

TO: ALL COUNTY PERSONNEL

**FROM: VERDENIA C. BAKER
COUNTY ADMINISTRATOR**

**PREPARED BY: DEPARTMENT OF HOUSING AND ECONOMIC
SUSTAINABILITY (DHES)**

SUBJECT: INDUSTRIAL DEVELOPMENT REVENUE BONDS

PPM# CW-F-065

ISSUE DATE
November 6, 2018

EFFECTIVE DATE
November 6, 2018

PURPOSE:

To establish guidelines for Palm Beach County issued Industrial Development Revenue Bonds (“IDBs”).

UPDATES:

Future updates to this PPM are the responsibility of the Director of DHES with assistance from the County Attorney’s Office.

AUTHORITY:

- Chapter 159, Florida Statutes, as may be amended;
- Chapter 19A-4, Florida Administrative Code, as may be amended;
- Resolution No. R-2018-0606 (establishing application fee, financing fee, and attorney fee for IDBs);
- Securities Act of 1933; and
- U.S. Internal Revenue Code (“Code”), Sections 103, 146 and 148; and applicable U.S. Treasury Regulations, as may be amended.

POLICY:

DHES will handle all inquiries regarding IDBs and will be responsible for implementing the following procedures, with the County Attorney’s Office providing legal support as needed. Upon request, DHES shall provide applicants with the IDB application form, this PPM, and the operative Resolution establishing the County’s application fee, financing fee, and attorney fee for issuances. This information shall also be available on the DHES website. By submitting an application, the applicant agrees to be bound by the

previously mentioned documents. The following procedures and the attached guidelines shall govern the County's IDB program.

The action of the County in approving an application for the issuance of IDBs and/or the approval of an authorizing resolution by the Board of County Commissioners (BCC) should not be construed as indicating the marketability of the IDBs, but rather, as an agreement by the County to issue the IDBs only if a willing purchaser can be found and upon the execution of bond sale documents mutually agreeable to all parties thereto. The County reserves the right to waive or alter any condition and/or requirement in this PPM upon good cause shown.

PROCEDURES:

- A. **Application**—Prior to submitting applications, applicants shall have selected bond counsel (“Bond Counsel”) listed in the latest edition of the *Bond Buyer's Municipal Market Place Directory* (“Red Book”). Thereafter, applicants shall submit a complete application, the nonrefundable application fee, and provide supporting documentation that is sufficient for DHES to determine if the IDB issuing requirements in Chapter 159, Florida Statutes and other applicable laws are met. Among other things, in considering an application, DHES shall take into account the guidelines attached as Attachment 1 to this PPM.
- B. **Prepare Memo Recommending Approval**—If DHES is satisfied that the application and supporting documents provide sufficient information for an IDB issuance, DHES shall prepare a memo addressed to the County Administrator, or designee, recommending that the application be placed as an agenda item for the BCC's approval. The memo shall indicate that the application satisfactorily requests the issuance of bonds to cover “costs” associated with a “project,” as defined in 159.27, F.S. The memo shall also specify (i) the requested amount of the issuance; (ii) the proposed use of the funds; (iii) an analysis on the appropriateness, economic contribution, and public purpose of the project; (iv) a statement on the applicant's financial responsibility to fulfill its financial obligations; and (v) the local agency's ability to cope with the impact of the project.
- C. **Prepare Authorizing Resolution**—The County, as the IDB issuer, is required to adopt a resolution or take other official action in connection with the issuance of IDBs. Bond Counsel shall prepare such a resolution, which, at a minimum, (i) makes findings sufficient to support the issuance of the IDBs under applicable law; (ii) authorizes the issuance of the IDBs; (iii) authorizes any member of the BCC to execute the IDBs and any other bond documents necessary for the issuance; (iv) makes clear that the IDBs are limited obligations that shall not be deemed to constitute a debt, liability, or obligation of the County, and that neither the taxing power nor the faith and credit of the County, nor any County funds, shall be pledged to make any payments relating to the IDBs; (v) limits the liability of the County solely to the loan payments made by the applicant under the

financing agreements; (vi) waives and releases any personal liability against any County agent, employee, officer, etc. that may be had in connection with the IDBs; and (vii) includes any other provision that the County, in its sole discretion, requires to be included.

