

Board of County Commissioners Leon County, Florida

Policy No. 08-3

Title: Leon County Conduit Financing Policy

Date Adopted: December 9, 2014

Effective Date: December 9, 2014

Reference: N/A

Policy Superseded: Policy No. 08-3, adopted 11/25/08

It shall be the Policy of the Board of County Commissioners of Leon County, Florida, Policy No. 08-3, entitled “Leon County Conduit Financing Policy” is hereby superseded, and a revised Policy is hereby adopted in its place, to wit:

Purpose:

Leon County desires to provide appropriate access for non-governmental entities to tax exempt financing through conduit issuances.

Leon County acknowledges that, although each individual issue must be self-supporting and will not at anytime require the direct financial support of the County, the issues will utilize the County’s authority and reputation for the issuance and that debt issues that do not ultimately perform to market expectations could negatively impact the County’s future capacity to issue debt and the overall reputation of the County.

Leon County further directs that all Authorities (other than the Leon County Housing Finance Authority)_seeking to request Tax Equity and Financial Responsibility Act (TEFRA) hearings from the County shall have policies adopted equal to this County policy.

CONDUIT FINANCING POLICY

1) Definitions. All terms in capitalized form that are defined in this Section shall have the same meanings as are ascribed to those terms herein, unless a different or additional meaning is given to those terms specifically. Unless the context shall otherwise indicate, words importing singular number shall include the plural number in each case and vice versa, and words importing persons shall include corporations and associations, including public bodies, as well as natural persons. The following terms shall have the meaning indicated below unless the context clearly requires otherwise:

- a) “*Credit Enhanced*” means a bond issue with a third party repayment guarantee such as a bank letter of credit, Federal program or insurance policy from a credit enhancer such as a bank or insurance company with credit ratings in the three highest categories, meaning at least A3 from Moodys, or A- from either FitchRatings or Standard and Poors, which repayment guarantee structure is binding for at least one year from date of issuance and results in the bonds being issued with the long-term credit ratings and the highest short-term rating, if applicable, of the credit enhancer.
- b) “*Credit Rating*” means a professional assessment of creditworthiness from either FitchRatings, Moodys, or Standard and Poors as nationally recognized credit rating agencies, or such other firm as may reasonably attain a similar role in the future.
- c) “*Financial Advisor*” or “FA” means a properly licensed firm retained by either the Issuer or Guarantor Applicant with a fiduciary responsibility to their client under the rules and procedures of the National Association of Securities Dealers, the Municipal Securities Rulemaking Board, Securities and Exchange Commission, and the Florida Statutes. The FA is expected to advise their client on structuring the debt, marketing the debt, and the investment or disposition of debt proceeds. Any FA retained by the Guarantor Applicant shall be acceptable to the Issuer.
- d) “*Guarantor Applicant*” means the entity that makes application to the County for the debt, sponsors the project, and provides the repayment funds. Notwithstanding the use of a conduit issuer and any credit enhancement, the Guarantor Applicant is the entity whose credit is reviewed by the investors or credit enhancers as the underlying source of repayment funds.
- e) “*Investment Grade Credit Rating*” means a Credit Rating of BBB- or higher from FitchRatings, Baa3 or higher from Moodys, and BBB- or higher from Standard and Poors, and such other similar minimum rating level from another similar nationally recognized Credit Rating firm as may reasonably attain a similar role in the future.
- f) “*Issuer*” means an Authority (other than the Leon County Housing Finance Authority) or Leon County as conduit issuer of the debt.
- g) “*Sophisticated Investor*” means a “qualified institutional buyer” as that term is defined under Rule 144A of the Securities and Exchange Commission or an “accredited investor” as that term is defined in Regulation D of the Securities and Exchange Commission.

2) Bond Issuance and TEFRA approval.

