

M E M O R A N D U M

DATE: October 1, 2014

TO: Dave Bullock, Town Manager

FROM: Sue Smith, Finance Director

SUBJECTS: Resolution 2014-26, Providing for Reimbursement of Capital Expenditures for Water and Wastewater Utility System from Future Tax-Exempt Financing Proceeds and Resolution 2014-27, Providing for Reimbursement of Capital Expenditures for Beach Maintenance from Future Tax-Exempt Financing Proceeds

The Town's bond counsel, Duane D. Draper, of Bryant Miller Olive, has prepared the attached Resolutions 2014-26 and 2014-27 in preparation for our future bond issues for both the Subaqueous Pipeline project and the Beach Renourishment project.

Prior to the issuance of bonds, the Town may incur upfront, preparatory costs related to the projects, such as professional consulting services, engineering and planning. These Resolutions will allow the Town to be reimbursed from the bond proceeds for these eligible costs associated with the project once the bonds are issued.

More specifically, **Section 1.150-2 of the Treasury Regulations** contains the provisions governing the use of bond proceeds to reimburse a bond issuer for expenses incurred prior to the bond issuance. Generally, the Regulation provides that bond proceeds may not be used to reimburse pre-issuance expenditures unless: (i) there was a Declaration of Official Intent to reimburse adopted by the issuer within 60 days of the date of the original expenditure; (ii) on the date of the adoption of the Declaration of Official Intent the issuer reasonably expects to reimburse the original expenditure with proceeds of a borrowing; and (iii) the reimbursement allocation is made within the proper time constraints (no later than 18 months after the later of (a) the date of the original expenditure, or (b) date the project is placed in service or abandoned and in no event later than three years after the date of original expenditure), which has the effect of requiring that reimbursing bonds be issued within the same timeframe.

Expenditures eligible for reimbursement include, but are not limited to, capital expenditures, grants, and certain extraordinary working capital expenditures. Certain types of expenditures are exempt from the specific requirements of the Regulation including preliminary expenditures and costs of issuance. The following is an outline summary of the applicable provisions of Section 1.150-2.

**PROCEEDS OF BONDS USED FOR REIMBURSEMENT
TREASURY REGULATION SECTION 1.150-2**

- **Application:**
 - This section applies to all governmental issues, private activity bonds and 501(c)(3) issues.
- **Prerequisites:**
 - **Official Intent** – No later than 60 days after payment of the original expenditure, the issuer must adopt a Declaration of Official Intent for the original expenditure.
 - **Form of Declaration of Official Intent:**
 - Any reasonable form, including an issuer resolution (e.g. reimbursement resolution), action by an appropriate representative of the issuer (e.g. a person authorized or designated to declare official intent on behalf of the issuer), or specific legislative authorization for the issuance of obligations for a particular project (e.g. a bond resolution).
 - **Project Description:**
 - Declaration of Official Intent must generally describe the project for which the original expenditure is to be paid and state the maximum principal amount of obligation expected to be issued for the project.
 - Project includes any property, project or program (e.g. highway capital improvement program, hospital equipment acquisition or school building renovation).
 - **Reasonable Deviations in Project Description:**
 - Deviations between the project described in the Declaration of Official Intent and the actual project financed with the reimbursement bonds will not invalidate the Declaration of Official Intent to the extent the actual project is reasonably related to the project originally described.
 - **Reasonable Expectation:**
 - On the date of Declaration of Official Intent, the issuer must have a reasonable expectation of reimbursement from obligation proceeds.
 - Blanket declarations are not reasonable.
 - Cannot be in amounts substantially in excess of amounts expected to be necessary for project.
 - Also a pattern of failure to reimburse amounts originally declared for reimbursement can be deemed evidence of unreasonableness.
 - **Timing of Reimbursement Allocation:**
 - Reimbursement allocation from debt proceeds must be made no later than 18 months after the later of:
 - Date of original expenditure.
 - Date the project is placed in service or abandoned
 - In no event shall the reimbursement allocation be made more than 3 years after the date the original expenditure is paid.
 - **Special Rule for Long-Term Construction Projects:**
 - Both issuer and a licensed architect or engineer must certify that completion of project construction will take at least 5 years.
 - 18-month provisions still applies.
 - But, in no event shall the reimbursement allocation be made more than 5 years after the date the original expenditure is paid.
 - **Nature of Expenditure:**
 - The original expenditure can be a capital expenditure, a cost of issuance for a bond, an expenditure described in 1.148-6(d)(4) (i.e. arbitrage rebate, yield reduction, or penalty in lieu of arbitrage), a qualified student loan, a qualified mortgage loan, or a qualified veterans mortgage loan.

