

ORDINANCE 2016-05

AN ORDINANCE OF THE TOWN OF LONGBOAT KEY, FLORIDA, AUTHORIZING THE ISSUANCE, SUBJECT TO THE BOND REFERENDUM HEREIN PROVIDED FOR, OF NOT TO EXCEED \$23,850,000.00 REVENUE BONDS AND/OR NOTES MATURING NOT BEYOND 30 YEARS FROM ISSUANCE PAYABLE FROM SPECIAL NON-AD VALOREM ASSESSMENTS IMPOSED AGAINST REAL PROPERTY THROUGHOUT THE TOWN AND OTHER NON-AD VALOREM REVENUES OF THE TOWN, IF NECESSARY, FOR PROVIDING FUNDS, TOGETHER WITH ANY OTHER LEGALLY AVAILABLE FUNDS, TO FINANCE THE COST OF REMAINING UNDERGROUNDING ELECTRICAL, COMMUNICATIONS, FIBER OPTICS AND OTHER UTILITIES AND THE INSTALLATION OF STREET LIGHTING RELATING TO NEIGHBORHOODS; PROVIDING FOR AND CALLING A BOND REFERENDUM OF THE QUALIFIED ELECTORS OF THE TOWN TO BE HELD ON MARCH 15, 2016; PROVIDING FOR AN OFFICIAL BALLOT; PROVIDING FOR BOND REFERENDUM PROCEDURES; ESTABLISHING ITS INTENT TO REIMBURSE SUCH CAPITAL EXPENDITURES INCURRED WITH PROCEEDS OF SUCH REVENUE BONDS AND/OR NOTES; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, many of the neighborhoods in the Town of Longboat Key, Florida (the "Town") have enjoyed undergrounded electrical utilities for many years; and

WHEREAS, the Town has overhead electrical utilities relating to Gulf of Mexico Drive and in certain neighborhoods within the Town; and

WHEREAS, on November 3, 2015, a majority of the qualified electors of the Town cast votes in favor of a bond referendum which authorized the Town to issue revenue bonds/notes, in one or more series, not exceeding \$25,250,000 to finance undergrounding electrical, communications, fiber optics and other utilities and installation of street lighting relating to Gulf of Mexico Drive (the "GMD Project"); and

WHEREAS, the Town Commission of the Town (the "Town Commission") now desires to call a bond referendum to authorize the Town to issue revenue bonds/notes, in one or more series, not exceeding \$23,850,000 to finance remaining undergrounding of electrical utilities in certain neighborhoods including street lighting installation, and communications/fiber optics utilities in certain neighborhoods (collectively, the "Project"); and

WHEREAS, the undergrounding of overhead electrical utilities, including removal of utility poles and overhead lines, provides safety benefits by reducing the potential for (1) downed power lines during storm and natural disaster events, (2) the hazardous conditions associated with downed power lines and exposure of live electric lines, and (3) restricted ingress and egress to and from all properties throughout the Town by residents and emergency responders; and

WHEREAS, the undergrounding of overhead electrical utilities also improves the reliability of utility services by substantially reducing the frequency of outages when compared with overhead networks, and the installation of new and upgraded utility lines, communications cables, and appurtenant facilities provides a higher level of reliability of utility services and reduces exposure to the elements that could cause potential damage and speed deterioration to facilities resulting in service interruptions; and

WHEREAS, in addition to safety and reliability benefits provided by undergrounding utilities, removing the overhead electrical utilities and utility poles creates an inviting, visually pleasing and scenic gateway for ingress and egress to all parcels within the Town, eliminates the radical line trimming of trees which frequently results in an unsightly and unnatural appearance and improves the overall aesthetics for individual parcels within the Town and the community as a whole; and

WHEREAS, Florida Power & Light ("FP&L") plans to replace the existing overhead power poles with new, expensive, larger, and stronger power poles to fortify, or harden, them against tropical storm force winds, thereby significantly increasing the Town's cost to underground the subject utilities at a future date after such replacement has occurred; and

WHEREAS, by undertaking the Project at this time, the Town can (1) maximize the financial assistance available for the Project through a reduction of up to 25% of the otherwise required Contribution in Aid of Construction payable to FP&L, and (2) take advantage of substantial cost efficiencies associated with constructing the Project in conjunction with the GMD Project; and

