



# City of Bloomington, Minnesota

## Conduit Debt Policy

# DEBT

## **Conduit Debt Policy –**

### **General**

The City of Bloomington is granted the power to issue conduit revenue bonds and other conduit revenue obligations under Minnesota Statutes, Section 469.152-469.165, as amended, and Minnesota Statutes, Chapter 462C, as amended (the “Conduit Bonds Acts”). The Bloomington City Council, being aware that such financing may prevent the emergence of blighted land, excessive unemployment and the need for redevelopment financing from the State and Federal governments, has expressed its support for the use of such financing but has reserved the right to approve or reject projects on a case-by-case basis. The following criteria have, therefore, been developed as a guide for review of applications:

### **Criteria**

- a. The project is to be compatible with the overall development plans and objectives of the City and of the neighborhood in which the project is located.
- b. New businesses locating in Bloomington must show relatively substantial new employment and tax base being generated by the project.
- c. Locating in areas of the City that the City wishes to develop, redevelop, or which in any way complements any development plans or policy of the City, will constitute a prime purpose under these guidelines. It is also the City’s intent to assist in business expansions or relocations within the City where it can be shown that such would have a substantial, favorable impact on employment or tax base, or both.
- d. It is the City’s intent to assist new or existing businesses in the acquisition of existing facilities, where such acquisition will maintain the stability of the tax base, or of employment, or both, and provided that not less than 15% of the portion of the cost of acquiring the existing facility financed with the net proceeds of the conduit bonds is to be used for rehabilitation of the existing facility.
- e. The project must not put a burden on existing City services or utilities beyond that which can be reasonably and economically accommodated.
- f. The applicant (and/or the lessee in the case of property to be leased) must have a good financial standing, show a substantial net worth, or equity in the project, or both, and have an acceptable earnings history or pro forma. Projects are to show in the application for financing an owner equity or other collateral (such as a bank Letter of Credit, a Bankers Acceptance, Pledge of a Certificate of Deposit, insurance company guarantee, or similar security) which will be satisfactory to the end-lender or rating agency, all determined with reference to total project costs, and applicant is to file with the City, if requested, a final statement of total costs and project equity, certified to by an authorized officer or partner, or the individual applicant, said statement to be filed at time of requesting the Final Resolution.

- g. The credit rating and method of offering conduit\* bonds or notes of the City are important considerations. The City will not entertain applications for such financings unless (i) the debt is rated in the “A” category (or better) by a nationally recognized rating agency or (ii) the debt is sold in a private placement. Debt will be considered sold in a private placement (i) if no advertising or solicitation of the general public occurs, and (ii) if the bonds are initially sold to not more than ten purchasers (not including any underwriter or placement agent as a purchaser) and (iii) the City receives written certification from each initial purchaser (or each underwriter or placement agent based on its reasonable belief) that: (a) such purchaser has such knowledge and experience in financial and business matters that it is capable of evaluating the merits and the risks of the debt, and (b) such purchaser is not purchasing for more than one account or with a view to distributing the debt.

In addition, for a private placement either (a) all bonds or notes (except for one bond or note) must always remain in minimum denominations of not less than \$100,000, or (b) investment letters from not only each initial purchaser, but from any subsequent purchaser must be obtained which contains the above described certifications from the purchasers. Any offering material for a private placement must prominently state in effect that: “THE CITY OF BLOOMINGTON HAS NOT ASSUMED ANY RESPONSIBILITY TO REVIEW THIS OFFERING MATERIAL AND HAS NO RESPONSIBILITY FOR ITS ACCURACY OR COMPLETENESS. THE CITY HAS NO FINANCIAL OBLIGATION OF ANY NATURE WITH RESPECT TO THE OFFERED BONDS.”

Finally, to qualify as a private placement the financing documents must require annual financial statements from the benefited private party (or the ultimate provider of credit) to be delivered to each investor (or a trustee).

\*The term “conduit” refers to any type of City revenue obligation the proceeds of which are loaned to a private party and for which the City has no financial obligation.

- h. Applications for acquisition of or replacement of machinery and equipment will be discouraged unless in conjunction with a totally new business in Bloomington, a physical plant expansion of an existing business, or where it is shown that the equipment acquisition is essential to the continued operation of the business in Bloomington. Also, it is the City’s intent to assist where possible in the acquisition of pollution control equipment for any new or existing business being required to meet mandated standards.
- i. A further permitted use under these guidelines are projects, whether profit or nonprofit, engaged in providing health care services, including hospitals, nursing homes, and related medical facilities, but only when the following findings can be made:
- (1) Number of new jobs and related payroll is relatively significant.
  - (2) The project would provide a facility or service, or expansion thereof considered desirable or necessary from a community services standpoint.
  - (3) The project application also meets requirements of paragraph a, e, f and g of these guidelines.