- **De minimis Exception**
 - A Declaration of Official Intent is not required and there are no timing constraints applicable to the costs of issuance on any bond or to an amount not in excess of the lesser of \$100,000 or 5% of the proceeds of the issue.
- **Preliminary Expenditures Exception**
 - A Declaration of Official Intent is not required and there are no timing constraints applicable to any preliminary expenditure, up to an amount not in excess of 20% of the aggregate issue price of the issue or issues that finance or are reasonably expected by the issuer to finance to project.
 - **Preliminary Expenditures include:**
 - Architectural, engineering, surveying, soil testing, reimbursement bond issuance, and similar costs incurred prior to the commencement of acquisition, construction or rehabilitation of a project, other than land acquisition, site preparation, and similar costs incident to the commencement of construction.
- **Special Rules on Refundings:**
 - **Once financed, not reimbursed.**
 - The Regulation does not permit the use of bond proceeds to reimburse the payment of principal and interest on an obligation or to reimburse an original expenditure paid by another obligation. Instead any such amounts should be analyzed as a refunding.
 - E.g. Cash used by an issuer to pay the purchase price of bonds tendered pursuant to an optional tender cannot later be reimbursed with the proceeds of a new bond issue.
 - **Certain proceeds of prior issue used for reimbursement treated as unspent.**
 - In the case of a refunding issue, proceeds of a prior issued purportedly used to reimburse an original expenditure are treated as unspent proceeds of the prior issue, unless the purported reimbursement was a valid reimbursement allocation, under applicable law, on the issue date of the prior issue.
 - **Anti-Abuse Rules**
 - **Arbitrage Abuse/Avoidance:**
 - Reimbursement allocation is not an expenditure of proceeds of an issue, if the allocation employs an abusive arbitrage devised (see s.1.148-10) to avoid the arbitrage restrictions or to avoid other restrictions applicable to private activity bonds under sections 142 through 147.
 - **One-year Step Transaction Rule – Creation of Replacement Proceeds.**
 - Reimbursement allocations will be invalid, and not an expenditure of proceeds, if within one year of the issuance of reimbursement bonds, funds corresponding to the reimbursement bond proceeds for which a reimbursement allocation was made, are used in a manner that results in the creation of replacement proceeds of that issue or another issue.
 - Does not apply to amounts placed in a bona fide debt service fund.
 - E.g. Within 1 year of issuing 1994 Bonds (with a 7% yield), for which the City has made a reimbursement allocation, the City deposits 1994 Bond proceeds, subject to the reimbursement allocation, in an escrow fund dedicated to principal and interest on the City's outstanding 1991 Bonds (bearing a 9% yield).
 - Because proceeds were deposited within one-year of issuance of the 1994 bonds, the reimbursement allocation is invalid. The proceeds are treated as unspent proceeds and are subject to the 1994 Bonds' 7% yield restriction and not the 9% yield restriction applicable to the 1991 Bonds.

RESOLUTION 2014-26

A RESOLUTION OF THE TOWN COMMISSION OF THE TOWN OF LONGBOAT KEY, FLORIDA ESTABLISHING ITS INTENT TO REIMBURSE CERTAIN CAPITAL EXPENDITURES INCURRED WITH PROCEEDS OF A FUTURE TAX-EXEMPT FINANCING TO IMPROVE THE WATER AND WASTEWATER UTILITY SYSTEM; PROVIDING CERTAIN OTHER MATTERS IN CONNECTION THEREWITH; PROVIDING AN EFFECTIVE DATE.

BE IT RESOLVED BY THE TOWN COMMISSION OF THE TOWN OF LONGBOAT KEY, FLORIDA:

SECTION 1. **AUTHORITY FOR THIS RESOLUTION.** This Resolution is adopted pursuant to the provisions of the Florida Constitution, Chapter 166, Florida Statutes, the Charter of the Town of Longboat Key, Florida and other applicable provisions of law (collectively, the "Act").

SECTION 2. **FINDINGS.** It is hereby ascertained, determined and declared that:

A. The Town Commission of the Town of Longboat Key, Florida (the "Issuer") has determined that the need exists to incur debt to expend funds in the water and wastewater enterprise fund or other appropriate fund or account in order to acquire, construct, and erect improvements to the Issuer's water and wastewater utility system to be acquired, constructed, and erected in accordance with plans on file at the offices of the Issuer, as such plans may be modified from time to time (the "Project").

B. It is expected that the costs of the Project will be reimbursed by and financed with the proceeds of bonds to be issued by the Issuer in the future.

SECTION 3. **DECLARATION OF INTENT.** The Issuer hereby expresses its intention to be reimbursed from proceeds of a future tax-exempt financing for capital expenditures to be paid by the Issuer for the purpose of acquiring, constructing and erecting the Project. The Issuer expects to use funds on deposit in the water and wastewater enterprise fund or other appropriate fund or account to pay such costs including but not limited to capital expenditures, costs of design, and other costs associated with the issuance of debt. It is reasonably expected that the total amount of debt to be incurred by the Issuer with respect to the Project will not exceed \$13,130,426. This Resolution 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, in one or more financings, to finance the Project.

SECTION 4. **SEVERABILITY.** If any one or more of the covenants, agreements or provisions of this Resolution should 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 separate from the remaining covenants, agreements or provisions of this Resolution.

SECTION 5. REPEAL OF INCONSISTENT DOCUMENTS. All ordinances, resolutions or parts thereof in conflict herewith are hereby superseded and repealed to the extent of such conflict.

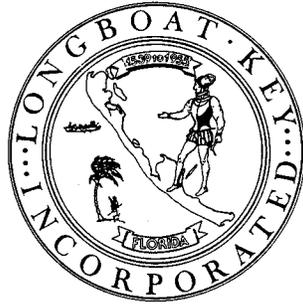
SECTION 6. EFFECTIVE DATE. This Resolution shall take effect immediately upon its adoption by the Town Commission of the Town of Longboat Key, Florida.

Passed by the Town Commission of the Town of Longboat Key, Florida the _____ day of _____, 2014.

TOWN OF LONGBOAT KEY, FLORIDA

James L. Brown, Mayor

By: _____
Trish Granger, Town Clerk



End of Agenda Item