WHEREAS, the Town Commission hereby determines that the qualified electors of the Town should make, through a bond referendum, the final decision determining whether to issue revenue bonds and/or notes to finance the costs to design, acquire, construct, relocate, and install the Project; and

WHEREAS, the Town Commission hereby determines that it serves a public purpose that the Project be designed, acquired, constructed, relocated, and installed and that it is in the best interest of the Town to issue revenue bonds and/or notes to finance the costs of the design, acquisition, construction, relocation, and installation of the Project; and

WHEREAS, to pay all or a part of the cost of the Project, it is necessary to issue the revenue bonds and/or notes of the Town as hereinafter provided; and

WHEREAS, Section 5(b) of the Charter of the Town provides that no revenue bonds and/or notes "shall be issued by the town or any public entity controlled by the town without approval at a referendum held in the manner prescribed by law;" and

WHEREAS, the Town now desires to issue revenue bonds and/or notes in one or more series in an amount not to exceed Twenty Three Million, Eight Hundred Fifty Thousand Dollars (\$23,850,000.00) (the "Bonds") pursuant to the terms of an

authorizing bond resolution hereafter to be adopted by the Town Commission if the qualified electors of the Town approve the bond referendum authorized herein; and

WHEREAS, the Bonds shall be limited obligations of the Town payable solely from special non-ad valorem assessments imposed against real property throughout the Town and other non-ad valorem revenues, if necessary; and

WHEREAS, the Bonds shall not be or constitute general obligations or indebtedness of the Town as "bonds" within the meaning of Article VII, Section 12 of the Constitution of Florida, but shall be payable solely from special non-ad valorem assessments imposed against real property throughout the Town and other legally available non-ad valorem revenues of the Town, if necessary, in accordance with the terms hereof, and no holder of any Bonds issued hereunder shall ever have the right to compel the exercise of any ad valorem taxing power or taxation of any real or personal property thereon or the use or application of ad valorem tax revenues to pay such Bonds, or be entitled to payment of such Bonds from any funds of the Issuer except from such special non-ad valorem assessments and legally available non-ad valorem revenues, as described herein; and

WHEREAS, this Ordinance is intended to constitute a "declaration of official intent" within the meaning of Section 1.150-2 of the Income Tax Regulations which were promulgated pursuant to the Internal Revenue Code of 1986, as amended, with respect to the debt incurred to finance the design, acquisition, construction, relocation and installation of the Project.

NOW THEREFORE, BE IT ORDAINED BY THE TOWN COMMISSION OF THE TOWN OF LONGBOAT KEY, FLORIDA, THAT:

SECTION 1. **AUTHORITY FOR THIS ORDINANCE.** This Ordinance is adopted pursuant to the Constitution and laws of the State of Florida, including Chapter 166, Florida Statutes, the Charter of the Town, and other applicable provisions of law (hereinafter collectively referred to as the "Act").

SECTION 2. **FINDINGS.** The Town Commission hereby finds and determines that the recitals set forth herein are true and correct and adopts the same as its findings and determinations.

SECTION 3. **AUTHORIZATION OF BONDS.** Subject and pursuant to the provisions hereof, the Bonds of the Town are authorized to be issued in one or more series in the aggregate principal amount not exceeding Twenty Three Million, Eight Hundred Fifty Thousand Dollars (\$23,850,000.00) to provide funds, together with any other legally available funds of the Town, if any, to finance the cost of the design, acquisition, construction, relocation, and installation of the Project. The monies received and interest earned from the issuance of the Bonds will be used for such purpose. The Bonds shall not be or constitute general obligations or indebtedness of the Town as "bonds" within the meaning of Article VII, Section 12 of the Constitution of Florida, but shall be payable solely from special non-ad valorem assessments imposed against real property throughout the Town and other legally available non-ad valorem revenues of the Town, if necessary, in accordance with the terms hereof, and no holder

of any Bonds issued hereunder shall ever have the right to compel the exercise of any ad valorem taxing power or taxation of any real or personal property thereon or the use or application of ad valorem tax revenues to pay such Bonds, or be entitled to payment of such Bonds from any funds of the Issuer except from such special non-ad valorem assessments and legally available non-ad valorem revenues, as described herein. The Bonds shall mature in not more than thirty (30) years from issuance, and the Bonds shall bear interest at a rate not exceeding the maximum rate permitted by law at the time of the sale of the Bonds. Both principal and interest on the Bonds, and redemption premiums, if any, may be payable at the office of the paying agent to be named by the Town at or prior to the sale of the Bonds.