## Procedures

- a. The applicant shall make an application for financing on forms available from the Finance Department of the City of Bloomington. The completed application is to be returned to the Chief Financial Officer, accompanied by the processing fee, whereupon the application will be forwarded to the City Council with a Staff recommendation. Specific findings shall be made and recited regarding the criteria as well as satisfaction of public purposes of the Conduit Bonds Acts.
- b. The application cannot be considered by the City until tentative City Code findings and requirements have been made with respect to zoning, building plans, platting, streets and utility services.
- c. The applicant shall submit a timetable for completion of the project as part of the application and any apparent major deviation from that timetable will automatically cause the application to be brought back to the City Council for review. This timetable must relate to the State timetable for entitlement and pool allocations. The financing must be completed within the calendar year for which application is made.
- d. The applicant is to select qualified financial consultants and/or underwriters, as well as legal counsel, to prepare all necessary documents and materials. The City may rely on the opinion of such experts and the application shall be accompanied by a financial analysis (pro forma income statement, debt service coverage, mortgage terms, etc.) by the underwriter as to the economic feasibility of the project and the underwriter's ability to market the financing. Financial material submitted is to also include most recent fiscal year-end, audited, financial statements of the applicant and/or of any major lessee tenant, if readily available.
- e. Further, in the case of the tax exempt mortgage placements, the applicant will be required to furnish the City, before passage of the Final Resolution, a comfort letter (but not necessarily a letter of commitment) from the lending institution, to the effect that said lending institution has reviewed the economic feasibility of the project, including the financial responsibility of the guarantors and find that, in their professional judgment, it is an economically viable project.
- f. The applicant shall furnish along with the application, a description of the project, plat plan, rendering of proposed building, etc., and a brief description of the applicant company, all in such form as shall be required at the time of application. Such of this data as necessary may be furnished to members of the City Council for background information.
- g. If an allocation of bonding authority is required under Minnesota Statutes, Chapter 474A, as amended ("Chapter 47 4A", the applicant shall be required to pay any required application fee and provide any required application deposit as specified in Chapter 474A, without regard to whether the application fee or application deposit will be refunded.
- h. The applicant shall covenant in the applicable conduit bond documents to comply with all applicable requirements of the Internal Revenue Code of 1986, as amended (the "Code"), and the applicable Treasury Regulations, including, but not limited to: (i) the arbitrage and rebate requirements of Section 148 of the Code; and (ii) the qualified bonds provisions of Sections 141(e), 142, 143, 144, and 145 of the Code. The applicant shall be the party responsible for monitoring the conduit bonds for compliance with such requirements and to remediate nonqualified bonds in accordance with the requirements of the Code and applicable Treasury Regulations. The applicant shall be the party responsible for monitoring compliance with the requirements of Section 148 of the Code.

- i. The applicant shall covenant in the applicable conduit bond documents to reimburse the City for all costs paid or incurred by the City (including the fees of attorneys, financial advisors, accountants, and other advisors) as a result of the City's response to or compliance with an audit, inspection, or compliance check (random or otherwise), by the Internal Revenue Service, the Minnesota Department of Revenue, the Minnesota Office of the State Auditor, or any other governmental agency with respect to the conduit bonds or the project financed with the proceeds of the conduit bonds.

**Administrative**

- a. The City Council reserves the right to deny any application for financing at any stage of the proceedings prior to adopting the final resolution authorizing issuance of the industrial development financing. The City Council may waive any provision of this Conduit Bonds Policy if the City Council determines that such waiver is in the best interests of the City.
- b. The City is to be reimbursed, and held harmless, for and from any out-of-pocket costs related to the actual or proposed issuance of conduit revenue bonds. In addition, a nonrefundable processing fee of \$2,500 must be submitted with the application. Upon closing, an administrative fee is due and payable to the City based on the following schedule:

On the first \$10,000,000 .25% of par

On portion in excess of \$10,000,000 .10% of par

In the case of a refinancing, the fee shall be calculated at 50% of the above schedule. The City will be reimbursed for any technical changes to a bond issue previously issued to be calculated at 25% of the above schedule.

- c. All applications and supporting materials and documents shall remain the property of the City. Note that all such materials may be subject to disclosure and/or public review under applicable provisions of State law.
- d. The Finance Department shall, report all conduit debt issues in the Comprehensive Annual Financial Report in accordance with Generally Accepted Accounting Principles and shall report any material events with regard to all conduit debt issued by the City, and still outstanding, to the City Council.

*(Adopted by City Council - 4/10/78, Revised complete Policy and Criteria - 6/12/78, Sections 1c., 1g. and 1h. amended - 4/09/79, Sections 1b., 1c., 1f., 1g. and 2e. amended - 11/19/79, Section 1i. added - 10/15/80, Section 1f. and 1g. amended - 4/27/81, Section 1f. amended - 8/02/82, Section 1f. amended - 7/25/83, Section 1d. amended, 1j. added, 2d. amended, 2h. added and Section 4 added - 7/30/84, Section 1g., 2b., 2g. and 3d. amended - 4/13/92, Section 3b. - amended 3/15/93, Revised complete Policy 5/17/2010, Section 2h and 2i amended – September 12, 2011)*