

# CTAS Guidance for County Debt Policies

Adopting debt policies can help counties:

- make better financial decisions;
- provide clear objectives for staff;
- demonstrate strong financial management practices to credit rating agencies; and
- distinguish policy decisions from transaction decisions.

The Tennessee State Funding Board requires counties issuing debt after January 1, 2012 to adopt a written debt management policy that must contain certain minimum requirements. This guidance is intended to guide counties in complying with the State Funding Board's requirement. \_\_\_\_\_ The minimum topics required are:

- Debt
- Transparency and disclosure
- Conflicts of interest
- Costs
- Professionals

Certain specific language must be included in a policy. **Language in boldfaced type satisfies the minimum requirements; language in italicized type is recommended.** If a county does not choose to utilize these items, the county should prepare alternatives that satisfy the minimum requirements.

Before adopting a policy, the members of the county commission should have a basic understanding of public finance, as well as understanding the past practice of the county regarding debt. This will allow the members to participate more fully in policy discussions and to gain more value from outside professional assistance. However, the county bears sole responsibility for the development, adoption, and implementation of the policy, even when using professional assistance. The county needs to be certain the policy adopted meets the needs of the county and reflects its practices [one size does not fit all].

## **1. Introduction**

It is recommended that the county include a statement of goals and purposes for the policy, indicating when debt will be considered. A definition of debt would be useful, specifically indicating whether borrowing for operating purposes is permitted:

The county needs to be certain the policy reflects all the borrowing needs- such as revenue bonds which could have different criteria from general obligation bonds. Also, if there are component unit issuers, such as an airport or hospital board, it needs to be determined whether each issuer will have a separate policy or be included in the county's policy.

The policy needs to include how compliance with the policy will be documented.

## 2. Transparency

County commissioners need to be informed about a proposed debt issue and county finance officials need to be able to explain the debt to citizens. The county should consider the debt policy, and any amendments, at a public meeting allowing for citizen input. The policy should include language for regular review and the process for considering amendments.

- **Responsibilities for analysis and reporting shall be with the** Choose an item.
- **The following annual reports shall be prepared and available for public review and comment: (choose) an annual debt payment report(s), annual debt service budget(s), as well as specific issuance debt reports (i.e. those required by state law).** *Clear disclosure of the terms and life of each debt issue, including principal and interest payments is required, whether annually or at the time the debt is issued; this disclosure must include a debt service schedule outlining the rate of retirement for the principal amount.*
- **County officials will comply with the state of Tennessee open record laws and respond to record requests from any citizen of Tennessee promptly.**

### New Debt Issuance

The policy should address how any decision about financing, structuring and selling debt will be reached. The policy should address the maximum level of debt. Also, the policy should address how the debt authorization process and all proposed and actual costs involved in issuing debt will be disclosed to the public. It is recommended that costs related to new debt issuance be disclosed using State Form CT-0253, as well as any other state required forms that detail all associated costs for the issuance of the proposed debt. These records should be available for public and county commission inspection prior to the commission approval of the debt issuance.

If all actual costs are not known prior to issuance and at time of commission approval, then complete State Form CT-0253 with the best estimate available at the time.

It is recommended that the policy address how the results of the sale are reported to the commission and the public after the sale. Any changes in costs after the sale must be promptly reported to the county commission in accordance with TCA Section 9-21-151 on Form CT-0253.

**Prior to the issuance of any new debt, the County Mayor/Executive shall review the proposed transaction with the most county debt policy to ensure compliance. A statement shall be placed in the debt resolution stating that the County Mayor/Executive has reviewed the most updated county debt policy, and that the proposed debt issue is in compliance with the policy. If the County Mayor/Executive or other official designated by**

**the County Legislative Body determines the proposed transaction not to be in compliance with the policy, the County will not proceed with the transaction unless the policy is amended consistent with Section X regarding amendment.**

**Additional Considerations/Options to Assist with Transparency:**

1. *Annually report:*
  - a. *Net debt calculation (Total principal outstanding less most recent year respective debt fund balance).*
  - b. *Calculation of percentage of total debt to assessed value.*
  - c. *Calculation of debt to per capita income.*
  - d. *Calculation of net debt per capita (net debt/population).*
  - e. *Documentation of the most recent debt rating.*
2. *Prepare multi-year debt budgets and capital plans.*
3. *Service all principal and interest payments through the debt service fund. [Although this is required/highly recommended, this is not the practice in numerous counties.]*
4. *Use additional media vehicles such as the county website and other social and electronic media outlets, newspapers of general circulation, etc.*

**3. Professionals**

Depending upon the complexity of the debt transaction, the county may need to hire third party professionals. The county should use the policy to provide guidance as to when outside professionals will be hired. The following items satisfy the minimum requirements. If a county does not choose to utilize these items, the county should prepare alternatives that satisfy the minimum requirements for engaging professionals.

**Hiring of Professionals for Debt Issuance**

- **From time to time, if the county so chooses, the county may hire a financial advisor, underwriter, or other financial professional to assist in issuance of debt. The county shall require all professionals engaged in the process of issuing debt to clearly disclose all compensation and consideration received related to services provided in the debt issuance process by both the entity and the lender or conduit issuer, if any. This includes “soft” costs or compensations in lieu of direct payments.**
- **Counsel: The county shall enter into an engagement letter agreement with each lawyer or law firm representing the county in a debt transaction. No engagement**

letter is required for any lawyer who is an employee of the county or lawyer or law firm that is under a general appointment or contract to serve as counsel to the county. [The county does not need an engagement letter with counsel not representing the county, such as underwriters' counsel.] **The counsel will be selected based on best qualifications as determined by the** Choose an item.