- D. **Submit Agenda Item for Approval**—Once DHES has prepared the above memo and Bond Counsel has prepared the appropriate resolution, DHES, with the assistance of Bond Counsel, shall prepare an appropriate agenda item for the BCC’s consideration. The agenda item shall typically recommend a motion to (i) approve the application; (ii) conduct any required public hearings, which is solely the applicant’s responsibility for noticing and adding to the agenda, and (iii) adopt the authorizing resolution.

At a minimum, the agenda item shall have as attachments (a) the public hearing notice, if any; (b) the application; (c) the memo to the BCC; and (d) the authorizing resolution for execution. While this is typically the format for approval, if the circumstances dictate that items need to be submitted individually at different dates, this PPM does not foreclose those situations.

- E. **Validation (Optional)**—If the user of the facility requests that a bond validation of the IDB be conducted, after adoption of the resolution described above, Bond Counsel shall prepare bond validation pleadings for the County Attorney’s Office’s review. Bond Counsel shall arrange for all required publication of the notice of the validation hearing. Bond Counsel shall file all validation pleadings and prosecute the validation action as special counsel to the County at the applicant’s cost and at no cost to the County. While any appeal period for the validation judgment is running, the IDB may be offered for private sale pursuant to an official statement or other similar document to be prepared by Bond Counsel.

- F. **The County’s Closing**—Absent a validation proceeding or at the conclusion of a favorable validation determination, once all parties have reached agreement on the terms of the bond documents, which may include but are not limited to the (i) loan agreement; (ii) trust indenture; and (iii) bonds themselves, and only after the County Attorney’s Office has reviewed and approved of said documents, the parties may schedule a time for the County’s authorized signatory to execute them. Once the County executes the bond documents, no further authorizations from the County should be required absent extenuating circumstances.

- G. **Sale of Bonds**—Because repayment obligations for IDBs rest solely with the applicant and neither the County, State, nor any municipality therein is responsible for their repayment or any associated expense, the manner in which the IDBs are sold, so long as complying with all applicable laws, shall generally be the prerogative of the applicant, subject to the limitations provided herein. The County reserves the right to review the credentials of any investor, financial

institution or investment banker chosen and to reject the same, without incurring any liability whatsoever.

- H. **Limitations on Method of Sale; Unrated Bonds**—Prospective IDB issues not rated or not considered to be of investment-grade quality may be sold only by private placement or by limited public offering in bond denominations of not less than \$100,000 each. For purposes of this paragraph, the term “limited public offering” shall be defined as an initial offering made only to qualified investors (i.e., “accredited investors” (within the meaning of Rule 501 of Regulation D promulgated under the Securities Act of 1933, as may be amended) or “qualified institutional buyers” (within the meaning of Rule 144A promulgated under the Securities Act of 1933, as may be amended)), not more than 35 in number. The intent of this paragraph relating to restrictions on minimum denominations and restrictions on sales to only “accredited investors” and “qualified institutional buyers” is applicable not only to the initial sale of the IDBs, but to resales, if any, in secondary markets and shall be incorporated in the bond sale documents and included in a legend on the IDBs.

In connection with the initial sale of the IDBs, the County will require either (i) an investor letter satisfactory to the County from each initial purchaser of the IDBs, or (ii) a representation of the underwriter satisfactory to the County to the effect that the underwriter has sold the IDBs to purchasers who are qualified investors as described above. An investor letter will not be required in connection with resales of the IDBs to subsequent purchasers.

Prospective issues of investment-grade quality may be sold by public offering or private placement in smaller bond denominations. Investment-grade quality shall be determined as meeting one of the following tests:

(a) A long-term rating of the IDB issue equal to or better than “Baa” by Moody’s Investors Service (“Moody’s”) or “BBB” by S&P Global Ratings (“S&P”) or a short-term rating of not less than “P-1” by Moody’s or “A-1” by S&P (in each case without gradations or modifiers).

