

RESOLUTION # 859-01-25-2022

Board Member Steines introduced the following Resolution entitled "RESOLUTION APPROVING A POST-ISSUANCE COMPLIANCE POLICY " and moved that it be adopted. Board Member McDevitt seconded the motion to adopt, and the roll being called thereon, the vote was as follows:

AYES: Steines, Willey, McDevitt

NAYS: _____

Whereupon, the Chairperson declared the Resolution duly adopted as follows:

RESOLUTION APPROVING A POST-ISSUANCE COMPLIANCE POLICY

WHEREAS, the Board of Supervisors is the governing body of Jackson County, Iowa (the "County"); and

WHEREAS, the County is a body corporate and politic duly incorporated, organized and existing under and by virtue of the constitution and laws of the State of Iowa; and

WHEREAS, various requirements apply under the Internal Revenue Code and Income Tax Regulations (hereinafter "IRS Requirements") including information filing and other requirements related to the issuance of tax exempt obligations, the proper and timely use of bond-financed property, and arbitrage yield restriction and rebate requirements; and

WHEREAS, to comply with the IRS Requirements, governmental bond issuers must ensure that the rules are met at the time the bonds, capital loan notes or lease-purchase obligations (hereinafter "bonds") are issued and throughout the term of the bonds; and

WHEREAS, this includes the continued review of post-issuance obligations and maintenance of records; and

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF SUPERVISORS OF JACKSON COUNTY, STATE OF IOWA:

Section 1. The Policy attached hereto as Exhibit A is hereby adopted and approved.

Section 2. The official designated in said policy shall take any and all action necessary to properly implement the Policy.

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PASSED AND APPROVED this 25th day of January, 2022.

John J. Willey
Chairperson

ATTEST:

Alisa Smith
County Auditor

EXHIBIT "A"

JACKSON COUNTY, IOWA

POST-ISSUANCE COMPLIANCE POLICY FOR TAX-EXEMPT OBLIGATIONS

1. Definitions.

"Bonds" means all tax-exempt obligations issued by the Issuer, including but not limited to bonds, notes and lease-purchase contracts.

"Code" means Sections 103 and 141 through 150 of the Internal Revenue Code of 1986, as amended.

"Rules" means Sections 103 and 141 through 150 of the Internal Revenue Code of 1986, as amended, and the U.S. Treasury Regulations promulgated thereunder.

"Advisors" means the Issuer's bond counsel, financial advisor, paying agent, and rebate analyst.

"Governing Body" means the Board of Supervisors of the Issuer.

"Issuer" means Jackson County, Iowa.

2. Purpose. Issuers of tax-exempt governmental Bonds must comply with federal tax rules pertaining to expenditure of proceeds for qualified costs, rate of expenditure, use of bond financed property, investment of proceeds in compliance with arbitrage rules, and retention of records. As an issuer of such Bonds, the Governing Body of the Issuer is required by the terms of Sections 103 and 141 through 150 of the Internal Revenue Code of 1986, as amended, and the U.S. Treasury Regulations promulgated thereunder, to take certain actions subsequent to the issuance of the Bonds to ensure the continuing tax-exempt status of such Bonds. Further, Section 6001 of the Code and Section 1.6001-1(a) of the Treasury Regulations impose record retention requirements on the Issuer with respect to its tax-exempt governmental Bonds. This policy is designed to ensure that the Issuer complies with its tax-compliance obligations under applicable provisions of the Rules.

3. Effective Date and Term. The effective date of this policy shall be the date of approval by the Governing Body, and shall remain in effect until superseded or terminated by action of the Governing Body. The Issuer shall comply with this policy upon issuance of Bonds and as long as the Bonds remain outstanding. This policy may be revised to comply with amendments to the Rules during the period the Bonds are outstanding.