- **Financial Advisor**: The county shall enter into a written agreement with each person or firm serving as financial advisor for debt management and transactions. Whether in a negotiated or competitive sale, the financial advisor shall not be permitted to bid on, privately place or underwrite an issue for which they are providing advisory services for the issuance. The county will utilize the most current definition of “financial advisor,” as determined by the U.S. Securities and Exchange Commission and the Municipal Securities Rulemaking Board when determining what exactly defines a financial advisor. The financial advisor will be selected by
- **Underwriter**: If there is an underwriter, the county shall require the underwriter to clearly identify itself in writing (e.g. in a response to a request for proposal or in promotional materials provided to the issuer) as an underwriter and not as a financial advisor from the earliest stages of its relationship with the county with respect to that issue. The underwriter must clarify its primary role as a purchaser of securities in an arm’s-length commercial transaction and that it has financial and other interests that differ from those of the county’s. The underwriter in a publically offered, negotiated sale shall be required to provide pricing information both as to interest rates and to takedown per maturity to the governing body in advance of the pricing of the debt. The underwriter will be selected by competitive bid determined at the time of the debt issue.

**Additional Considerations for Engaging Professionals for Debt Issuance Process:**

1. *The county legislative body shall approve all contracts for financial services longer than one year.*
2. *Issuers should include a provision prohibiting any firm from engaging in activities on behalf of the issuer that produce a direct or indirect financial gain for the financial advisor, other than the agreed-upon compensation, without the legislative body’s approval.*

3. *As a financial advisor is not required to be engaged for all debt issues, the county may stipulate the specific debt issues (capital outlay loans, G.O. bonds, etc) that the county will or will not engage a financial advisor to assist with.*

#### **4. Conflicts of Interest**

The following items satisfy the minimum requirements. If a county does not choose to utilize these items, the county should prepare alternatives that satisfy the minimum requirements for addressing conflicts of interests.

- **It is required that all professionals related to the debt issue will enter into a written engagement letter related to their proposed services, cost, and any potential conflict of interest. These letters will be signed by the county mayor and are open records.**
- **Professionals involved in a debt transaction hired or compensated by the county shall be required to disclose to the county existing client and business relationships between and among the professionals to a transaction (including but not limited to financial advisor, swap advisor, bond counsel, swap counsel, trustee, paying agent, underwriter, counterparty, and remarketing agent), as well as conduit issuers, sponsoring organizations and program administrators. This disclosure shall include that information reasonably sufficient to allow the county to appreciate the significance of the relationships.**
- **Professionals who become involved in the debt transaction as a result of a bid submitted in a widely and publicly advertised competitive sale conducted using an industry standard, electronic bidding platform are not subject to this disclosure. No disclosure is required that would violate any rule or regulation of professional conduct.**

It is recommended that the policy clearly state conflicts of interest are disclosed prior to the commission taking any action approving a debt transaction.

#### **5. Principal Deferral**

- *As a rule, the county will not backload, use “wrap-around” techniques, balloon payments or other exotic formats to pursue the financing of projects. When refunding opportunities, natural disasters, other non-general fund revenues, or other external factors occur, the county may utilize non-level debt methods. However, the use of such methods must be thoroughly discussed in a public meeting and the \_\_\_\_\_ must determine such use is justified and in the best interest of the county .*

- **Any deferral of principal payments (including number of years that principal will be deferred) will be fully disclosed to the county commission and public at the time of public hearing and issuance.**

#### **6. Useful Life Limitations**

- *In accordance with state statute, no repayment schedule of debt will extend past the useful life of the asset that the funds are being issued for. The most current, adopted county's capital asset policy will be referenced for asset useful lives. No refunded debt issue will extend beyond the useful life of the asset that the original debt was issued for.*

#### **7. Variable Rate Debt**

- *The county may utilize variable rate debt in the county's overall debt management plan. Such variable rate debt, including the percentage of variable rate to fixed rate debt in the overall debt portfolio will be discussed and approved by the county commission in a public meeting prior to issuance. The percentage ratio of variable rate debt in the debt portfolio will be dependent on market conditions and overall management discussions with the county commission. The county commission will determine the current level of variable rate debt based on this analysis.*

#### **8. Regular Review and Amendment to Policy and Ongoing Federal Compliance**

- *The county commission will review the debt policy at least annually to insure timely updates to the policy and will review any recommendations from the state comptroller, CTAS, and/or the county's financial advisor at that time.*

#### **Additional Requirements for New Debt:**

1. *All leases will be reviewed by the county attorney prior to execution of the lease, in order to determine if the instrument is a capital or operating lease. No county official that is not authorized by state statute should execute a capital lease on behalf of the county. [Since capital leases are typically the least used and most expensive means of financing, the county commission should fully understand the cost of the asset and borrow cost imputed, as well as whether they intend to use the asset through the end of its useful life.]*
2. *If borrowing using capital outlay notes, the county will solicit a minimum of three rate and issuance cost quotes and select the lowest and best offer. The county will contact the state loan pool to solicit a quote from the pool, as well as local banks.*

3. *In the case of refinancing, an analysis report shall be provided that fully explains the reasons for the refinancing and the net savings and costs of the refinancing which will include not only interest charges, but also the fees associated with the transaction.*

The county should maintain a reasonable fund balance in the general debt service fund to safeguard against interest rate and liquidity risks. A county should adopt a written minimum fund balance policy.

**9. Types of debt instruments authorized by the policy.** (The county should select all types of debt instruments they wish to be authorized to issue)

- ***Long term debt instruments:***

- General obligation bonds

- Any local government is authorized to issue general obligation bonds under this part and part 1 of this chapter for a public works project.

(2) "General obligation bonds" mean those bonds in which the local government incurs a definite and absolute obligation by pledging the full faith, credit and unlimited taxing power of the local government as to all taxable property in the local government or of a portion of the local government, if applicable, to the payment of the principal of and interest on such bonds.

(b) The bonds may be sold in such blocks as the governing body may by resolution determine.

- Revenue Bonds

- Any local government is authorized to issue revenue bonds under this part and part 1 of this chapter for a public works project. "Revenue bonds" are defined as those bonds which are payable exclusively from the revenues of one (1) or more public works projects.

(b) The bonds may be sold in such blocks as the governing body may by resolution determine.

- General Obligation Refunding Bonds

- (a) Any local government has the power and is authorized to issue, by resolution, general obligation refunding bonds to refund outstanding obligations heretofore or hereafter lawfully issued or assumed by the local government, and to provide for the rights of the holders thereof and to secure such bonds as provided in this part and part 1 of this chapter.

