

**EXCERPTS FROM THE MINUTES OF A REGULAR MEETING OF
THE CITY COUNCIL OF THE CITY OF FOLEY, ALABAMA**

[Adoption of Policy and Procedures for Compliance
of Tax-Exempt Bonds with the Internal Revenue Code]

The City Council of the City of Foley met in regular public session at the City Hall in the City of Foley, Alabama, at 5:30 p.m. on December 17, 2012. The meeting was called to order by the President, and the roll was called with the following results:

Present: J. Wayne Trawick, President
 Ralph G. Hellmich
 Charles J. Ebert III
 Vera J. Quaite
 Rick Blackwell

Absent: _____

* * *

The Mayor, John E. Koniar, was also present.

The President stated that a quorum was present and that the meeting was open for the transaction of business.

* * *

Thereupon, the following ordinance was introduced in writing by the President, and considered by the City Council:

**AN ORDINANCE TO ADOPT, APPROVE AND AUTHORIZE A POLICY
AND PROCEDURES FOR COMPLIANCE OF TAX-EXEMPT BONDS
WITH THE INTERNAL REVENUE CODE**

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF FOLEY, ALABAMA (the "City"), as follows:

1. The City does hereby approve, adopt, authorize, direct, ratify and confirm the "Policy and Procedures for Compliance of Tax-Exempt Bonds with the Internal Revenue Code" (the "Tax-Exempt Bonds Policy"), in the form and of the content as attached hereto as Exhibit A and presented to and considered by the City, and effective as provided therein.

2. The Tax-Exempt Bonds Policy shall be filed in the permanent records of the City.

3. The officers of the City are hereby authorized and directed to take such actions, and to execute, deliver and file such related agreements, documents, instruments and notices, as may be necessary or desirable to carry out and effect the provisions of this ordinance and the Tax-Exempt Bonds Policy.

4. All actions heretofore taken by officers of the City with respect to the development of the Tax-Exempt Bonds Policy are hereby ratified and confirmed.

5. This ordinance shall take effect immediately.

The foregoing Ordinance was adopted this 17th day of December, 2012.

President

S E A L

Attest: _____
City Clerk

Transmitted to, and approved by, the Mayor of the City of Foley, Alabama, on this 17th day of December, 2012.

Mayor

Exhibit A

**Procedures for Compliance of Tax-Exempt Bonds
with the Internal Revenue Code**

CITY OF FOLEY, ALABAMA

Procedures for Compliance of Tax-Exempt Bonds with the Internal Revenue Code

Effective: December 1, 2012 and thereafter

I. DEFINITIONS

City shall mean the City of Foley, Alabama and its successors and assigns.

Bond Compliance Officer shall mean the City Treasurer of the City.

Bond Counsel shall mean counsel with experience in matters relating to the issuance of obligations by or on behalf of states or local governmental units who shall be acceptable to the City.

Code shall mean the Internal Revenue Code of 1986, as amended, and regulations, rulings and notices issued thereunder or applicable thereto.

Investment Property shall have the meaning assigned in the Code.

Tax Certificate and Agreement shall mean the Tax Certificate and Agreement, or non-arbitrage certificate, delivered by the City with respect to any Tax-Exempt Bonds.

Tax-Exempt Bonds shall mean all bonds, notes, warrants, certificates of participation, and other obligations issued by the City the interest on which is excludable from gross income for federal income tax purposes under Section 103 of the Code.

City shall mean the City of Foley, Alabama and its successors and assigns.

II. PURPOSE

The purpose of this document is to establish procedures for compliance of Tax-Exempt Bonds with the Code.

