

## 3.6 Using State Allocation of Private Activity Bonds

- A. Background:** Conduit debt is issued in a local government's name, but the resources for repayment come from individuals or entities that are not part of government. Entities seek conduit debt because of the government's ability to issue debt at favorable tax-exempt rates. Private Activity Bonds (PAB) are a form of conduit debt.

Colorado's Private Activity Bond allocation program is established by the Colorado Private Activity Bond Ceiling Allocation Act, Section 24-32-1701, et seq., C.R.S. Pursuant to Section 24-32-1706, annually the City of Fort Collins is offered a portion of the State ceiling as a local government. If the City does not issue bonds or assign bond capacity to an entity for a local project by September 15th annually, the cap automatically reverts back to the state's pool.

Historically, the City has provided this capacity on a first come first serve basis. It has not been uncommon for the City to receive no requests. Because more partners are using programs that can benefit from the lower interest rate that PAB's offer, the City is establishing this process.

- B. Purpose:** PAB's allow certain private sector activities to receive lower interest rates. PAB's may be used for affordable housing development and rehabilitation, specific economic development programs and for industrial development purposes, among other permitted uses. The City will attempt to find local uses for this development tool.
- C. Communication:** Information about the program should be placed on the City's website (fcgov.com). Consideration for other advertising and communication methods may be appropriate.
- D. Awarding and Assigning:** Awarding PAB and Assigning PAB allocations are different processes. Assigning PAB to another qualified issuer is strongly preferred. This is to reduce the administrative investments and leverage the efficiency of qualified issuers who award PAB's regularly. If an entity applies for a direct award under the City's name, staff will attempt to find a qualified issuer that agrees to accept an assignment from the City and issue the PAB under their own authority.
- E. Application due date:** Written applications to use of Fort Collin's annual PAB allocation are due to the City's Chief Sustainability Officer by March 15th.
- F. Application Elements:**
- a. The following items are required when applying for both assignments and direct awards.
    - i. A request letter signed by applicant describing the project the PAB would be used for and including: the applicant's name, address, phone, email address, and principal contact.
    - ii. Amount of allocation being requested.
    - iii. Bond counsel firm name, address, phone, email address and principal contact.
    - iv. Description of Applicant's local projects and years of operation
    - v. Number of years entity has been doing business in State of Colorado

- vi. Provide a Certificate of Good Standing from the Secretary of State's office.
  - vii. Description of assets to be purchased or constructed and expenses incidental to the project, including the sale of bonds.
  - viii. Explanation of how the project aligns with City objectives.
  - ix. Number of housing units and target demographics
  - x. Statement from competent bond counsel that the project is eligible for qualified private activity bonds.
- b. The following additional items are required in applications for direct awards of PAB:
- i. **Debt Information**
    - 1. Name, address, phone of principal contact of the proposed underwriter or lender.
    - 2. Anticipated timetable for bond transaction.
    - 3. Estimated bond redemption and interest payment schedule
    - 4. Indicate the type of letter of credit or similar instrument, which will back the debt
    - 5. Disclose if the applicant is involved in any litigation which may affect the validity or repayment of the bonds.
  - ii. **Financial Information**
    - 1. Audited financial statements for the applicant for the last three years and interim statements for the current year. If not available, please explain why.
    - 2. Projection of future revenues, expenditures and debt service coverage for the next five years supported by a feasibility study.
  - iii. **Other**
    - 1. Describe the arrangements that will ensure compliance with arbitrage reporting and payment requirements.
    - 2. Name, address and principal contact person for applicant's local bank.
    - 3. Briefly describe any potential conflicts of interest of personal/professional/political relationships between the applicant's officers and/or directors or applicant's operations and the City of Fort Collins.
    - 4. Any other information which provides evidence of the applicant's ability to repay the bonds and complete the project.
  - iv. **Debt Security**
    - 1. All arbitrage calculations and payments must be performed by the trustee under the terms of the trust agreement or by any such other arrangement that will insure compliance. The City must be provided with copies of 8088-T's filed with the IRS.
    - 2. The private entity must provide the City with information on the status of the debt annually and upon any material event.
    - 3. The bond documents must indemnify the City against IRS assessments and legal fees arising from the financing.
    - 4. The issuer's agent will be responsible for all continuing disclosure requirements.
- c. Items missing from application may result in disqualification from consideration.

**G. Fees:** There are no fees for applications that request assignments to another qualifying issuer. However, the following fees apply to applications requesting a direct award of PAB from the City of Fort Collins.

- a. Issuance fee equal to the greater of: A. 0.25% of the par amount of the debt, or B. \$5,000. The fee is capped at \$25,000.
- b. The cost of a review of the financing by an independent fiscal agent (to be selected by the City)
- c. Any other direct cost incurred by the City related to the financing.
- d. There will not be additional issuance fees for any amendment or modification of the original transaction even if it requires official action by City Council, except for actual direct costs of the City.

#### **H. Review Process**

- a. PAB Committee: Applications will be reviewed by a committee of at least 3 people. Members will include at least one representative each from Social Sustainability, Economic Health and Finance. Representatives from other departments, such as the City Manager's Office will be added as needed. Service Area Directors will make the necessary appointments to the PAB Committee.
- b. At a minimum, the following factors should be considered by the PAB Committee when making a recommendation:
  - i. How well the project applied for meets the land use, economic development and/or affordable housing goals of the City of Fort Collins.
  - ii. Project feasibility and timing.
  - iii. Leverage of other investment into the project.
  - iv. Maintenance of or increase in local tax base.
  - v. Competing uses for the City's allocation.
  - vi. Whether the City's allocation should be used in multiple projects.
  - vii. Whether the application should be considered by any City Board or commission.
- c. The PAB Committee will decide on a recommendation no later than July 1.
- d. City Council shall approve all PAB assignments or direct awards. The PAB Committee shall submit their recommendations to the City Council no later than August 15.