- (b) General obligation refunding bonds issued hereunder and secured by the full faith and credit and unlimited taxing power of the local government shall be for the purpose of:
      - (1) Refunding outstanding obligations which are secured by a pledge of the full faith and credit and unlimited taxing power of the local government;
      - (2) Refunding outstanding obligations secured by a pledge of revenues in addition to the full faith and credit pledge; or
      - (3) Refunding outstanding obligations secured solely by the revenues of a public works project.
    - (c) General obligation refunding bonds may be issued to refinance more than one (1) issue of outstanding obligations, notwithstanding that such obligations may have been issued at different times.
    - (d) The resolution authorizing general obligation refunding bonds may also provide for other bonds to be issued jointly with such refunding bonds.
- Revenue Refunding Bonds
  - (a) Any local government has the power and is authorized to issue by resolution revenue refunding bonds to refinance outstanding obligations heretofore or hereafter issued or lawfully assumed by the local government which are payable solely from all or any part of the revenues of one (1) or more enterprises, or from a combination of such revenues and taxes, to refinance any enterprise or combination of enterprises, and for such purpose or purposes to combine or divide any two (2) or more enterprises, and to provide for the rights of the holders thereof and to secure such bonds as provided in this part and part 1 of this chapter.
  - (b) No revenue refunding bonds shall be issued under this part and part 1 of this chapter, unless the governing body of the local government shall make a finding, which finding shall be conclusive, that one (1) or more of the following purposes will be accomplished:
    - (1) Cost savings to the public;
    - (2) Removal or modification of one (1) or more restrictive covenants; or
    - (3) Payment or discharge of all or any part of an issue or series of outstanding obligations, including any interest thereon, in arrears or to become due and for the payment of which sufficient funds are not available.
  - (c) Revenue refunding bonds may be issued to refinance more than one (1) issue of outstanding obligations, notwithstanding that such outstanding obligations may have been issued at different times and may be secured by the revenues of different enterprises; and any such enterprises may be operated as a single enterprise, subject to contract rights vested in the holders of obligations being refinanced.

- (d) The resolution authorizing revenue refunding bonds may also provide for other bonds to be issued jointly with the revenue refunding bonds.
- Capital Outlay Notes
  - The governing body of a local government acting by resolution is hereby authorized to issue and sell interest-bearing capital outlay notes for all purposes for which bonds can be legally authorized and issued by a local government for public works projects as defined in this chapter and for property valuation, tax assessment and tax equalization programs. The sale of all interest-bearing capital outlay notes shall first be approved by the comptroller of the treasury or the comptroller's designee
- Inter-fund Loans
  - Notes issued between funds of the county
- Loan agreements:
  - State revolving loan program
  - PBA
  - ***Short term debt instruments:***
- Bond Anticipation Notes
  - The governing body of the local government acting by resolution is hereby authorized to issue and sell interest-bearing bond anticipation notes for all purposes for which bonds can be legally authorized and issued by a local government for public works projects as defined by this chapter, and for purposes authorized by chapter 11 of this title and by title 49, chapter 3, part 10. Such resolution shall not be effective until the initial resolution authorizing the issuance of the bonds, if required, shall have been adopted, published and no petition protesting the issuance of such bonds shall have been filed as permitted by law.
- Capital Outlay Notes
  - The governing body of a local government acting by resolution is hereby authorized to issue and sell interest-bearing capital outlay notes for all purposes for which bonds can be legally authorized and issued by a local government for public works projects as defined in this chapter and for property valuation, tax assessment and tax equalization programs. The sale of all interest-bearing capital outlay notes shall first be approved by the comptroller of the treasury or the comptroller's designee.
- Grant Anticipation Notes
  - The governing body of a local government, acting by resolution, is hereby authorized to issue and sell interest-bearing grant anticipation notes for public works projects secured solely by a pledge of moneys, which pledge shall not be less than the principal amount of such notes, to be received pursuant to a contract or agreement between a state or federal agency and the local government. The resolution shall not be effective until the contract or agreement between the state or federal agency and the local government has been executed by all parties to the contract or agreement. The sale of all interest-bearing grant anticipation notes shall first be approved by the comptroller of the treasury or the comptroller's designee.

- Tax Anticipation Notes
  - The governing body of a local government may issue interest-bearing tax anticipation notes for the purpose of meeting appropriations made for the current fiscal year in anticipation of the collection of taxes and revenues of that fiscal year in amounts not exceeding sixty percent (60%) of such appropriation; provided, that the sale of the notes shall first be approved by the comptroller of the treasury or the comptroller's designee. The notes may be renewed from time to time and money may be borrowed from time to time for the payment of any indebtedness evidenced thereby, but all such notes shall mature not later than the close of the current fiscal year. If taxes and revenues are found to be overestimated and it becomes impossible to pay the notes prior to the close of the current fiscal year, application shall be made to the comptroller of the treasury or the comptroller's designee within ten (10) days prior to the close of the current fiscal year for permission to issue funding bonds to cover the unpaid note balances in the manner provided by chapter 11 of this title, or as otherwise provided for in a manner approved by the comptroller of the treasury or the comptroller's designee.
  
- Inter-fund Loans
  - Notes issued between funds of the county
  
- Loan agreements:
  - State revolving loan program
  - PBA

## Attachment A: Resources

### 1. Comptroller of the Treasury

Guide For The Issuance Of Notes By The Counties, Consolidated Governments, And Municipalities Of Tennessee ([www.tn.gov/comptroller/lf/pdf/guide2003.pdf](http://www.tn.gov/comptroller/lf/pdf/guide2003.pdf))

