Washington County Community Development Agency
Conduit Bonds Policy

The Washington County Community Development Agency (the "Agency") is committed to promoting a diverse housing stock ensuring that affordable options are available to residents and those who work in the county and to assisting capital projects that benefit the citizens, businesses, and communities of Washington County. Under Minnesota Statutes, Chapter 474A, Sections 469.152-469.165 (the "Municipal Industrial Development Act") and Chapter 462C (the "Municipal Housing Programs Act") the Agency is authorized to issue conduit revenue bonds on behalf of private, for profit and non-profit entities for the purpose of financing the capital costs of multifamily housing, commercial, industrial structures, or health care facilities. The statutes also permit the Agency to issue conduit bonds on behalf of government units including but not limited to cities, townships, and school districts. Further, there may be instances where bonds are issued for projects outside the geographical limits of Washington County. This policy contains the guidelines for issuing any type of conduit revenue bonds[1].

I. Application for Bond Financing

Interested borrowers shall submit a completed application for conduit bond financing. Application forms are included in Exhibits A-C. Agency staff will review the application for completeness and provide a recommendation to the Board of Commissioners. Agency staff reserves the right to request any additional information from the applicant at any time during the review process. The timeline for review and approval of the application shall be established by Agency staff and the requirements of federal and/or state statutes.

II. General Requirements

A. *Community Review:* The project must be consistent and compliant with all municipal regulations. All applications will be sent to the municipality in which the bonds are to be expended for review and comment. Municipalities will be given a minimum of thirty days to review and submit comments. The Agency will not consider approving a final bond sale resolution before this period of time has elapsed or comments are received. In addition, the borrower shall submit to the Agency an approving resolution from the local municipality prior to the closing on the bonds.

B. *Consistency with Municipal Plans:* The project must be compatible with the applicable municipality's zoning and building code, platting, street and utility service requirements and all other applicable requirements. The Agency will not approve projects that would place an undue burden on municipal infrastructure or adversely affect its ability to deliver municipal services beyond that which can be reasonably and economically accommodated.

[1] "Conduit revenue bonds" refers to any type of Agency revenue obligations the proceeds of which are loaned to a third party and for which the Agency has no financial obligation.

C. *Financial Well-being:* The borrower must have a good financial standing or equity in the project, or both, and have an acceptable earning history or pro forma. Review of the borrower's financial statements may be required. Projects are to show in the application an owner equity or other collateral which will be satisfactory to the end-lender or rating agency, all determined with reference total project costs, and the borrower is to file with the Agency, if requested, a final statement of total costs and project equity.

D. *Bond Counsel:* In order to protect the interests of the Agency, at the applicant's sole cost, the borrower shall be required to use the Agency's Bond Counsel for all bond issues. While the Borrower will be required to pay all Bond Counsel fees approved by the Agency, the Bond Counsel represents the interests of the Agency.

E. *Municipal Advisor or Bond Underwriter:* In order to protect the interests of the Agency, the Agency may engage its Municipal Advisor or a Bond Underwriter to review the transaction to assess its impact on the Agency's interests.

F. *Other Financing Team Members:* The borrower may only add additional members to the financing team such as a Municipal Advisor, Bond Underwriter, or Trustee that are acceptable to the Agency. The Agency may rely on information provided by, and the opinions of, the borrower's financing team. The borrower will notify the Agency what members it intends to use on the financing team in a reasonable time period and the Agency will need to provide a written notice, in a timely manner, if it should find any financing team members unacceptable. The Agency may engage a Municipal Advisor, the cost of which will be paid by the borrower, to advise the Agency regarding the proposed bonds.

G. *Issuer administrative fees and costs of issuance:* The borrower must agree to pay all costs of issuance and the application fee, issuance fee, and, if applicable, the Agency's annual compliance monitoring fees, as set forth below.

H. *Reimbursement and Indemnification:* The borrower must agree to pay or reimburse the Agency for any and all costs incurred in connection with its consideration of the project and the approval of bonds, regardless of whether or not the bonds are issued and sold and whether or not the project is carried to completion. The borrower shall be responsible for the pre- and post-issuance costs of and activities necessary to meet all federal and state statutory requirements of bond financed housing, economic development, or industrial programs. Borrower must indemnify and hold the Agency, its officers, employees, and agents harmless against any and all losses, claims, damages, expenses, or liabilities, including attorney fees incurred in its defense, arising from or relating to the Agency's consideration, issuance, or sale of bonds for the borrower's project or the carrying out of the transactions contemplated by any and all agreements and resolutions made in connection with the issuance of bonds for the borrower's project (including but not limited to the fees of attorneys, municipal advisors, accountants, and other advisors incurred as a result of the Agency'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).