- a) Debt issues for more than \$10,000,000 undertaken for Guarantor Applicants with Credit Ratings below Investment Grade Credit Ratings must use the services of a Financial Advisor mutually acceptable to the Guarantor Applicant and the County.
- b) The Authority or Guarantor Applicant will cause an Official Statement and related offering documents to be produced in connection with all public sales of debt.
- c) To the extent possible, public hearings should be held in the Leon County Commission and televised to facilitate the most open process possible.
- d) Blanket (statewide) TEFRA hearings will not fulfill a local TEFRA hearing requirement. TEFRA approvals for projects involving multiple facilities over a period of time should be specific in identifying the names and locations of the multiple facilities and local TEFRA approvals should be obtained in all jurisdictions where appropriate.
- e) Standards for County TEFRA approval request:
 - i) The Authority or Guarantor Applicant will provide a detailed project description and a distribution list of the participants. The project description should include a description of the plan to obtain all necessary TEFRA approvals.
 - ii) TEFRA requests will include any related financials, feasibility studies, and required pro-forma statements that were part of the Guarantor Applicant's application to the Authority. For Credit Enhanced debt issues, the Guarantor Applicant's financials do not need to accompany the TEFRA request.
 - iii) The Authority or Guarantor Applicant will provide minutes of legally noticed hearings regarding the debt issue, along with copies of required legal notices (minutes should include the outcome of any votes that take place, hearing dates, and legal notice publication dates).
 - iv) The Authority or Guarantor Applicant will provide a description of the sale method, the proposed debt structure, and the minimum debt denominations. When an FA participates in the debt issue, the FA will provide the recommendation about sales method, debt structure, and minimum denominations.
 - v) The Authority or Guarantor Applicant will provide a credit discussion regarding such things as repayment sources, credit enhancements, ratings, insurance, and debt service reserve levels. When an FA participates in the debt issue, the FA will provide the credit description.
 - vi) The Authority or Guarantor Applicant will provide copies of resolutions; being certain those resolutions contain legal disclosure confirming that no County funds are pledged when that is the case.
 - vii) The Authority or Guarantor Applicant will provide notice of any waiver granted pursuant to Section 4 c).

3) Pooled Finance.

- a) The Authority or Guarantor Applicant will avoid blind-pools justified by demand surveys where funds are issued and invested until used to fund projects. Instead, the Authority or Guarantor Applicant will focus on individual issues for individual projects or focus on draw-down structures that issue debt proceeds from investors only as projects require funding.

4) Categorization of debt.

- a) For purposes of determining requirements for the Authority or Guarantor Applicant, there are three categories which provide threshold standards:

- i) **Rated and/or enhanced debt:** Bonds with credit enhancement and a rating in one of the three highest rating categories. Held by the borrower or a credit enhancer, or an affiliate of either, bonds with a rating in one of the three highest rating categories from a nationally recognized rating service (currently at least A3 from Moodys or A-from FitchRatings or Standard and Poors). These bonds do not have any additional restrictions required.

- ii) **System debt:** This is debt being issued to support an existing or on-going concern of at least five years. Revenues must be pledged from the entire enterprise, not from the specific project. The debt must be issued as a sole placement and is not divisible. The financial pro-forma should demonstrate coverage of at least 1.10 of maximum debt service.

- iii) **Other Financings:** This is debt being issued that does not meet the definition of either i) or ii), as previously stated. If either privately or publicly placed, these financings must meet the following criteria: (i) a feasibility study (market analysis, management structure, financial plans, etc) with financial projections showing at least 1.10X coverage of maximum annual debt service, and (ii) explanation of supplemental financial support from parent corporations, provision for reasonable and prudent reserves. If publicly placed, the financing must also meet the following criteria:

- (a) shall be sold and subsequently transferred only to a Sophisticated Investor or Investors

- (b) receive an investment credit grade rating

- (c) shall comply with the conditions set forth in paragraph i – iii) or iv - vi), as determined prior to the issuance of the bonds:

- (i) The bonds shall be sold in minimum denominations of \$100,000; and

- (ii) The bonds shall be sold only to Sophisticated Investors who have executed and delivered an “investor’s letter”, in form and substance satisfactory to the County including, among other things, (A) stating that the purchase of the bonds will be solely for its own account, (B) stating that such Sophisticated Investor can bear the economic risk of its investment in the bonds, (C) stating that such Sophisticated Investor has such knowledge and experience in financial business matters in general and tax-exempt obligations in particular, that it is capable of evaluating the merits and risks of purchasing the bonds, (D) stating that such Sophisticated Investor has made the decision to purchase the bonds based on its own independent investigation regarding the bonds, the borrower and the project and if a disclosure document has been prepared, it has reviewed such disclosure document, and has received the information it considers necessary to make an informed decision to invest in the bonds, and (E) acknowledging that the County, its counsel and its advisors bear no responsibility for the accuracy or completeness of information with respect to the borrower and the project contained in any disclosure document related to the Sophisticated Investor’s purchase of the bonds; and
- (iii) The bonds shall bear a legend restricting subsequent transfers to other Sophisticated Investors who have executed and delivered an “investor’s letter” complying with the preceding paragraph (ii).