### 2. Government Finance Officers Association (GFOA) ([www.gfoa.org](http://www.gfoa.org))

#### Best Practices Governmental Debt Management

- a. [Analyzing an Advance Refunding](#) (1995)
- b. [Business Preparedness and Continuity Guidelines](#) (2005 and 2008)
- c. [Debt Management Policy](#) (1995 and 2003)
- d. [Post Issuance Compliance Checklist](#)
- e. [Debt Service Payment Settlement Procedures](#) (2003 and 2007)
- f. [Investment of Bond Proceeds](#) (1996 and 2007)
- g. [Issuer's Role in Selection of Underwriter's Counsel](#) (1998 and 2009)
- h. [Issuing Taxable Debt by U.S. State and Local Governments](#) (1998)
- i. [Maintaining an Investor Relations Program](#) (1996, 2003 and 2010)
- j. [Payment of the Expense Component of Underwriters' Discount](#) (1996 and 2010)
- k. [Pricing Bonds in a Negotiated Sale](#) (1996, 2000, and 2010)
- l. [Public-Private Partnerships for Economic Development](#) (2008)
- m. [Role of the Finance Officer in Privatization](#) (2009)
- n. [Selecting and Managing the Method of Sale of State and Local Government Bonds](#) (1994 and 2007)
- o. [Selecting Bond Counsel](#) (1998 and 2008)
- p. [Selecting Financial Advisors](#) (2008)
- q. [Selecting Underwriters for Negotiated Bond Sales](#) (2008)
- r. [Tax Increment Financing as a Fiscal Tool](#) (2006)
- s. [Understanding Your Continuing Disclosure Responsibilities](#) (2010)
- t. [Use of Debt-Related Derivatives Products and the Development of a Derivatives Policy ADV](#) (1995, 2003, 2005 and 2010)
- u. [Derivatives Checklist](#)
- v. [Using a Web Site for Disclosure](#) (2002 and 2010)
- w. [Web Site Presentation of Official Financial Documents](#) (2009)

### 3. Best Practices Budgeting and Fiscal Policy

- a. [Adoption of Financial Policies](#) (2001)
- b. [Incorporating Capital Project Budget in the Budget Process](#) (2007)

### 4. Advisories Governmental Debt Management

- a. [Auditor Association with Financial Statements Included in Offering Statements or Posted on Web Sites](#) (2005 and 2006)
- b. [Evaluating the Sale and Securitization of Property Tax Liens](#) (1997)
- c. [Evaluating the Use of Pension Obligation Bonds](#) (1997 and 2005)
- d. [Issuing Build America and other Direct Subsidy bonds](#) (2010)
- e. [Need for Considerable Caution in Regard to OPEB Bonds](#) (2007)

- f. [Understanding the Issuer's Role in Secondary Market Securitization of Tax-Exempt Obligations](#) (1993, 1996, and 2005)
  - g. [Underwriter Disclaimers in Official Statements](#) (2000)
  - h. [Using Variable Rate Debt Instruments ADV](#) (1997 and 2010)
5. [Publications: Capital Finance and Debt Administration](#) (11 titles)
- a. *Benchmarking and Measuring Debt Capacity*
  - b. *Debt Issuance and Management: A Guide for Smaller Governments*
  - c. *An Elected Official's Guide to Debt Issuance*
  - d. *An Elected Official's Guide to Tax Increment Financing*
  - e. *An Elected Official's Guide to Rating Agency Presentations*
  - f. *A Guide for Preparing a Debt Policy*
  - g. *A Guide for Selecting Financial Advisors and Underwriters: Writing RFPs and Evaluating Proposals*
  - h. *Making Good Disclosure: The Role and Responsibilities of State and Local Officials Under the Federal Securities Laws*
  - i. *Purchasing Credit Enhancement: How to Decide if Bond Insurance Makes Sense*
  - j. *Structuring and Sizing the Bond Issue*
  - k. *Tax Exempt Financing: A Primer*
6. [Publications: Financial Management and Budgeting](#) (26 titles)  
*Financing the Future: Long-Term Financial Planning for Local Governments*
7. International City/County Management Association (<http://icma.org/en/icma/home>)  
 Management Policies in Local Government Finance, 5th edition  
 ([http://bookstore.icma.org/product1.cfm?product\\_ID=1190&DID=7](http://bookstore.icma.org/product1.cfm?product_ID=1190&DID=7))
8. Municipal Technical Advisory Service (<http://www.mtas.tennessee.edu/>)
9. County Technical Assistance Service (<http://www.ctas.utk.edu/>)
10. Rating Agencies:
- a. Fitch Ratings ([www.fitchratings.com](http://www.fitchratings.com))
  - b. Moodys ([www.moodys.com](http://www.moodys.com))
  - c. Standard & Poors ([www.standardandpoors.com](http://www.standardandpoors.com))
11. Municipal Securities Rulemaking Board ([www.msrb.org](http://www.msrb.org))  
 Electronic Municipal Market Access ([www.emma.msrb.org](http://www.emma.msrb.org))
12. Securities Industry and Financial Markets Association ([www.sifma.org](http://www.sifma.org))  
 Investing in Bonds (<http://investinginbonds.com/>)
13. California Debt and Investment Advisory Commission ([www.treasurer.ca.gov/cdiac](http://www.treasurer.ca.gov/cdiac))

## Attachment B: Glossary

**Conflicts of Interest** occur in situations where parties in a transaction have multiple interests or relationships that could possibly corrupt the motivation to act. The presence of a conflict of interest indicates the potential for divided loyalty and does not automatically indicate wrong doing.

**Costs** means fees and expenses of professionals and service providers and other similar fees and expenses, whether or not payable at the time the debt is incurred. “Costs” also means recurring and nonrecurring fees and expenses during the life of the debt.

**Debt** means indebtedness lawfully issued, executed or assumed by a public entity. Debt is created when a public entity agrees to pay over time to someone else, in exchange for receiving an upfront payment or loan or for acquiring an asset. “Security” refers both to debt that can be transferred or delivered to another party, as well to property or assets pledged as collateral for a debt. Common instruments or evidence of debt are:

**Bonds** are debt instruments issued for a period of one year or longer, usually for permanent financing.

**Notes** are debt instruments issued for a short period of time, often for interim financing. Notes may be rolled to bonds. Examples are Capital Outlay Notes, Tax and Revenue Anticipation Notes, Bond Anticipation Notes, and Grant Anticipation Notes.

**Capital leases or a lease purchase are** written agreements allowing the use of property in exchange for payment of funds.