4. Compliance Coordinator:

- a) The County Auditor shall be responsible for monitoring post-issuance compliance to ensure that the Issuer successfully carries out its tax compliance requirements under applicable provisions of the Rules with regard to all obligations of the Issuer.
- b) The Coordinator shall be assisted by other staff and officials when appropriate and at the Coordinator's discretion. The Coordinator shall be responsible for assigning post-issuance tax compliance responsibilities to other staff and to the Advisors.
- c) The Coordinator will maintain a copy of the transcript of proceedings in connection with the issuance of any tax-exempt obligations. Coordinator will obtain such records as are necessary to meet the requirements of this policy.
- d) The Coordinator shall be authorized to retain and consult with the Advisors during the time the Bonds are outstanding for assistance in carrying out post-issuance tax compliance requirements. The Coordinator shall utilize such other professional service organizations as are necessary to ensure compliance with the post-issuance tax compliance requirements of the Issuer. The Coordinator shall consult with the Advisors, IRS publications and such other resources as are necessary to understand and meet the requirements of this policy.
- e) Training and education of Coordinator will be sought and implemented upon the occurrence of new developments and upon the hiring of new personnel to implement this policy. The Coordinator shall also provide training and educational resources to staff responsible for ensuring compliance with any portion of the tax compliance requirements of this policy.

5. Financing Transcripts. The Coordinator shall confirm the proper filing of an 8038 Series return, and maintain a transcript of proceedings for all tax-exempt obligations issued by the Issuer, including but not limited to all tax-exempt bonds, notes and lease-purchase contracts. Each transcript shall be maintained until eleven (11) years after the tax-exempt obligation it documents has been retired. Said transcript shall include, at a minimum:

- a) Form 8038s;
- b) minutes, resolutions, and certificates;
- c) certifications of issue price from the underwriter;
- d) formal elections required by the IRS;
- e) trustee statements;
- f) records of refunded Bonds, if applicable;
- g) correspondence relating to bond financings; and
- h) reports of any IRS examinations for bond financings.

6. Proper Use of Proceeds. The Coordinator shall review the resolution authorizing issuance for each tax-exempt obligation issued by the Issuer, and shall:

- a) obtain a computation of the yield on such issue from the Issuer's financial advisor;
- b) create a separate Project Fund (with as many sub-funds as shall be necessary to allocate proceeds among the projects being funded by the issue) into which the proceeds of issue shall be deposited;
- c) review all requisitions, draw schedules, draw requests, invoices and bills requesting payment from the Project Fund;
- d) determine whether payment from the Project Fund is appropriate, and if so, make payment from the Project Fund (and appropriate sub-fund if applicable);
- e) maintain records of the payment requests and corresponding records showing payment;
- f) consult with the Advisors to ensure that such expenditures are within the sixty (60) day period prior to the date in which the Issuer made a "declaration of intent" to reimburse such costs or are preliminary expenditures under the Code, in the event the Issuer seeks to utilize bond proceeds for costs that were incurred prior to the issuance of the Bonds;
- g) maintain records showing the earnings on, and investment of, the Project Fund;
- h) ensure that all investments acquired with proceeds are purchased at fair market value;
- i) identify bond proceeds or applicable debt service allocations that must be invested with a yield-restriction and monitor the investments of any yield-restricted funds to ensure that the yield on such investments does not exceed the yield to which such investments are restricted;
- j) maintain records related to any investment contracts, credit enhancement transactions, and the bidding of financial products related to the proceeds;

7. Timely Expenditure and Arbitrage/Rebate Compliance. The Coordinator shall review the Tax-Exemption Certificate (or equivalent) for each tax-exempt obligation issued by the Issuer and the expenditure records provided in Section 6 of this policy, above, and shall:

- a) ensure that the expenditure of bond proceeds will be monitored against the expenditure expectations represented in such certificate for such bond issue to ensure that:
- Five percent (5%) of the net sale proceeds were spent or committed within six (6) months of the issue date;
 - Eighty-five percent (85%) of the net sale proceeds were spent within three (3) years of the issue date; and
 - the Issuer proceeded with due diligence to complete the project and fully spend the net sale proceeds.