The Bonds shall be issued pursuant to authority granted under this Ordinance and the Act, but only after approval of the bond referendum hereinafter called and subsequent adoption of an authorizing bond resolution by the Town Commission, as governing body of the Town.

SECTION 4. BOND REFERENDUM. A bond referendum of the qualified electors residing in the Town is hereby called to be held on Tuesday, March 15, 2016, in conjunction with the presidential preference primary to be held on such date, to determine whether or not the issuance of the Bonds in an aggregate amount of not exceeding Twenty Three Million, Eight Hundred Fifty Thousand Dollars (\$23,850,000.00) shall be approved by such qualified electors to finance the cost of the design, acquisition, construction, relocation, and installation of the Project. All qualified electors in the Town shall be entitled and permitted to vote in the bond referendum.

The Sarasota County Supervisor of Elections and the Manatee County Supervisor of Elections (collectively, the "Supervisors of Elections") and the Town Clerk of the Town (the "Clerk") shall take all necessary measures to hold, administer, and conduct the bond referendum in the manner prescribed by law. The results shall be certified to the Department of State in accordance with Section 100.351, Florida Statutes. All procedures and requirements of the laws of the State of Florida, the Charter of the Town, and other applicable law shall be complied with for the purpose of conducting the computation of ballots and completion of bond referendum procedures.

Trish Granger, Town Clerk of the Town of Longboat Key, Florida, as the elections official of the Town pursuant to Article IV, Section 2(b) of the Charter of the Town, is hereby designated and appointed as the official representative of the Town Commission in all transactions with the Supervisors of Elections in relation to matters pertaining to the use of the registration books and the holding of said bond referendum.

Ballots containing the question set forth in Section 6 hereof shall be prepared for the use of absent electors entitled to cast such ballots in said election. Early voting for the election shall be in conjunction with the schedules and locations established by the Supervisors of Elections offices.

SECTION 5. NOTICE OF BOND REFERENDUM. Notice of the bond referendum shall be published in a daily newspaper of general circulation in the Town, at least twice, once in the fifth week and once in the third week prior to the week in which the bond referendum is held, the date of first publication in said newspaper to be

at least thirty (30) days before said bond referendum, in substantially the form attached hereto as Exhibit A and in the manner provided in Section 100.342, Florida Statutes. The Town Clerk is hereby charged with the responsibility of this notice procedure.

SECTION 6. OFFICIAL BALLOT. The ballot for voting in the bond referendum shall be in substantially the following form:

**Official Ballot
Town Of Longboat Key, Florida
Bond Referendum Election
March 15, 2016**

**APPROVING REVENUE BONDS/NOTES
TO FINANCE REMAINING UNDERGROUNDING UTILITIES/STREET LIGHTING**

Shall Town of Longboat Key be authorized to issue revenue bonds/notes, in one or more series, not exceeding \$23,850,000, bearing interest not exceeding maximum legal rates, maturing not later than 30 years, to finance remaining undergrounding of electrical utilities in certain neighborhoods including street lighting installation, and communications/fiber optics utilities in certain neighborhoods, payable solely from special assessments imposed against real property throughout the Town and other non-ad valorem revenues if necessary?

_____ Yes - For Bonds/Notes

_____ No - Against Bonds/Notes

SECTION 7. BOND REFERENDUM RESULTS. Returns of the votes cast at the bond referendum shall be made as required by law.

If a majority of the votes cast at the bond referendum shall be "Yes - For Bonds/Notes," the Bonds shall be approved, and then the Bonds may be issued pursuant to this Ordinance as provided by authorizing bond resolution of the Town Commission, as governing body of the Town. If less than a majority of the votes cast at the bond referendum shall be "Yes - For Bonds/Notes," the Bonds shall be defeated, and no Bonds shall be issued pursuant to this Ordinance.