**Loans** are debt agreements usually with a financial institution such as a local bank or an organized loan program such as the Tennessee Municipal Bond Fund or the State Revolving Loan Program. Loans are also internal loans between funds within the entity or **seller financed loans**.

**Debt service** means a series of payments including **interest** (the amount or fee earned or paid for use of money or credit, calculated on the amount of principal) and **principal** (the amount of money borrowed or credit provided) required on a debt over time. The rate of interest can be **variable** or **fixed**.

**Schedule** means the plan listing the amount and when debt service will be paid.

**Backloading** refers to delaying repayment of principal until the end of the financing term. A standard or default structure for debt service is level debt service payments, similar to a standard home mortgage. Backloading should be considered only when 2 beneficial to the overall amortization of debt, upon the occurrence of natural disasters, or when project revenues are not available during the early years of a project.

**Maximum total level of debt** means the maximum principal amount of debt a public entity will have outstanding at any time, usually for each type of debt issued.

**Federal compliance issues** means the ongoing responsibilities of a public entity after issuing debt. If the debt is sold as being “federally tax-exempt,” then the entity will have to comply with federal tax law. If the debt is a “security” for federal securities laws, then the public entity is subject to anti-fraud provisions and possibly is subject to continuing disclosure obligations.

**Finance transaction** means both debt obligations and derivatives. A derivative is a financial product deriving value from a separate security. This term refers to many different products. “Derivative” includes

an Interest Rate Agreement as defined in Tennessee Code Annotated Section 9-22-103 and other transactions as identified by the State Funding Board.

**Guidelines** means the document adopted by the Tennessee State Funding Board providing statutorily required guidance on Interest Rate and Forward Purchase Agreements. The current version became effective November 1, 2009. The Guidelines are available on the internet at <http://tn.gov/comptroller/lf/pdf/SFB%20Guidelines%2010-9%20Final.pdf>.

**Professionals** means individuals or firms advising or offering to provide professional services to a public entity with respect to a finance transaction. Examples of professionals are:

**Advisor** means an individual or firm with a deep knowledge in a specific area, engaged in the business of advising others. It can include a Financial, Swap, or Program Administrator.

**Counsel** means a legal advisor or attorney, whether an individual or a firm, representing a client. It can include Bond, Disclosure, Issuer, Swap, Tax, or Underwriters Counsel.

**Counterparty** means the other party or participant in an agreement or contract; usually it refers to the other party in an Interest Rate (or swap) Agreement.

**Lender** means an individual or firm who loans a borrower money.

**Paying Agent** means an individual or firm that transfers the periodic interest and principal payments from the public entity to the investors.

**Registrar** means the individual or firm responsible for maintaining a record or list of owners or investors in debt (sometimes referred to as holders of the debt).

**Remarketing Agent** means the firm responsible for reselling to new investors debt instruments that have been “tendered” for purchase by their holders. The remarketing agent is also usually responsible for resetting the interest rate for variable rate debt instruments.

**Underwriter** means the firm that buys new debt for reselling to the public for a profit. The underwriter may acquire the debt either through negotiation or by award on the basis of competitive bidding.

**Verification Agent** usually means a certified public accountant or other independent third party that determines that the cash flow from investments purchased with proceeds of a refunding debt issue, along with other money, will be sufficient to pay the refunded bonds.

**Public Entity** is a governmental organization or unit that has a legal existence and is authorized to borrow money or enter into debt. It includes the State, state agencies, local governments, local government instrumentalities, and any other authority, board, district, instrumentality, or entity created by the State, a state agency, local government, a local government instrumentality, or any combination of the above. It does not include legal entities without debt authority, such as a county school board; however, a special school district with debt authority is included.

**Governing Body** means the group of individuals with the authority to make decisions for a public entity, often referred to as the “legislative body.” Governing bodies are subject to the Tennessee Open Meetings Law (requiring public notice and recording of minutes).

**Members** are the individuals serving on the governing body.

**Conduit Entity** means a governmental entity or agency that borrows money to lend to another entity, and not to finance a project for itself. Examples of conduit issuers are health and education boards, economic development boards, and public building authorities.

**Risk** refers to the uncertainty (downside) involved in a debt transaction, including investment, business, credit, market, liquidity, operations, tax, and basis risks.

**State Agency Loan Program** refers to programs offered by the state or state agencies, such as the State Revolving Loan Program offered by the Tennessee Local Development Authority or the Qualified School Construction Bond program offered by the Tennessee State School Bond Authority.

**State Funding Board** means the state entity whose members are the Governor, the Commissioner of Finance and Administration, the Comptroller, the State Treasurer, and the Secretary of State. The State Funding Board is created by Tennessee Code Annotated Section 9-9-101.

**Attachment C:**

**REQUEST FOR PROPOSAL**

**For**

**FINANCIAL SERVICES**

**For**

\_\_\_\_\_ **COUNTY, TENNESSEE**

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## 1.0 INTRODUCTION

### 1.1 Purpose

This Request for Proposal (RFP) is to solicit proposals from qualified companies to serve as financial advisor for \_\_\_\_\_ County, Tennessee in connection with a proposed debt issuance of approximately \_\_\_\_\_ **Dollars** (\$\_\_\_\_\_) for capital project purposes. The debt shall be issued under the provisions of Title 9 of the Tennessee Code Annotated. Although it is anticipated that the vehicle will be a tax-exempt bond issue (and this RFP is so structured), companies are permitted and encouraged to submit alternate proposals using other debt vehicles, including but not limited to variable rate loan pool programs.

### 1.2 Proposal Submittal

Sealed proposals (\_\_\_\_\_ ( ) copies) will be accepted by the \_\_\_\_\_ County no later than (time) \_\_\_\_\_ on (date) \_\_\_\_\_ at the office of the \_\_\_\_\_. All proposals must be submitted in accordance with the conditions and instructions provided herein. **All proposals must remain open for acceptance for ( ) days.**

### 1.3 Schedule

RFP released -

Pre-proposal Conference -

Deadline for amendments to RFP -

Deadline for proposal submittal -

Oral presentations - To be scheduled by \_\_\_\_\_ County

This schedule is intended as a guideline for the timing of various events in this effort. Management requirements and other factors may cause certain of these dates to vary from original intentions. **In no event will the deadline for proposal submittal be changed.**

## **2.0 GENERAL CONDITIONS**

### **2.1 Conformity with RFP**

All proposals must conform to the requirements presented in this RFP. Proposals not in conformity may be rejected. Exceptions to any requirement must be clearly noted in the company's response.