Failure to meet the expected expenditure expectations represented in the tax compliance certificate for such bond issue shall be documented and retained by the Coordinator in the records for the bond issue.

- b) monitor and ensure that proceeds of each such issue are spent within the temporary period set forth in such certificate;
- c) if the Issuer does not meet the "small issuer" exception for said obligation, monitor and ensure that the proceeds are spent in accordance with one or more of the applicable exceptions to rebate as set forth in such certificate;
- d) not less than 60 days prior to a required expenditure date confer with bond counsel and a rebate consultant if it appears expenditures will fail to meet the applicable temporary period or rebate exception expenditure requirements of the Tax-Exemption Certificate; and
- e) in the event of failure to meet a temporary period or rebate exception:
- i. procure a timely computation of any rebate liability and, if rebate is due, file a Form 8038-T and arrange for payment of such rebate liability;
 - ii. arrange for timely computation and payment of "yield reduction payments" (as such term is defined in the Code and Treasury Regulations), if applicable.
- f) ensure that the investment of bond proceeds is made only in permitted investments of the Issuer as outlined in Iowa Code chapters 12B and 12C, and any official policy;
- g) consult with the Advisors to ensure that the investment of bond proceeds is performed in compliance with the arbitrage rules and rebate requirements;

- h) consult with the Advisors to identify bond proceeds that must be yield-restricted and shall monitor the investments of any yield-restricted funds to ensure that the yield on such investments does not exceed the yield to which such investments are restricted;
- i) contact the Rebate Analyst (and, if appropriate, bond counsel) prior to 1) the fifth anniversary of the date of issuance of each issue of Bonds of the Issuer, 2) each fifth anniversary thereafter, 3) final maturity of the Bonds, and 4) redemption of the Bonds, to arrange for calculations and reports of the rebate requirements with respect to such Bonds; and
- j) if a rebate payment is required to be paid by the Issuer, the Coordinator shall prepare or cause to be prepared the appropriate form to be filed with the IRS (Form 8038-T).

8. Filings with Internal Revenue Service. The Coordinator, with assistance from bond counsel, shall ensure that each issuance of Bonds is properly reported with the Internal Revenue Service (IRS) as required by Section 149(e) of the Code. On the issue date of each series of Bonds, the Coordinator shall consult with the Advisors to identify the deadline to file the requisite IRS form for such issue.

9. Reporting the Issuance of Tax-Exempt Bonds. The original issuance of a tax-exempt bond issue with an issue price of one hundred thousand dollars (\$100,000) or greater shall be reported on Form 8038-G. The original issuance of a tax-exempt bond issue with an issue price less than one hundred thousand dollars (\$100,000) shall be reported on Form 8038-GC.

- Forms 8038-G and 8038-GC shall be filed by the Coordinator or bond counsel no later than the 15th day of the 2nd calendar month following the quarter in which the Bonds were issued.
- The Coordinator shall consult with the Advisors to ensure the Form 8038-G is accurately filled out.

10. Rebate Reporting Requirements. The Coordinator shall contact the rebate analyst prior to 1) the 5th anniversary of the issue date on each series of Bonds, 2) each 5th anniversary thereafter, 3) final maturity of the Bonds, and 4) redemption of the Bonds, to arrange for calculations of the rebate requirements with respect to such Bonds. If a rebate payment is required to be paid, the Coordinator shall prepare or cause to be prepared a Form 8038-T, and submit such Form 8038-T to the IRS with the required rebate payment. If the Issuer is authorized to recover a rebate payment previously paid, the Coordinator shall consult with Advisors and may prepare or cause to be prepared a Form 8038-R, with respect to such rebate recovery, and submit such Form 8038-R to the IRS.

