

City of Marshall, Minnesota

**PRIVATE ACTIVITY
TAX EXEMPT FINANCING GUIDELINES**

January 2023

City of Marshall

Conduit Debt (Private Activity Tax Exempt Financing)

Administrative Guidelines

General

The City of Marshall 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"). Under the Minnesota Municipal Industrial development Act, Minnesota Statutes, Sections 469.152 to 469.1651 (the "Industrial Development Act"), the City of Marshall, Minnesota has authority to issue revenue bonds or notes to attract or promote economically sound industry and commerce to the City, including the development of facilities by qualified 501(c)(3) organizations. Under Minnesota Statutes, Chapter 462C (the "Housing Act") the City is authorized to issue housing revenue bonds to finance multi-family residential housing projects for low- and moderate-income persons and elderly persons.

The City Council is aware that such financing for certain private activities may be of benefit to the City and will consider requests for tax exempt financing subject to these Guidelines. The City Council considers tax exempt financing to be a privilege, not a right.

It is the judgment of the City Council that tax exempt financing is to be used on a selective basis to encourage certain development that offers a benefit to the City as a whole, including employment and housing opportunities. It is the applicant's responsibility to demonstrate the benefit to the City. The applicant should understand that although approval may have been granted by the City for the issuance of financing for a similar project or a similar debt structure, that is not a basis upon which approval will be granted. Each application will be judged on the merits of the project as it relates to the public purposes of the Housing Act or the Industrial Development Act and the benefit to the City at the time the request for financing is being considered.

The Marshall 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 Marshall 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 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 bonds are initially sold to not more than ten purchasers (not including any underwriter or 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 MARSHALL HAS NOT ASSUMED ANY RESPONSIBILITY TO REVIEW THIS OFFERING MATERIAL AND HAS NOT RESPONSIBILITY FOR ITS ACCURACY OR COMPLETENESS. THE CITY OF MARSHALL 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 Marshall, 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 Marshall.

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 Marshall. The completed application is to be returned to the Director of Administrative Services, accompanied by the processing fee and other materials as may be required by section f. below, whereupon the application will be forwarded to the City Council with a Staff recommendation within 60 business days of the complete application, processing fee, and any other required materials being submitted. 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 affect 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. This data may be shared with members of the City Council as background information.
- g. If an allocation of bonding authority is required under Minnesota Statutes, Chapter 474A, as amended ("Chapter 474A"), the applicant shall be required to pay any required application fee and provide any required application deposit as specified in Chapter 474A, and 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 \$2,000 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	.15% of par
- 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 conduit debt issuances in the audited financial statements 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.
- e. Subsequent Proceedings. Where changes to the underlying documents or credit facilities of outstanding bond issues are to be made and require Council action (including changes that are a "deemed reissuance" under Internal Revenue Service regulation), no administrative fee is charged but a non-refundable fee of \$2,000 must be deposited with the City to cover administrative costs. No formal application form is required.
- f. Issue by Another Political Subdivision. The City will consider requests for tax exempt financing of projects in the City by other political subdivisions. In these cases, the non-refundable application fee must be paid and all procedures through the approval of the preliminary resolution followed. No administrative fee is charged. At the Council's discretion, all or part of the application may be waived if there are offsetting benefits resulting from this financing.

City Contact. Initial contacts about tax exempt financing are made by contacting:

City of Marshall
Attn: Finance Department
344 West Main Street
Marshall, MN 56258-1313

Or

(507) 537-6763

- g. **Deadlines.** The City Council conducts all tax-exempt financing matters at regularly scheduled City Council meetings held on the first and third Mondays of each month. Documents for City Council consideration must be at the City office by the Tuesday preceding the next regular Council meeting at which the matter is to be considered. In the case of a publicly offered bond issue, the documents, when submitted, may specify a maximum price and maximum effective interest rate if prices and rates have not yet been established.

Application

CITY OF MARSHALL, MINNESOTA
APPLICATION FOR TAX EXEMPT FINANCING
APPLICATION FOR ISSUANCE OF CONDUIT DEBT
CITY OF MARSHALL

(Industrial, Health Care or Other Non-Housing Non-Profit Projects)

1. APPLICANT

Business Name: _____ Date of Application: _____

Business DBA: _____

Business Address: _____

City: _____ State: _____ Zip: _____ Phone: _____

Primary Contact Person: _____

Phone: _____ Email: _____

Authorized Business Representative: _____

Structure: Corporation Partnership Sole Proprietorship LLC

Other: _____

2. PURPOSE OF REQUEST:

New Facility Expansion Refunding Host

3. TYPE OF DEVELOPMENT:

Manufacturing Housing Health Care Other: _____

Are you a 501(c)(3)? Yes No

Do you pay property taxes on your facilities? Yes No

Where your business or non-profit is incorporated? _____

Names and titles of signatory parties.