### **2.2 Uniformity of Proposals**

To facilitate evaluation, all proposals must be submitted in the uniform format described in Section 9.0 of this RFP. In addition, all companies submitting proposals are required to submit each of the forms, fully completed, which are attached as Exhibits to this RFP. **FAILURE TO COMPLETE THE REQUIRED FORMS COULD RESULT IN PROPOSALS BEING REJECTED.** The requirements for companies submitting proposals for tax-exempt bonds are discussed in Sections 4.0 and 5.0. The requirements for companies submitting alternate proposals for loan programs are discussed in Section 6.0. Alternate proposals involving both bonds and loans must furnish all information discussed in Sections 4.0, 5.0 and 6.0. Alternate proposals must be clearly labeled "Alternate Proposal."

### **2.3 Advisor Agreement**

Upon award of this project, the parties will enter into a mutually acceptable written contract. All terms and conditions contained in this RFP, together with the company's materials submitted in response, shall become a part of the contract. All contracts between the parties shall be governed by and enforced in accordance with the laws of the State of Tennessee. The company shall furnish a sample form of the agreement proposed by his/her firm.

2.4 Licenses

The company shall have and maintain all required licenses necessary for it to conduct business in the State of Tennessee.

2.5 Right to Reject Proposals

\_\_\_\_\_ County reserves the right to reject any or all proposals, to waive technicalities or informality and to accept any proposal deemed to be in the best interest of the County. \_\_\_\_\_ County reserves the right to seek additional or new proposals and to waive informalities and minor inequities in proposals received.

2.6 Rights to Submitted Material

All proposals, responses, inquiries, or correspondence relating to or in reference to this RFP, and all reports, charts, displays, schedules, exhibits, and other documents provided by companies will become the property of \_\_\_\_\_ County when received. The company understands that all documents submitted will become public record.

2.7 Non-Collusion

Each company must submit a company affidavit, a copy of which is attached as **Exhibit V**.

2.8 Additional Information

All inquiries or requests for additional information relative to this RFP should be directed to \_\_\_\_\_ at telephone number ( ) \_\_\_\_\_.

### **3.0 COMPANY INFORMATION**

A major consideration in awarding a contract is the experience and services the firm is able to provide, and the company personnel who will be handling the proposed debt issue. The following information must be supplied by each company:

#### **3.1 General Company Information**

Please furnish a brief history of your company, including how long in business, municipal bond financial advisory services offered, and major offices located in Tennessee.

#### **3.2 Recent Bond Issues**

Please furnish a list of the five (5) most recent municipal bonds and/or loans issued in Tennessee for which your company has served as advisor and/or underwriter, listing for each issue the name of issuer, date, amount, purpose, contact person, address, and telephone number.

#### **3.3 Advisor Representative Resumes**

Please furnish a brief resume of each of the key personnel who will be directly responsible for working with the appropriate official(s) of \_\_\_\_\_ County on this project. The resume should focus on underwriting, financial advisory and investment banking experience and should indicate his or her registration status with the appropriate state and federal authorities. If the personnel whose names are submitted are not in fact the personnel who perform the work in connection with the issuance, the County may terminate the agreement.

## **4.0 SCOPE OF SERVICES - BOND ISSUE**

Each company is required to submit a statement outlining the scope of services which the company proposes to provide. The following items should be addressed for companies submitting proposals for the issuance of tax-exempt bonds:

### **4.1 Marketing /Oversight and Sales of Bond Issue**

The financial advisor shall provide assistance and guidance to the County throughout the process of the debt issuance, including but not limited to the following services:

1. Assist in the solicitation of an underwriter(s).
2. Assist in the receipt and opening of bids relative to bond sales.
3. **Bond Counsel** - It is the intention of \_\_\_\_\_ County to use a nationally recognized bond counsel. Please indicate the law firm or firms which your company will use on this bond issue. The financial advisor will maintain correspondence with the bond counsel and regulatory officials and assist bond counsel in preparation of all financial documents and assist in the preparation and printing of necessary offering documents (i.e., preliminary and final official statements, official notices of sale, bid forms, and other market documents).
4. Secure a printer of bonds.
5. Arrange for assignment of CUSIP numbers.
6. Arrange for interim financing/credit supplements when needed.
7. Assist in the solicitation of bids for appointment of a trustee and/or paying agent and registrar.
8. Coordinate the proper registration of the bonds.
9. Set a schedule/calendar for financing and issuance with bond counsel.

10. Arrange for closing and transfer of proceeds on the day of closing. The closing must be conducted in Tennessee.
11. Responsible for preparation of all county resolutions in accordance with applicable law.
12. Advertise pending offerings in appropriate national financial press publications and assure distribution of offering documents to a comprehensive list of potential bond purchasers/investors.
13. Coordinate all activities related to the bond issue with the State of Tennessee, Director of Local Finance.
14. Make prudent recommendations as to the size of bond issue, amortization schedules, and reduction and control of debt per capita.
15. Conduct market timing analysis as actual date of closing draws near.

#### 4.2 Rating Agencies and Insurance

\_\_\_\_\_ County believes a close and on-going relationship with the two (2) major rating agencies (Moody's and Standard & Poor's) is important. Please describe how your firm proposes to seek a rating on the bond issue. Also describe how your company will explore the possibility and feasibility of insuring the bond issue with a nationally recognized municipal bond insurance company, specifying which municipal bond insurance company would be used.

#### 4.3 Capital Planning

The company shall describe the extent to which it proposes to assist in planning for capital improvements through analysis of the county's financial statements, budgets, cash flows, etc., and make recommendations as to the most feasible method of financing future projects.

#### 4.4 Debt and Financial Resource Management

The company shall assist \_\_\_\_\_ County in analyzing its existing debt and proposed debt and offer suggestions as to the best method of structuring debt principal and interest repayments.