11. Proper Use of Bond Financed Assets. The Coordinator shall monitor the use of all bond-financed facilities in order to determine whether private business uses of bond-financed facilities have exceeded the limits set forth in Section 141(b) of the Code (generally 10% of bond

proceeds; sometimes 5% of bond proceeds) as a result of leases and subleases, licenses, management contracts, research contracts, naming rights agreements or other arrangements that provide special legal entitlements to nongovernmental persons. To this end, the Coordinator shall:

- a) maintain appropriate records and a list of all bond financed assets. Such records shall include the actual amount of proceeds (including investment earnings) spent on each of the bond financed assets;
- b) with respect to each bond financed asset, the Coordinator will monitor and confer with bond counsel with respect to all proposed:
 - i. management contracts,
 - ii. service agreements,
 - iii. research contracts,
 - iv. naming rights contracts,
 - v. leases or sub-leases,
 - vi. joint venture, limited liability or partnership arrangements,
 - vii. sale of property;
 - viii. any other change in use of such asset; or
 - ix. output contracts (including retail and wholesale requirements contracts);
- c) maintain a copy of the proposed agreement, contract, lease or arrangement, together with the response by bond counsel with respect to said proposal for at least three (3) years after retirement of all tax-exempt obligations issued to fund all or any portion of bond financed assets, or obligations issued to refund those obligations; and
- d) provide training and educational resources to any staff member that has the primary responsibility for the operation, maintenance, or inspection of bond-financed facilities with regard to the limitations on the private business use and on the private security or payments with respect to bond-financed facilities;
- e) ensure that no item of bond-financed property will be sold or transferred to a nonexempt party without advance arrangement of a "remedial action" under the applicable Treasury Regulations and the Coordinator shall consult with bond counsel prior to the sale or transfer of any bond-financed property; and
- f) In the event of an action with respect to a bond financed asset, which may cause the private business tests or private loan financing test to be met, the Coordinator shall contact bond counsel and ensure timely remedial action under IRS Regulation Sections 1.141-12.

12. Record Retention – General Project Records. For each project financed with tax-exempt obligations, the Coordinator shall maintain, until three (3) years after retirement of the tax-exempt obligations or obligations issued to refund those obligations, the following:

- a) appraisals, demand surveys or feasibility studies,
- b) applications, approvals and other documentation of grants,
- c) depreciation schedules,
- d) contracts respecting the project.

13. Record Retention – Bond issues. Management and retention of records related to bond issues shall be supervised by the Coordinator. Records and documents pertaining to cancellation, transfer, redemption or replacement of Issuer Bonds shall be preserved by the Issuer or its agent for a period of not less than eleven (11) years, as set forth in Iowa Code Section 76.10. Other records shall be retained during the period in which the Bonds remain outstanding (plus any refunding Bonds) plus three (3) years. Records may be in the form of documents and electronic copies of documents, appropriately indexed to specific bond issues and compliance functions.

The Coordinator shall collect and retain the following records with respect to each issue of Bonds of the Issuer and with respect to the facilities financed with the proceeds of such Bonds:

- audited financial statements of the Issuer;
- appraisals, demand surveys, or feasibility studies, if any, with respect to the facilities to be financed with the proceeds of such Bonds;
- publications, brochures, and newspaper articles, if any, related to the bond financing;
- trustee or paying agent statements;
- records of all investments and the gains (or losses) from such investments;
- paying agent or trustee statements regarding investments and investment earnings;
- reimbursement resolutions, if any, and expenditures reimbursed with the proceeds of such Bonds;
- allocations of proceeds to expenditures (including costs of issuance) and the dates and amounts of such expenditures (including any requisitions, expenditure/draw schedules, expenditure/draw requests, invoices, bills, and cancelled checks with respect to such expenditures);
- contracts entered into for the construction, renovation, or purchase of bond-financed facilities;
- an asset list or schedule of all bond financed depreciable property and any depreciation schedules with respect to such assets or property;
- records of the purchases and sales of bond-financed assets;
- private business uses of bond-financed facilities that arise subsequent to the date of issue through leases and subleases, licenses, management contracts, research contracts, naming rights agreements, or other arrangements that provide special legal entitlements to nongovernmental persons and copies of any such agreements or instruments; arbitrage rebate reports and records of rebate and yield reduction