I. *Bank Qualified Status:* The Agency may designate conduit qualified 501(c)(3) bonds as qualified tax exempt obligations, commonly referred to as "bank-qualified bonds," in the sole discretion of the Agency and only if the Agency and Washington County determine that the principal amount of such conduit bonds, taking into account all other bonds issued or which may be issued by the Agency and Washington County in the same calendar year, will not exceed the limitations imposed by Section 265(b)(3) of the Internal Revenue Code. Subject to the foregoing, the selection of conduit qualified 501(c)(3) bonds to be issued as bank-qualified bonds in any calendar year shall be on a first-come first-served basis.

J. *Capital Projects Outside Washington County:* The Agency will determine, in its sole discretion, if a bond issue for a project that is outside the geographic limits of the County is in the best interests of the Agency. The borrower will be solely responsible to secure and to pay for any costs associated with approval from the host municipality in the form of a resolution.

K. *Continuing Disclosure and Arbitrage:* The Agency will not be responsible for any continuing disclosure or arbitrage calculations or rebate and the documents must clearly reflect that the borrower is responsible for those matters. The borrower must retain a qualified dissemination agent. The borrower must utilize the services of a trustee for financial records retention and must provide copies of the arbitrage reports prepared at least every five years.

L. *Minimum Denominations of Bonds:* Conduit revenue bonds which are rated at least "A" by one of the major rating agencies may be issued in minimum denominations of $5,000. Bonds which are not rated at least "A" should generally be issued in minimum denominations of $100,000 in a private placement. Bonds will be considered sold in a private placement if (i) no advertising or solicitation of the general public occurs; and (ii) the bonds are initially sold to not more than thirty-five purchasers (not including any underwriter or placement agent as a purchaser); and (iii) the Agency receives investment letters from each initial purchaser, and any subsequent purchaser, to the effect that: (a) such purchaser has such knowledge and experience in financial and business matters that it is capable of evaluating the merits and risks of the debt, and (b) such purchaser is not purchasing for more than one account or with a view to distributing the debt; and (iv) the financing documents require annual financial statements from the borrower (or the ultimate provider of credit) to be delivered to each investor (or a trustee).

M. *Waiver, Denial:* The Agency will determine, in its sole discretion, whether the provisions of this policy may be waived. The Agency reserves the right, in its sole discretion to deny any application for financing at any stage of the proceedings prior to adopting the final resolution authorizing issuance of the proposed bonds.

III. Housing Revenue Bonds

A. *Tax Exempt Private Activity Bonds for Residential Rental Projects:* The use of private activity bonds will be considered for either new construction or rehabilitation. Issuance of tax exempt private activity bonds will be dependent on a volume cap allocation of bonds under Minnesota Statutes, Chapter 474A, as amended, from Minnesota Management and Budget. Borrower will be solely responsible for the fees, deposits, and penalties, if any, incurred through that process.

B. *501(c)(3) Bonds for Residential Rental Housing for Family Units:* In order to qualify for 501(c)(3) bonds for residential rental housing for family units, the borrower must be a qualified 501(c)(3) organization, or a disregarded entity created by a 501(c)(3) organization, for purposes of federal tax law and all projects must be consistent with its 501(c)(3) charitable purposes. Proof of this status must be submitted with the application and an opinion of counsel acceptable to Agency Bond Counsel will be required by closing. 501(c)(3) bonds cannot be used in a partnership with for-profit ownership or be used for an activity that constitutes an unrelated trade or business of the 501(c)(3) organization.

C. *Low Income Housing Tax Credits (LIHTC):* The Agency has been designated as an allocating agency for LIHTC by Minnesota state law. Federal law requires the Agency to adopt a Qualified Allocation Plan detailing the method by which LIHTC will be allocated. Allocations of LIHTC made in connection with tax exempt debt obligations will be considered under the Qualified Allocation Plan that is in effect for the calendar year in which the tax-exempt bonds were first allocated to the issuer.

D. *Considerations:* Applications for the issuance of Housing Revenue Bonds will be reviewed for the following aspects.

1. *Eligibility:* If the project will require an allocation of volume cap for private activity bonds, or if the project is being carried out by a 501(c)(3) organization but will be required to comply with the rules applicable to qualified residential rental projects by reason of Section 145(d) of the Internal Revenue Code, the borrower must demonstrate that the project meets the definition of Qualified Residential Rental Project of section 142(d) of the Internal Revenue Code. The term Qualified Residential Rental Project means any project for residential rental property if, at all times during the qualified project period, such project meets the requirements of subparagraph a or b, whichever is elected by the issuer at the time of the issuance of the issue with respect to such project:

   a. The project meets the requirements of this subparagraph if 20 percent or more of the residential units in such project are occupied by individuals whose income is 50 percent or less of area median gross income.

   b. The project meets the requirements of this subparagraph if 40 percent or more of the residential units in such project are occupied by individuals whose income is 60 percent or less of area median gross income.