## 5.0 ISSUANCE COSTS AND DEBT SERVICE SCHEDULE - BOND ISSUE

The following information is required for companies submitting proposals for the issuance of tax-exempt bonds:

### 5.1 Assumptions

\_\_\_\_\_ County will provide an “estimated debt repayment schedule” listed as **Appendix 1** to the RFP. Proposals shall be based on the “estimated repayment schedule” as provided by the county; however, the company may submit an “alternative estimated debt service schedule” which may be submitted and listed as **Exhibit I** in the company’s proposal. For the purposes of the company’s “alternative estimated debt service schedule” and the issuance costs (**Exhibit II**), the following assumptions shall apply: the face amount of the debt will be \$\_\_\_\_\_ and the interest rate shall be the municipal market data general obligation yields as published in the Bond Buyers Guide for a rating of \_\_\_\_\_ as of \_\_\_\_\_ (date). It is understood that the actual debt service schedule utilizing actual rates shall be determined on the actual date of sale of the issue.

### 5.2 Issuance Costs

Each company must complete all items on the attached Cost of Issuance form, **Exhibit II**, using the assumptions set out in Section 5.1. The proposal submitted shall include all expenses \_\_\_\_\_ County will be responsible for in connection with the debt issuance. **Any expenses which the company has not listed on Exhibit II in response to this RFP will not be paid by \_\_\_\_\_ County**, with the sole exception of any legal fees charged by the \_\_\_\_\_ County Attorney. The costs and expenses detailed below shall in no way limit the company’s obligation to disclose all other costs which may not have been mentioned.

#### 5.2.1 Bond Registrar and Paying Agent

The first and second year costs for the Bond Registrar and Paying Agent shall include, without limitation, the following items:

1. Acceptance fee, if any.

2. Minimum annual fee.
3. Cost to record the bond issue and any additional cost if the financial advisor requires the original registration and then subsequent re-registration when the bonds are sold to the investor.
4. Maintenance fee for records of bond holders.
5. Preparation of interest payment checks.
6. Preparation of IRS forms W9 and W99B.
7. Cost of recording bonds sold and surrendered by the investor for reissuance.
8. Bonds paid at maturity.
9. Service charge for shipping securities, including postage, to holders of the bonds.
10. Other costs to the county. The total cost estimated should be a conservative estimate for county budgeting purposes. Any additional costs shall be the responsibility of the bond registrar and paying agent.

#### 5.2.2 Investment of Bond Proceeds

Please list the cost of providing investment services for bond proceeds. Please state how the bond proceeds will be invested and who will handle the investments (include appropriate resumes).

#### 5.2.3 Other Services Fees and Expenses

The company's proposal must include all services and fees your company and any other company necessary in providing services for the bond issuance. The fees and expenses proposed must include, without limitation, the following:

1. Preparation of all county resolutions in accordance with state law.
2. Advertising in accordance with Tennessee law and personal contact with various active bond purchasers.

3. Preparation, printing and distribution of sufficient copies of the final official statement (estimate up to 100 final with the County receiving 10 copies).
4. All legally required publication costs.
5. CUSIP registration fee.
6. Travel and communication expenses of your company relating to this issue.
7. Delivery of bonds to successful purchaser.
8. Debt retirement (amortization) schedules after closing.
9. Other requirements deemed necessary by the financial advisor.

## **6.0 ALTERNATE LOAN PROGRAM**

Any company may submit a proposal utilizing an alternate financing vehicle, including but not limited to variable rate loan pool programs. The proposal must be clearly marked "Alternate Proposal." The following information is required for companies submitting an alternate proposal:

### **6.1 Scope of Services**

The company shall describe the services provided; describe the proposed loan program, and method(s) of borrowing and repayment of loan. The company shall coordinate all documentation and transactions as they relate to the finalization of the loan closing, fully describing all aspects of the process. The company is responsible for preparation of all county resolutions in accordance with applicable law.

#### **6.1.1 Legal Notices and Advertising**

The company shall provide all necessary legal notices and advertisements.

#### **6.1.2 Governing Law**

The company shall comply with all applicable state and federal laws and shall coordinate all activities related to the borrowing with the State of Tennessee, Director of Local Finance.

#### **6.1.3 Debt and Financial Resource Management**

The company shall assist \_\_\_\_\_ County in analyzing its existing debt and proposed debt and offer suggestions as to the best method of structuring loan repayments.

#### 6.1.4 Capital Planning

The company shall describe the extent to which it proposes to assist in planning for capital improvements through analysis of the county's financial statements, budgets, cash flows, etc., and make recommendations as to the most feasible method(s) of financing future projects.

#### 6.1.5 Other Duties

The company may list any other services not mentioned in the scope of services which it is available to perform, itemizing the cost to be charged.

### 6.2 Loan Closing Costs and Annual Program Fees

The proposal shall include all costs, fees and expenses which \_\_\_\_\_ County will be expected to pay in connection with the debt. The company shall complete the attached **Exhibit IV** showing loan closing costs and annual program fees. For the purpose of completing **Exhibit IV**, it is to be assumed that the face amount of the loan is \$ \_\_\_\_\_. \_\_\_\_\_ **County will not be responsible for any costs, fees or expenses not disclosed on Exhibit IV.**

#### 6.2.1 Total Closing Costs

Please list the total closing costs (including trustee, administrator, legal, one-time costs, estimated accrued interest, annual add-on/interest rate, etc.).

#### 6.2.2 Net Closing Costs

Please list the net closing costs (net of any rebates or similar items).

#### 6.2.3 Closing Costs as a Percentage

Please list the net closing costs as a percentage of the total loan amount.

### 6.3 Debt Service Schedule

\_\_\_\_\_ County will provide an “estimated debt repayment schedule” listed as **Appendix 1** to the RFP. Proposals shall be based on the “estimated debt repayment schedule” as provided by the county; however, the company may submit an “alternative estimated debt service schedule” which may be submitted as **Exhibit III** in the company’s proposal assuming the face amount of the loan is \$ \_\_\_\_\_ and using the company’s average base coupon rate for the past years, beginning on \_\_\_\_\_ (date) and ending on \_\_\_\_\_ (date). The Company shall utilize its current credit rating in determining its average base coupon rate. The Company shall add the annual add-on cost to the average base coupon rate to arrive at the coupon rate to be shown on **Exhibit III**. The company shall also recommend a conservative estimated interest rate for the county to use for budgeting purposes only.