SECTION 8. LANGUAGES. To the extent required by law, the official ballot and notice of bond referendum shall be published in both the English and the Spanish languages.

SECTION 9. INTENT TO REIMBURSE. The Town Commission hereby expresses its intention that the Town be reimbursed from the proceeds of the Bonds for costs relating to the Project. Pending reimbursement, the Town expects to use funds on deposit in the Town's general fund or other appropriate fund or account to pay such costs. This Ordinance is intended to constitute with respect to the construction of the Project a "declaration of official intent" within the meaning of Section 1.150-2 of the Income Tax Regulations.

SECTION 10. EFFECTIVE DATE. This Ordinance shall become effective immediately upon adoption by the Town Commission.

PASSED at a meeting of the Town Commission held the 14th day of December, 2015.

ADOPTED at a meeting and public hearing of the Town Commission held the 4th day of January, 2016.

Jack G. Duncan, Mayor

ATTEST:

Trish Granger, Town Clerk

Attachment: Exhibit A

EXHIBIT A

NOTICE OF REVENUE BOND REFERENDUM FOR UNDERGROUNDING REMAINING UTILITIES AND RELATED STREET LIGHTING TO BE HELD ON TUESDAY, MARCH 15, 2016

TOWN OF LONGBOAT KEY, FLORIDA

To be held on Tuesday, March 15, 2016, as provided by
Ordinance 2016-05 of the Town Commission,
as governing body of the Town of Longboat Key, Florida adopted on
January 4, 2016

Notice is hereby given that a bond referendum will be held in the Town of Longboat Key, Florida on Tuesday, March 15, 2016. The bond referendum will be held to determine whether there shall be issued revenue bonds and/or notes (the "Bonds") of the Town, in one or more series, in an amount not exceeding Twenty Three Million, Eight Hundred Fifty Thousand Dollars (\$23,850,000.00). The Bonds shall not be or constitute general obligations or indebtedness of the Town as "bonds" within the meaning of Article VII, Section 12 of the Constitution of Florida, but shall be payable solely from special non-ad valorem assessments imposed against real property throughout the Town and other legally available non-ad valorem revenues of the Town, if necessary, and no holder of any of the Bonds shall ever have the right to compel the exercise of any ad valorem taxing power or taxation of any real or personal property thereon or the use or application of ad valorem tax revenues to pay such Bonds, or be entitled to payment of such Bonds from any funds of the Issuer except from such special non-ad valorem assessments and legally available non-ad valorem revenues. The Bonds shall mature in not more than thirty (30) years from issuance, and the Bonds shall bear interest at a rate not exceeding the maximum rate permitted by law at the time of the sale of the Bonds. The monies received and interest earned from the issuance of the Bonds will be used to finance the cost of remaining undergrounding of electrical utilities in certain neighborhoods including street lightning installation, and communications/fiber optics utilities in certain neighborhoods. The financing of this undergrounding project is intended to complete the undergrounding initiative to replace overhead electrical and communications/fiber optics utilities in the Town. The undergrounding of utilities relating to Gulf of Mexico Drive is expected to be financed separately, in accordance with Town Ordinance 2015-21.

The issuance of such Bonds and the holding of such bond referendum have been authorized by Ordinance 2016-05 of the Town Commission of the Town adopted on January 4, 2016.

In accordance with the Constitution and laws of the State of Florida and the Charter of the Town of Longboat Key, all qualified electors of the Town of Longboat Key, Florida, shall be entitled to vote in the bond referendum to which this notice pertains. The polls at said bond referendum will be open from 7 o'clock a.m. until 7 o'clock p.m. on

Tuesday, March 15, 2016, and will be held at polling places in the several precincts of the Town.

The Town of Longboat Key shall be authorized to issue the Bonds covered by the question hereinabove set forth only if such issuance shall have been approved by vote of a majority of the qualified electors of the Town of Longboat Key voting thereon.

By order of the Town Commission of the Town of Longboat Key, Florida.

Trish Granger
Town Clerk,
Town of Longboat Key, Florida