In addition, for projects utilizing volume cap, pursuant to Minnesota Statutes, Section 474A.047, the maximum rent for at least 20% of the units in the project may not exceed the area fair market rent or exception fair market rents for existing housing, if applicable, established by HUD, and projects which receive project-based federal rental assistance may be financed only if (i) the borrower enters into a binding agreement with the Minnesota Housing Finance Agency to extend affordability restrictions and any contract for rental assistance for the maximum term permitted, including renewals, and (ii) Minnesota Housing Finance Agency certifies that project reserves will be maintained at certain levels specified in the statute.

Projects which also use Low Income Housing Tax Credits are also subject to rent restrictions as provided in that program.

2. *Readiness to Proceed:* The borrower has site control, is able to secure all sources of funding, has the experience in developing and operating rental communities, and has the capacity to close in a timely manner.

3. *Financing Feasibility:* The borrower has contained costs and capped intermediary costs, profit and overhead, and developer fees to industry standards. The Agency will further consider the amount of gap financing being requested by the borrower from Agency sources, including pass through grants from the Metropolitan Council and Minnesota Department of Employment and Economic Development.

4. *Length of Affordability:* Where Low Income Housing Tax Credits are requested, the borrower agrees to a minimum thirty-year term of affordability under the Low Income Housing Tax Credit rent and income restrictions.

E. *Compliance and Monitoring*: Prior to the issuance of bonds, the borrower must enter into an agreement with the Agency that specifies the maximum unit rental rates and income levels for occupancy of the rent-restricted units. The borrower at borrower's sole cost and expense must annually certify to the Agency the project's compliance with the applicable limitations. The Agency will monitor compliance with the rent and income restrictions agreed upon. This includes but is not limited to meeting tenant maximum income requirements.

F. *Participation in the Section 8 Housing Choice Voucher Program:* The borrower will be required to sign an agreement that during the term of the bonds, they will participate in the Section 8 Housing Choice Voucher Rental Assistance Program. Participation means that to the extent the developer has housing units that meet the requirements of this program, they will not exclude from consideration qualified individuals or families receiving assistance under this program.

G. *Costs of Issuance*: The borrower shall be responsible for all costs related to bond issuance including but not limited to bond counsel and/or other consultant fees necessary to close the bond transaction. Further, the borrower shall enter into a memorandum of understanding with the Agency's bond counsel guaranteeing the borrower's commitment to payment of all costs of issuance regardless of whether the bond issuance transaction is completed or not.

H. *Fees:* The Agency's tax exempt conduit housing revenue bonds are issued pursuant to a program for the financing of housing established by the Agency in accordance with the federal Treasury Regulations. The following fees shall be payable in connection with the issuance of such housing program bonds. The fees are subject to the limitations of, and will be used by the Agency in a manner consistent with, the program investment requirements under the Treasury Regulations.

1. *Application Fee*: A non-refundable fee of $2,500 is to be submitted with the application.

2. *Issuance Fee:* The issuance fee shall be the greater of $10,000 or 0.125% of the principal amount of the bonds. The issuance fee shall be paid to the Agency upon closing of the bonds.

3. *Annual Compliance Monitoring Fee*: If housing revenue bonds are issued without an allocation of Low Income Housing Tax Credits, there shall be an annual fee due to the Agency equal to 0.125% of the annual outstanding principal amount of bonds over the term of the bonds. The purpose of the administrative fee, in part, is to cover the costs of monitoring the affordability requirements including but not limited to tenant income and rent thresholds established by the applicable statutes. For housing revenue bonds with an allocation of Low Income Housing Tax Credits, annual compliance monitoring will be completed with the credit regulation monitoring; therefore, no additional fees will be collected.

IV. Industrial Revenue Bonds[2]

A. *Economic Benefit:* The project must be a positive benefit to Washington County. The project must be of a nature that the Agency wishes to attract, or an existing business which the Agency wishes to retain or have expand within the County, considering employment opportunities, incentive for further development, impact on municipal and county services, and support for the industrial, commercial, or health care operations currently located in Washington County.