Or,

- (iv) The bonds shall be sold in minimum denominations of \$250,000; and
- (v) The bonds shall be sold initially only to Sophisticated Investors who have executed and delivered an “investor’s letter”, in form and substance satisfactory to the County including, among other things, (A) stating that the purchase of the bonds will be solely for its own account, (B) such Sophisticated Investor can bear the economic risk of its investment in the bonds, (C) stating that such Sophisticated Investor has such knowledge and experience in financial business matters in general and tax-exempt obligations in particular, that it is capable of evaluating the merits and risks of purchasing the bonds, (D) stating that such Sophisticated Investor has made the decision to purchase the bonds based on its own independent investigation regarding the bonds, the borrower and the project and if a disclosure document has been prepared, it has reviewed such disclosure document, and has received the information it considers necessary to make an informed decision to invest in the bonds, and (E) acknowledging that the County, its counsel and its advisors bear no responsibility for the accuracy or completeness of information with respect to the borrower and the project contained in any disclosure document related to the Sophisticated Investor’s purchase of the bonds; and

(vi) The bonds shall bear a legend restricting subsequent transfers to investors who by their purchase of the bonds represent that they (A) are purchasing the bonds solely for their own account, (B) can bear the economic risk of their investment in the bonds, (C) have such knowledge and experience in financial business matters that they are capable of evaluating the merits and risks of purchasing the bonds, and (D) have made the decision to purchase the bonds based on their own independent investigation regarding the bonds and have received the information they consider necessary to make an informed decision to invest in the bonds.

(d) Each indenture related to bonds that are subject to the restrictions, as set forth previously, shall provide that the trustee and the paying agent shall not authenticate or register a bond unless the conditions of this policy have been satisfied.

(e) Guarantor Applicants can petition the County for a waiver to issue in smaller denominations than required within this Section. The Guarantor Applicant must demonstrate a compelling public purpose for smaller denominations. The demonstration of a compelling public purpose may require a formal presentation at the discretion of the County. Any waiver granted by the Authority may only be granted prior to submission of TEFRA materials to the County pursuant to Section 2 e).

5) Investment of Proceeds.

a) The FA will recommend the investment structure for debt proceeds and bid the investment of proceeds. In the event an FA is not required for a debt amount under \$10,000,000 or for a Guarantor Applicant with Investment Grade Credit Ratings, a financial officer of the Guarantor Applicant should submit a signed plan for disposition, investment and safekeeping of the proceeds as a part of the application process which will then be included in the TEFRA request packet for the County. Prior to disbursement of proceeds of debt issued by the County, a trustee bank or financial institution approved by the County shall hold such proceeds.

6) Continuing Disclosure and Market Transparency.

a) The Authority or the Guarantor Applicant will arrange to use a recognized agent as an information repository and dissemination agent for 15(c) 2-12 disclosure, to the extent applicable. Guarantor Applicants with Investment Grade Credit Ratings can choose to undertake any disclosure responsibilities under 15(c) 2-12 through a proprietary process.

b) The Authority or the Guarantor Applicant will ensure that copies of all closing transcripts are forwarded to the Leon County Clerk, the County Attorney, and the County Administrator.

7) Criteria, Application and Fees.

a) Criteria for financing

- i) Community need: The primary criterion for financing any project will be the degree to which the community needs the proposed capital improvement. The issuer will require the presentation of all pertinent data and information, both objective and subjective, with respect to community needs before approving any project. In order to provide community need, a project shall make a significant contribution to the economic growth of Leon County; shall provide or preserve gainful employment; shall protect the environment; or shall serve a public purpose by advancing the economic prosperity, the public health, or the general welfare of the State and its people.
- ii) Financial feasibility: The County, as its discretion; shall have the authority to require a financial feasibility study to be completed by an independent financial feasibility consultant of recognized competence at the applicant's expense.