4. ESTIMATED PROJECT COSTS: (Not Required for Refunding)

Land	\$
Building	\$
Equipment	\$
Architectural, Engineering	\$
Costs of Issuance	\$
Capitalized Interest (including discount)	\$
Other	\$
Total Financing Requested	\$

5. AMOUNT OF FINANCING REQUESTED: \$_____ (_____% of Project Costs)

6. TYPE OF FINANCING PROPOSED:

- a. Publicly Sold Bonds Privately Placed Bonds (Bonds sold to a bank)
- b. Expected Term of Financing _____ Years
- c. Security: Mortgage Letter of Credit Guaranty (third party)
- Guaranty (Personal) Unsecured Other (specify): _____

7. BUSINESS PROFILE: (Not required for refunding)

- a. Job Information:
1. Current number of Full Time Equivalent Employees: _____
*Full Time Equivalent (FTE) is based on total annual hours of 2080.
2. Number of New Permanent Jobs to be created: _____
3. Number of Construction Jobs to be created: _____
- b. Do you have facilities in other locations? Yes No

If yes, where: _____

8. NAMES OF:

a. Underwriter, Place Agent or Lender Name: _____

Contact Person Name: _____

Telephone: _____ Email: _____

b. Corporate Counsel Name: _____

Telephone: _____ Email: _____

c. Counsel to Underwriter, Place Agent or Lender Name: _____

Telephone: _____ Email: _____

9. WHAT IS YOUR TARGET DATE FOR:

Construction Start: _____

Construction Completion: _____

10. ATTACHMENTS:

Attach the following information with the application. Application is not considered complete until all documents have been received.

- a) Description of the project; and
 - b) Give a brief description of the nature of the business, principal products, etc.; and
 - c) Preliminary Site Plan & Design; and
 - d) Preliminary sources and uses for financing project; and
 - e) Initial application fee
-

Notice to Company: Data Practices Act

The information that you supply in your application to the City of Marshall ("City") will be used to assess your eligibility for financial assistance. The City will not be able to process your application without this information. The Minnesota Government Data Practices Act (Minnesota Statutes, Chapter 13) governs whether the information that you are providing to the City is public or private. If financial assistance is provided for the project, the information submitted in connection with your application will become public, except for those items protected under Minnesota Statutes, Section 13.59, Subdivision 3 (b) or Section 13.591, Subdivision 2.

I have read the above statement and I agree to supply the information to the City of Marshall with full knowledge of the matters contained in this notice. I certify that the information submitted in connection with the application is true and accurate.

Applicant's Full Name (Signature)

Date

Applicant's Full Name (Printed)

Applicant's Title

Application Submittal

Return completed form to:

Director of Administrative Services

City of Marshall

344 West Main Street

Marshall, MN 56258-1313

INDEMNIFICATION LETTER OF AGREEMENT

City of Marshall Mayor

And Members of the Council

RE: Application of _____ for Tax Exempt Revenue Bond Financing by the City of Marshall

Dear Mayor and City Council Members:

This letter of agreement is given by _____, a _____ under the laws of Minnesota ("Applicant") as required by the City of Marshall in connection with its consideration of an application for tax exempt revenue bond financing for the project described in the application.

Applicant hereby covenants, warrants and agrees as follows:

Applicant agrees to pay or reimburse the City for any and all costs and expenses which the City may incur in connection with its consideration of the project and the granting of tax exempt revenue bond financing therefore, whether or not the project is preliminarily approved by the City, whether or not the project is approved by the State of Minnesota, whether or not revenue bond financing is finally approved by the City, whether or not the bonds are issued and sold, and whether or not the project is carried to completion.

Applicant agrees to indemnify and hold the City, its officers, employees and agents harmless against any and all losses, claims, damages, expenses or liabilities, including attorneys' fees incurred in their defense, to which the City, its officers, employees and agents may become subject in connection with the City's consideration, issuance or sale of the bonds for Applicant's project and the carrying out of the transactions contemplated by this agreement and any resolutions adopted, or agreements executed by the City in connection with the issuance of its bonds for this project.

Applicant here by releases the City, its officers, agents and employees from any claims, causes of action, losses, damages, or liabilities which it may have against the City, its officers, agents, and employees or which it may incur in connection with: the City's consideration of the application for industrial development revenue bond financing for Applicant's project; the failure of the City, in its discretion, to issue tax exempt revenue bonds for Applicant's project; the issuance and sale of the bonds; the construction of the project; or any other matter or thing of any type or nature whatsoever which may arise in connection with the foregoing.

Applicant is aware of the City's application and administrative fee structure for tax exempt financing and agrees and covenants that all such fees will be paid in the amount and at the times required.

Dated: _____ (Applicant)

By _____

Its _____