- payments, if any; resolutions or other actions, if any, taken by the Governing Body subsequent to the date of issue with respect to such Bonds;
- formal elections authorized by the Code or Treasury Regulations that are taken with respect to such Bonds;
- relevant correspondence relating to such Bonds;
- documents related to guaranteed investment contracts or certificates of deposit, credit enhancement transactions, and financial derivatives entered into subsequent to the date of issue;
- copies of any and all forms filed with the IRS for each series of Bonds including, as applicable, Form 8038-G or Form 8038-GC; and
- the official transcript prepared by bond counsel with respect to each series of Bonds of the Issuer.

14. Identification of Violations and Corrections. If, during the period the Bonds remain outstanding, it is determined that a violation of federal tax requirements may have occurred, the Coordinator shall immediately consult with the Advisors to ensure that corrective or remedial action is taken. In consultation with bond counsel, the Coordinator shall become acquainted with the remedial actions under Treasury Regulations, Section 1.141-12, to be utilized in the event that private business use of bond-financed facilities exceeds the limits under Section 141(b)(1) of the Code. In consultation with bond counsel, the Coordinator shall become acquainted with the Tax Exempt Bonds Voluntary Closing Agreement Program, described in Notice 2008-31, 2008-11 I.R.B. 592, to be utilized as a means for an issuer to correct any post-issuance infractions of the Rules with respect to its outstanding Bonds.

15. Advance Refundings. [At the time of adoption of this policy, advance refunding of bonds are not allowed. This section shall not apply unless advance refunding bonds are allowed by applicable law.] The Coordinator, shall be responsible for the following current, post issuance and record retention procedures with respect to advance refunding Bonds:

- a) Identify and select Bonds to be advance refunded with advice from internal financial personnel, and a financial advisor;
- b) The Coordinator shall identify, with advice from the financial advisor and bond counsel, any possible federal tax compliance issues prior to structuring any advance refunding;
- c) The Coordinator shall review the structure with the input of the financial advisor and bond counsel, of advance refunding issues prior to the issuance to ensure (i) that the proposed refunding is permitted pursuant to applicable federal tax requirements if there has been a prior refunding of the original bond issue; (ii) that the proposed issuance complies with federal income tax requirements which might impose restrictions on the redemption date of the refunded Bonds; (iii) that the proposed issuance complies with federal income tax requirements which allow for the proceeds and replacement proceeds of an issue to be invested temporarily in higher yielding investments without causing the advance refunding Bonds to become "arbitrage Bonds"; and (iv) that the proposed issuance will not result in

the issuer's exploitation of the difference between tax exempt and taxable interest rates to obtain a financial advantage nor overburden the tax exempt market in a way that might be considered an abusive transaction for federal tax purposes.

- d) The Coordinator shall collect and review data related to arbitrage yield restriction and rebate requirements for advance refunding Bonds. To ensure such compliance, the Coordinator shall engage a rebate consultant to prepare a verification report in connection with the advance refunding issuance. Said report shall ensure said requirements are satisfied.
- e) The Coordinator shall, whenever possible, purchase SLGS to size each advance refunding escrow. The financial advisor shall be included in the process of subscribing SLGS. To the extent SLGS are not available for purchase, the Coordinator shall, in consultation with bond counsel and the financial advisor, comply with IRS regulations.
- f) To the extent as issuer elects to the purchase a guaranteed investment contract, the Coordinator shall ensure, after input from bond counsel, compliance with any bidding requirements set forth by the IRS regulations.
- g) In determining the issue price for any advance refunding issuance, the Coordinator shall obtain and retain issue price certification by the purchasing underwriter at closing.
- h) After the issuance of an advance refunding issue, the Coordinator shall ensure timely identification of violations of any federal tax requirements and engage bond counsel in attempt to remediate same in accordance with IRS regulations.