b) Fees

- i) A \$15,000 application fee is required at the time of application. The application fee is non-refundable in the event the bond issue does not close for any reason.
 - ii) A financing fee is required to be paid from the proceeds of the bonds at closing of the bond issue in an amount equal to (1%) of the principal amount of the bonds actually issued, or \$5,000 whichever is greater.
 - iii) The applicant shall pay to Leon County, an amount equal to all out-of pocket costs other than normal office expenditures for telephone charges, photocopying and the like incurred by the County in processing the application and issuing the bonds. The applicant shall reimburse the County for time expended by attorneys employed by the Office of the County Attorney in direct support of the bond issue. The applicant shall pay these expenses within ten (10) days after receipt of written invoice or demand for payment. These expenses may be deferred and collected from the proceeds of sale upon approval of the Board, provided the same shall not reduce the applicant's liability to pay the expenses in the event that no closing occurs.
 - iv) All fees and expenses of all such consultants required by the applicant (including but not limited to financial advisor, bond counsel, engineers, etc.) shall be the sole responsibility of the applicant.
- c) Application: The following is applicable to those entities seeking direct conduit financing through the County. The County Administrator and Finance Advisory Committee are hereby authorized to request any additional information deemed necessary to properly evaluate the request.
- i) Three original applications shall be submitted.
 - ii) The applicant shall execute an Expense and Indemnity Agreement in the form included as Attachment #1.
 - iii) Application questionnaire in the form included as Attachment #2.

d) County Review

- i) Upon receipt of an application, the County's Finance Advisory Committee or designee shall determine whether an application is complete. No further processing of an incomplete application shall be done until the application is determined to be complete.
- ii) The County's Financial Advisor will prepare its written report to the County with respect to the issue.
- iii) A preliminary meeting will be scheduled of the County's Finance Advisory Committee.
 - (1) The committee may decide whether the applicant may make a presentation.
 - (2) The committee may recommend the project for further consideration by the Board of County Commissioners, contingent upon the applicant fulfilling all statutory requirements, the requirements of these Financing Guidelines, and any other requirements the County may deem appropriate depending on the circumstances; or
 - (3) The committee may reject the application; or
 - (4) The committee may request additional information.
 - (5) The committee shall submit its finding and recommendations to the Board for its consideration.

8) Authorities: It is the County's intent for all Authorities (other than the Leon County Housing Finance Authority) seeking a TEFRA of the County that the Authority adopt the same guidelines. Notwithstanding anything herein to the contrary, this Leon County Conduit Financing Policy shall not apply to any conduit bonds proposed to be issued by the Leon County Housing Finance Authority; provided, however, the Leon County Housing Finance Authority shall receive a positive recommendation from an independent credit underwriter before it gives final approval to the issuance of conduit bonds. Conduit bonds issued by the Leon County Housing Finance Authority shall comply with its Multi-Family Bond Program Application Procedures and Program Guidelines.

Attachment #1: Expense and Indemnity Agreement

(Leon County, FL)

Proposed Bond Issue for:

Ladies and Gentlemen:

The undersigned corporation (The “Corporation”) has requested you to consider its application to have you issue the bonds referred to above (the “Bonds”) for the benefit of the Corporation and as an inducement to such consideration, hereby agrees with you as follows:

Section 1. Payment of Expenses:

Whether or not the Bonds are offered, sold or issued, the Corporation agrees to pay and be liable for, and to hold you harmless against the payment of any and all expenses relating to the Bond issue, including without limitation the fees and disbursements of your financial advisor, special counsel and bond counsel, your administrative charges and out-of pocket expenses, recording charges, expense of printing offering circulars, official statements, and the Bonds, legal advertising and expenses of registering the Bonds with the securities commission of any state.

Section 2. Indemnity:

Whether or not the Bonds are offered, sold or issued, the Corporation agrees to indemnify you, and each of your members, officers, agents, attorneys, advisors and employees against any and all claims and liability of whatsoever nature arising out of or relating directly or indirectly to the Bond issue, whether caused by you or the Corporation or otherwise, including, without limitation, claims based upon actual or alleged misrepresentation, fraud or other tortious conduct, breach of contractual relationships, or violation of law or administrative rule, whether predicted upon federal or state statutes, common law, principles of equity or otherwise, excepting only claims based upon willful misfeasance or nonfeasance. In furtherance of the foregoing, the corporation agrees to pay any and all attorneys’ fees and court costs incurred in the defense of any of the persons herein above indemnified shall be entitled to retain counsel acceptable to you or them to defend any such claim, but that neither you nor any such person will enter into any settlement of the same without the prior written approval of the Corporation.

