ratings of at least equal to the County's long term General Obligation rating from Fitch, Moody's, or S&P and ratings no lower than AA from the remaining rating agency, and the counterparty has demonstrated experience in successfully executing Interest Rate Swap Agreements. The use of terminating subsidiaries will not be permitted to meet the counterparty rating requirements of this policy. If after entering into an agreement, the counterparty does not maintain at least two ratings of Aa3/AA-/AA- or higher, or as otherwise specified in the swap documents, then the agreement shall be subject to termination unless (a) the counterparty provides either a substitute guarantor or assigns the agreement, in either case, to a party meeting the rating criteria reasonably acceptable to the County, or (b) the counterparty (or guarantor) collateralizes the Interest Rate Swap Agreement in accordance with the criteria set forth in this Policy and the Interest Rate Swap Agreement. In addition, if after entering into an agreement, a rating of the counterparty is downgraded below Baa1/BBB+/BBB+ or as otherwise specified in the swap documents, then the agreement shall be subject to termination unless the counterparty provides either a substitute guarantor or assigns the agreement, in either case, to a party meeting the rating criteria reasonably acceptable to the County.

Provisions for Collateralization

Should the rating of the counterparty, or if secured, the entity unconditionally guaranteeing its payment obligations, not satisfy the requirements of having at least two ratings of at least Aa3/AA-/AA-, then the obligations of the counterparty shall be fully and continuously collateralized by (1) direct obligations of the United States of America, (2) obligations the principal and interest on which are guaranteed by the United States of America, or (3) direct obligations of US Agencies and such collateral shall be deposited with the County or an agent thereof. Collateral requirements shall be subject to reasonable threshold and minimum transfer amounts. The specific collateralization requirements for each interest rate swap transaction shall be set forth in the corresponding swap documentation.

Long-Term Implications

In evaluating a particular transaction involving the use of Interest Rate Swap Agreements, the County shall review long-term implications associated with entering into Interest Rate Swap Agreements, including: costs of borrowing, historical interest rate trends, variable rate capacity, credit enhancement capacity, opportunities to refund related debt obligations and other similar considerations. The required minimum present value savings to the County of a swap transaction issued to refund outstanding debt shall be at least twice the minimum required for fixed rate refunding to compensate for the inherent risks associated with the use of interest rate swaps.

Methods to Be Used to Reflect Such Contracts in the County's Financial Statements

The County shall reflect the use of Interest Rate Swap Agreements on its financial statements in accordance with generally accepted accounting principles, including the Governmental Accounting Standards Board pronouncements and guidance. Further, the County will provide appropriate swap disclosures to credit rating agencies, to investors in connection with bond offerings, and the municipal secondary market. Appropriate disclosure includes information about legal authority, risks, guidelines, and market value.

Monitoring

The County may use an independent Swap Advisor to assist internal professional staff in monitoring its existing or proposed swap(s) if it is in the best interests of the County to do so. The County's Chief Financial Officer is solely authorized to enter into contract(s) to accomplish these monitoring efforts in amounts not to exceed \$100,000 per annum.

The County shall monitor its use of Interest Rate Swap Agreements on a quarterly basis as follows:

1. Preparing a description of each contract, including a summary of its terms and conditions, the notional amount, rates, maturity and other provisions thereof;

2. Determining any amounts which were required to be paid and received, and that the amounts were paid and received;
3. Assessing the counterparty risk, termination risk, and other risks associated therewith, which shall include the aggregate marked to market value for each counterparty and relative exposure compared to other counterparties and a calculation of the County's Value at Risk for each counterparty;
4. Determining that each counterparty is in compliance with its rating requirements;
5. Determining that each counterparty is in compliance with the downgrade provisions, if applicable (See Counterparty Selection Criteria); and
6. Determining that all posted collateral, if required, has a net market value of at least the collateral requirements specified in the Interest Rate Swap Agreement.

Waivers of Policy

After considering all the issues and risks identified herein, the Board of County Commissioners may, by majority vote, waive one or more provisions of this policy.

SECTION 2. Severability. If any section, sentence, clause or phrase of this Resolution is held to be invalid or unconstitutional by any court of competent

jurisdiction, then said holding shall in no way affect the validity of the remaining portions of this Resolution.

SECTION 3. Inclusion in Administrative Code. It is the intention of the Board of County Commissioners that the provisions of this Resolution shall become and be made a part of the Broward County Administrative Code; and that the sections of this Resolution may be renumbered or relettered and the word “resolution” may be changed to “section,” “article,” or such other appropriate word or phrase in order to accomplish such intentions.

SECTION 4. Effective Date.

This Resolution shall become effective upon adoption.

ADOPTED this 23rd day of March, 2004.