## **7.0 SELECTION PROCESS**

The selection of a company by \_\_\_\_\_ County will involve both objective and subjective elements. While cost is one factor to be considered, it will not be the sole determining factor. The process to be used to make this selection is outlined below:

### **7.1 Request for Proposal (RFP)**

This RFP is intended to provide interested companies with uniform information concerning \_\_\_\_\_ County's requirements, and to result in uniform responses for comparison purposes. In responding to this RFP, **companies must adhere to the required format and use the required forms.**

### **7.2 Evaluation Criteria**

3. Technical Qualifications: qualifications relating to this work including prior experience and demonstrated ability in related operations. Performance record and quality of work, ability to commit the necessary time required to perform the necessary required services, and qualifications of assigned individuals.
2. Approach methodology.
3. Completeness of proposal.
4. The company's perceived ability to obtain the best overall financing costs including cost of issuance and/or loan closing costs.

Note: Evaluation criteria are not ranked in order of importance.

### 7.3 Oral Presentations

Following submission of proposals, oral presentations will be scheduled in advance (by the \_\_\_\_\_ County Purchasing Agent) to accommodate the scheduling requirements of \_\_\_\_\_ County. The following limits shall be observed by companies during oral presentations:

The oral presentation may not be considered as a “negotiation session”. Only material contained in the original written proposal will be considered in any subsequent evaluations.

Companies will observe time limitations imposed prior to the oral presentation.  
**Presentations may not exceed \_\_\_\_\_ ( ) minutes in length.**

### 7.4 Selection

Following the process described above, \_\_\_\_\_ County will make all decisions regarding selection of the finalists, contract negotiation, and the award of the contract. The decision of \_\_\_\_\_ County will be considered final.

## **8.0 PROPOSAL FORMAT (REQUIRED)**

Proposals should be written in a concise, straightforward and forthright manner, and superficial marketing statements and materials should be avoided. Proposals should be organized in the following manner, using forms contained in the exhibits where appropriate:

### **Bonds Proposal Format**

1. Statement of company credentials, history, and experience handling tax exempt bond issues.
2. Representative resumes.
3. Recent bond issues.
4. Scope of services provided.
5. Explanation of how investment of bond proceeds will be handled, including appropriate resumes.
6. Company Alternative Debt Service schedule **Exhibit I**.
7. Cost of issuance **Exhibit II**.
8. Company affidavit **Exhibit V**.
9. Sample agreement form.

### **Loan Proposal Format**

4. Statement of company credentials, history, and experience.
2. Representative resumes.

3. Recent loans.
4. Scope of services provided.
5. Company Alternative Debt service schedule **Exhibit III**.
6. Loan Closing Costs and Annual Program Fees **Exhibit IV**.
7. Company affidavit **Exhibit V**.
8. Sample agreement form.

## **9.0 PRESENT OUTSTANDING BONDS, NOTES AND INTEREST**

To assist companies in responding to this RFP, information is presented in **Exhibit VI** relative to the current unpaid principal and interest on the County's outstanding general obligation bonds and various notes.

### **REQUIRED FORMS**

The following forms, fully completed, must be submitted:

- Exhibit I - Alternative Debt Service Schedule (Bonds Proposal Only) – Submitted on Company's Form if Company Proposes an Alternative Debt Service Schedule
- Exhibit II - Cost of Issuance (Bonds Proposal Only)
- Exhibit III - Alternative Debt Service Schedule (Alternate Proposal Only) - Submitted on Company's Form if Company Proposes an Alternative Debt Service Schedule
- Exhibit IV - Loan Closing Costs and Annual Program Fees (Alternate Proposal Only)
- Exhibit V - Company Affidavit
- Exhibit VI - Current Unpaid Principal and Interest on the County's Outstanding General Obligation Bonds and Various Notes

**Exhibit I - Alternative Debt Service Schedule (Bonds Proposal Only) –  
Submitted on Company’s Form if Company Proposes an Alternative  
Debt Service Schedule**

**Exhibit II - Cost of Issuance (Bonds Proposal Only)**

**Exhibit III - Alternative Debt Service Schedule (Alternate Proposal Only) - Submitted on Company's Form if Company Proposes an Alternative Debt Service Schedule**

**Exhibit IV - Loan Closing Costs and Annual Program Fees - (Alternate Proposal Only)**

**EXHIBIT V - COMPANY AFFIDAVIT**

The affiant states with respect to this Proposal to \_\_\_\_\_ County, Tennessee:

I (we) hereby certify that if the contract is awarded to our firm that no member or members of the governing body, elected official or officials, employee or employees of said County, or any person representing or purporting to represent the County, or any family member including spouse, parents, or children of said group, has received or has been promised, directly or indirectly, any financial benefit, by way of fee, commission, finder's fee or any other financial benefit on account of the act of awarding and/or executing a contract.

I hereby certify that I have full authority to bind the company and that I have personally reviewed the information contained in the RFP and this proposal, and all attachments and appendices, and do hereby attest to the accuracy of all information contained in this proposal, including all attachments and exhibits.

I acknowledge that any misrepresentation will result in immediate disqualification from any consideration in the proposal process.

I further recognize that \_\_\_\_\_ County reserves the right to make its award for any reason considered advantageous to the County. The company selected may be without respect to price or other factors.

Signature \_\_\_\_\_

Date \_\_\_\_\_

Name \_\_\_\_\_

Phone \_\_\_\_\_

Title \_\_\_\_\_

Firm Name \_\_\_\_\_

Type of business organization (corporation, LLC, partnership, proprietorship)

Address \_\_\_\_\_

City, State, Zip \_\_\_\_\_

**Exhibit VI - Current Unpaid Principal and Interest on the County's  
Outstanding General Obligation Bonds and Various Notes**

## **Appendix 1**

### **Debt Repayment Schedule**