16. Continuing Disclosure. The Coordinator shall assure compliance with each continuing disclosure certificate and annually, per continuing disclosure agreements, file audited annual financial statements and other information required by each continuing disclosure agreement. The Coordinator will monitor material events as described in each continuing disclosure agreement and assure compliance with material event disclosure. Events to be reported shall be reported promptly, but in no event not later than ten (10) Business Days after the day of the occurrence of the event. Currently, such notice shall be given in the event of:

- a) Principal and interest payment delinquencies;
- b) Non-payment related defaults, if material;
- c) Unscheduled draws on debt service reserves reflecting financial difficulties;
- d) Unscheduled draws on credit enhancements relating to the Bonds reflecting financial difficulties;
- e) Substitution of credit or liquidity providers, or their failure to perform;

- f) Adverse tax opinions, the issuance by the Internal Revenue Service of proposed or final determinations of taxability, Notices of Proposed Issue (IRS Form 5701-TEB) or other material notices or determinations with respect to the tax-exempt status of the Bonds, or material events affecting the tax-exempt status of the Bonds;
- g) Modifications to rights of Holders of the Bonds, if material;
- h) Bond calls (excluding sinking fund mandatory redemptions), if material, and tender offers;
- i) Defeasances of the Bonds;
- j) Release, substitution, or sale of property securing repayment of the Bonds, if material;
- k) Rating changes on the Bonds;
- l) Bankruptcy, insolvency, receivership or similar event of the Issuer;
- m) The consummation of a merger, consolidation, or acquisition involving the Issuer or the sale of all or substantially all of the assets of the Issuer, other than in the ordinary course of business, the entry into a definitive agreement to undertake such an action or the termination of a definitive agreement relating to any such actions, other than pursuant to its terms, if material;
- n) Appointment of a successor or additional trustee or the change of name of a trustee, if material;
- o) Incurrence of a Financial Obligation of the obligated person, *if material**, or agreement to covenants, events of default, remedies, priority rights, or other similar terms of a Financial Obligation of the obligated person, any of which affect security holders, *if material**; and
- p) Default, event of acceleration, termination event, modification of terms, or other similar events under the terms of a Financial Obligation of the obligated person, any of which reflect financial difficulties.

*Materiality is determined upon the incurrence of each distinct Financial Obligation, taking into account all relevant facts and circumstances. A Financial Obligation is considered to be incurred when it is enforceable against the Issuer. Event notices for Financial Obligations (e.g. under 15 and 16 above) should generally include a description of the material terms of the Financial Obligation, including: (i) date of the incurrence, (ii) principal amount, (iii) maturity and amortization; (iv) interest rate(s), if fixed, or method of computation, if variable, (v) other appropriate terms, based on the circumstances. In

addition to a summary of material terms, the Issuer may alternatively, or in addition, submit related materials, such as transaction documents (which may require some redaction), terms sheets prepared in connection with the Financial Obligation, or continuing covenant agreements or financial covenant reports.

17. Other Post-Issuance Actions. If, in consultation with the Advisors, the Coordinator determines that any additional action not identified in this policy must be taken by the Coordinator to ensure the continuing tax-exempt status or "qualified" status of any issue of the Issuer's Bonds, the Coordinator shall take such action if the Coordinator has the authority to do so. If, after consultation with the Advisors, the Coordinator determines that this policy shall be amended or supplemented to ensure the continuing tax-exempt status or "qualified" status of any issue of the Issuer's Bonds, the Coordinator shall follow the appropriate Issuer policy or procedure that this document be so amended or supplemented.

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