Section 3. Survival of Agreement:

This Agreement shall survive the closing of the Bond issue and shall not merge into or be superseded by any other agreement other than by a written amendment hereto specifically denominated as such and executed by you and the Corporation.

If the forgoing is acceptable to you, please indicate your acceptance in the space provided below, whereupon the Agreement shall become a binding contract between us.

Dated: _____

NAME OF CORPORATION: _____

By: _____

Its: _____

Accepted and agreed to as of the date above written:

(LEON COUNTY, FLORIDA)

LEON COUNTY, FLORIDA

BY: _____
Mary Ann Lindley, Chairman
Board of County Commissioners

ATTEST:
Bob Inzer, Clerk of the Circuit Court and Comptroller
Leon County, Florida

BY: _____

Approved as to Form:
Leon County Attorney's Office

BY: _____
Herbert W. A. Thiele, Esq.
County Attorney

Attachment #2: Leon County Application for Financing

(Please refer to pages 12-15)

Leon County Application for Financing

(Submit three original fully executed application forms with all required attachments and ten copies of the Application form with attachments and the application fee to the County at 301 S. Monroe St., Ste. 502)

A. Applicant

Corporation Name: _____

State of Incorporation: _____

Business Physical & Mailing Address: _____

Telephone: _____ Fax: _____

Contact Person: _____

Applicant's Agent (if any) Name: _____

Business Physical & Mailing Address: _____

Telephone: _____ Fax: _____

Contact Person:

Applicant's Legal Counsel: _____

Contact Person: _____

Telephone: _____ Fax: _____

Management of Project (if other than Applicant): _____

Applicant shall attach copies of items 1-6 below:

- Names and Business Address of Officers and Directors
- Articles of Incorporation
- By-Laws: If Applicant is a non-profit corporation, evidence that the Applicant is an Organization covered under Section 501(c) (3) of the Internal Revenue Code for prior three years.
- Audited Financial Statements of the Applicant for the preceding three years.
- Annual Report (if regularly issued)
- If Applicant is a public company under the securities and Exchange Act of 1934, a copy of form 10-K for the last three years.

B. Project

Brief Description: (Include number and type of Jobs): _____

Location: _____

Real Property to be acquired, if any (attach legal description, if available): _____

Description of equipment or other personal property to be acquired (attach list, if applicable):

If the project is a health care project for which a Certificate of Need is required, has Certificate of Need been obtained?

No: _____ Yes: _____ Date: _____
(If yes, attach copy and give CON number: If no, give date of applications)

If no Certificate of Need is necessary, explain why: _____

Estimated total cost of project: \$ _____

Projects	Amount
Land Acquisition	
Design and Construction	
Acquisition of existing structures	
Equipment Purchase	
Other (Explain)	
Estimated Total Cost of Project	

Has any feasibility study been performed? No: _____ Yes: _____
(If yes, attach copy)

Timetable: Attach as detailed a timetable as is available for the project.

C. Financing

Note: If the applicant has not yet obtained this date, leave this part blank, and the County will assist in structuring the transaction and selecting underwriters, feasibility consultants, and other professionals.

Associated Expenditures	Project Cost
Amount of Bond or Note Issue	
Total Project Cost	
Cost of Issuance	
Monies Available from Other Sources (attach explanation)	
Sources of Debt Service Payments	
Additional Security of Guaranties	
Credit Enhancement Provider (Letter of Credit, Bond Issuance, Surety Bond, etc.)	
Final Maturity	
Total	

Are the proposed bonds to be junior in status to any other obligations of Applicant? No: _____ Yes: _____
(If yes, explain) _____

Underwriter's name: _____

Business Physical & Mailing Address: _____

Telephone: _____ Fax: _____

Contact Person: _____

Underwriter's Counsel: _____

Business Physical & Mailing Address: _____

Telephone: _____ Fax: _____

Contact Person: _____

C. Financing Cont'd

Feasibility Consultants: _____

Business Physical & Mailing Address: _____

Telephone: _____ Fax: _____

Contact Person: _____

If any, list other Consultants, Contractors, and/or Agents: _____

D. Refunding Issues:

If the proposed bond issue is for purposes of refunding previous debt, attach an official statement and all other "refunding documents," and a summary of the debt to be refunded.

E. Date of Application:

Applicant is required to submit an executed "Expenses and Indemnity Agreement" as required by the Guidelines.

For the Applicant: _____

Its: _____
(Corporate Seal)