(b) Credit enhancement, letter of credit, surety bond, bond insurance or corporate guarantee securing the IDB issue from a provider rated by Moody’s or S&P equivalent to or better than the ratings stated in (a) above.

- I. **The Parties’ Closing**—After the County’s Closing (*See* Section F), the parties typically schedule a closing amongst themselves where the transaction is finalized and the IDBs are delivered to the IDB purchaser against receipt of the purchase price. At this closing, the applicant shall pay the County’s financing fee and any fees associated with the County Attorney’s Office time spent on the transaction. The applicant, not the County, bears any and all additional closing costs, including but not limited to billable hours incurred by Bond Counsel.

- J. **Official Transcript**—Bond Counsel shall prepare an official bond transcript for the IDB upon closing, at no cost to the County. Bond Counsel shall provide to the County Attorney's Office (a) a bound hard copy of the transcript; and (b) two CDs containing electronic copies of the transcript documents. Thereafter, the County Attorney's Office shall retain the hard copy for inspection, provide one of the CDs to DHES, and prepare a receive and file agenda item for the other CD to be filed with the County Clerk.



VERDENIA C. BAKER
COUNTY ADMINISTRATOR

Suppression History:

1. PPM# CW-F-065, effective 2/25/1998
2. PPM# CW-F-065, effective 7/16/2007
3. PPM# CW-F-065, effective 9/1/2009
4. PPM# CW-F-065, effective 7/23/2010
5. PPM# CW-F-065, effective 5/15/2013
6. PPM# CW-F-065, effective 6/28/2018

ATTACHMENT 1

GUIDELINES

1. In deciding whether to recommend the issuance of an Industrial Development Revenue Bond (“IDB”), staff shall consider, among other things,:
 - a) whether the project will increase the value of taxable property;
 - b) whether the project will require additional governmental services;
 - c) the number and kind of jobs that will be created; and
 - d) whether the project or entity that owns the project is financially capable of constructing the project and paying the debt service on the bonds.

2. Prior to issuance, the applicant must:
 - a) agree to pay all expenses incurred by Palm Beach County in issuing the bonds;
 - b) indemnify Palm Beach County against any liability;
 - c) agree to obtain insurance for the financed property and its business activity; and
 - d) provide the bond resolution, any and all required documentation, including the following documentation in support of its IDB Application:
 - 1) A complete project budget including a breakdown of building and equipment costs, land acquisition costs and other fees;
 - 2) Pro forma financial statements – preferably for 10 years, with a minimum of five years – disclosing the applicants’ estimate of company operations resulting from the new investment, Management Discussion and Analysis, Summary of Significant Accounting Policies, and Summary of Significant Forecast Assumptions.
 - 3) A Statement of the contributions of the project to the local economy;
 - 4) Evidence that the entity is financially responsible and capable of fulfilling its obligations under the agreements including the proposed security and guarantee for the bonds;
 - 5) Conventional Financial Statements in accordance with generally accepted accounting principles for the preceding three years and audited by an independent certified public accountant; and
 - 6) Sufficient information for County staff to determine if local government will be able to cope with the impact of the project and provide needed public facilities necessary for the construction and operation of the project.

3. The bond resolution, and any offering documents must contain a statement that Palm Beach County’s obligation is limited to payments, collateral or credit enhancement provided by the private business entity, and that neither the faith and credit, nor the taxing power, nor any funds of Palm Beach County are pledged to pay the principal of or the interest on such IDB.

4. Any offering document must make clear that Palm Beach County is not responsible for information about the IDB or the payment of principal and interest on the IDB.

5. Palm Beach County shall receive assurances from bond counsel that the offering document provides adequate information for potential investors and that the offering complies with all applicable securities laws.
6. Verify that all procedures required by the Florida Statutes regarding issuance of IDBs are followed.