B. *501(c)(3) Industrial Revenue Bonds:* In order to qualify for 501(c)(3) bonds for commercial, health care, and other projects, the borrower must be a qualified 501(c)(3) organization, or a disregarded entity created by a 501(c)(3) organization, for purposes of federal tax law and all projects must be consistent with its 501(c)(3) charitable purposes. Proof of this status must be submitted with the application and opinion of counsel acceptable to Agency Bond Counsel will be required by closing. 501(c)(3) bonds cannot

[2] This policy uses the terms "Industrial Revenue Bonds" or "IRBs" to refer to conduit revenue bonds the proceeds of which are loaned to a for profit or non-profit third party for commercial, industrial, health care or other non-housing structures or capital facilities which are defined as a "project' under Minnesota Statutes, Section 469.153.

be used in a partnership with for-profit ownership or be used for an activity that constitutes an unrelated trade or business of the 501(c)(3) organization.

C. *Tax-Exempt Private Activity IRBs:* Issuance of tax-exempt private activity bonds will be dependent on a volume cap allocation of bonds under Minnesota Statutes Chapter 474A, as amended, from Minnesota Management and Budget. Borrower will be solely responsible for the fees, deposits, and penalties, if any, incurred through that process.

D. *Costs of Issuance*: The borrower shall be responsible for all costs related to bond issuance including but not limited to bond counsel and/or other consultant fees necessary to close the bond transaction. Further, the borrower shall enter into a memorandum of understanding with the Agency's bond counsel guaranteeing the borrower's commitment to payment of all costs of issuance regardless of whether the bond issuance transaction is completed or not.

E. *Fees:* The following fees shall be payable in connection with the issuance of IRBs (subject to applicable limitations under the Treasury Regulations):

1. *Application Fee*: A non-refundable fee of $2,500 is to be submitted with the application.

2. *Issuance Fee:* The issuance fee for IRBs shall be the greater of $10,000 or 0.25% of the bond principal. For bonds that are issued for 501(c)(3) organizations, the issuance fee shall be the greater of $5,000 or 0.0625% of the bond principal. The issuance fee will be due at closing.

V. Governmental Lease Revenue Bonds or Other Government Entity Bonds

A. *Costs of Issuance*: The borrower shall be responsible for all costs related to bond issuance including but not limited to bond counsel, financial advisor, and/or any additional consultant fees necessary to complete tasks necessary to close the bond transaction. Further, the applicant shall enter into a memorandum of understanding with the Agency's bond counsel guaranteeing the applicant's commitment to payment of all costs of issuance regardless of whether the bond issuance transaction is completed or not.

B. *Fees:* The borrower must pay the following fees in connection with governmental lease revenue or other government entity bond issues (subject to applicable limitations under the Treasury Regulations).

1. *Application Fee*: A non-refundable fee of $2,500 is to be submitted with the application.

2. *Issuance Fee:* The issuance fee for government entity bond issues shall be the greater of $10,000 or 0.25% of the bond principal. The issuance fee will be due at closing.

VI. Refunding Bonds

The Agency will consider a borrower's request that the Agency issue bonds to refund an existing bond issue, or make amendments which constitutes a reissuance for purposes of federal tax law.

A. *Costs of Issuance*: The borrower shall be responsible for all costs related to bond issuance including but not limited to bond counsel and/or other consultant fees necessary to close the bond transaction. Further, the borrower shall enter into a memorandum of understanding with the Agency's bond counsel guaranteeing the borrower's commitment to payment of all costs of issuance regardless of whether the bond issuance transaction is completed or not.

B. *Fees:* In the case of refunding of bonds for which the Agency was the issuer and the administrative fees for the original issuance were paid in full, the borrower must pay application and issuance fees to the Agency at a reduced cost. (Fees are subject to applicable limitations under the Treasury Regulations.)

   1. *Application Fee*: A non-refundable fee of $1,500 is to be submitted with the application.

   2. *Issuance Fee:* The issuance fee shall be the greater of $5,000 or 0.0625% of the principal amount for the refunding of Housing Revenue Bonds. The issuance fee shall be the greater of $5,000 or 0.125% of the principal amount for the refunding of Industrial Revenue Bonds and Government Entity Bonds. The issuance fee shall be paid to the Agency upon closing of the bonds.

   3. Annual Compliance Monitoring Fee: If refunding housing revenue bonds without an allocation of Low Income Housing Tax Credits, there shall be an annual fee due to the Agency equal to 0.125% of the annual outstanding principal amount of bonds over the term of the bonds. The purpose of the administrative fee, in part, is to cover the costs of monitoring the affordability requirements including but not limited to tenant income and rent thresholds established by the applicable statutes. For refunding of housing revenue bonds with an allocation of Low Income Housing Tax Credits, annual compliance monitoring will be completed with the credit regulation monitoring; therefore, no additional fees will be collected.

<u>EXHIBITS</u>

Exhibit A: Application for Housing Revenue Bonds
Exhibit B: Application for Industrial Revenue Bonds
Exhibit C: Application for Government Lease Revenue Bonds