III. PROCEDURES

The City understands that:

(1) Tax-Exempt Bonds must be issued in compliance with the Code on the date of issuance thereof;

(2) the City will deliver a Tax Certificate and Agreement on the date of issuance of any Tax-Exempt Bonds which shall set forth certain facts and expectations of the City, and certain covenants undertaken by the City, with respect to compliance of such bonds with the requirements of the Code;

(3) the opinion of Bond Counsel with respect to any Tax-Exempt Bonds shall be subject to the condition the City comply with all requirements of the Code that must be satisfied subsequent to the issuance of such bonds in order that interest on such bonds be, or continue to be, excludable from gross income for federal income tax purposes;

(4) the City shall covenant, with respect to any Tax-Exempt Bonds, in the Tax Certificate and Agreement with respect to such bonds, and in the documents and proceedings under which such bonds are issued, to comply with all such requirements;

(5) failure to comply with the requirements of the Code with respect to any Tax-Exempt Bonds may cause interest on such bonds to lose the tax-exempt status thereof, retroactive to the date of issuance of such bonds, with resulting higher interest costs to the City.

The City has adopted these Procedures to provide for full and continuing compliance by the City with the requirements of the Code with respect to all Tax-Exempt Bonds.

IV. DETERMINATION OF ISSUANCE AND PURPOSE OF TAX-EXEMPT BONDS

A. General

The Bond Compliance Officer shall determine and recommend to the City the purposes for which the City shall issue Tax-Exempt Bonds, which shall include:

(1) the refunding of existing obligations,

(2) the acquisition and construction of capital improvements to the facilities of the City,

(3) the payment of expenses of issuance, credit enhancement and professional fees in connection with such bonds,

(4) Working Capital Expenditures, and

- (5) such other purposes as may be permitted by law.

B. Special Considerations for Issuance of Tax-Exempt Bonds for Advance Refunding Purposes

(1) Determination

The Bond Compliance Officer shall determine and recommend to the City the advance refunding of any Tax-Exempt Bonds, which recommendation shall be accompanied by

- (a) verification by Bond Counsel of the compliance with the Code of the proposed refunding, including without limitation:

- (i) qualification of refunded bonds for advance refunding,
 - (ii) nature and yield of investments in escrow,
 - (iii) redemption, if any, of refunded bonds,
 - (iv) the governmental purpose of the issue,
 - (v) compliance with rebate requirements with respect to the refunded bonds,
 - (vi) whether any action in connection with such refunding employs or constitutes an abusive arbitrage device;

- (b) verification by the Financial Advisor/Underwriter of

- (i) the governmental purpose of the City to be obtained by issuance of the refunding bonds and that, to achieve such purpose, the refunding bonds would be issued if interest thereon were not tax-exempt,
 - (ii) the issue price of the refunding bonds;

- (c) verification by independent certified public accountants or independent arbitrage consultants of

- (i) the yield of the refunding bonds and the yield of the escrow established with the proceeds thereof,
 - (ii) the sufficiency of the escrow to pay the refunded bonds.

(2) Investment Property for Yield Restricted Defeasance Escrow

The City establishes the following guidelines for Investment Property to be acquired with the proceeds of Tax-Exempt Bonds and to be deposited in an escrow for the advance refunding of outstanding Tax-Exempt Bonds:

- (a) The Investment Property shall consist of United States Treasury

obligations of State and Local Government Series, unless the Financial Advisor/Underwriter shall establish to the satisfaction of the City and counsel therefor that such obligations are not available for purchase or that the Investment Property should consist of other investments.

(b) The Investment Property shall not consist of capital appreciation bonds or zero coupon bonds.

(c) The Investment Property shall be purchased at fair market value determined in accordance with the Code, including the use of bidding procedures under the regulatory safe harbor provisions of the Code. A bidding agent or broker shall be determined upon advice and recommendation of the Financial Advisor/Underwriter.

C. Special Considerations for Issuance of Tax-Exempt Bonds for Working Capital Purposes

(1) Determination

The Bond Compliance Officer shall determine and recommend to the City the issuance of Tax-Exempt Bonds for “Working Capital Expenditures” (as defined in Treas. Reg. § 1.150-1(b)), which recommendation shall be in accordance with the requirements set forth in IV(C)(2) below and shall be accompanied by verification by Bond Counsel of compliance with the Code of the proposed issue.

(2) Particular Requirements for Tax-Exempt Bonds for Working Capital Expenditures

The City establishes the following requirements for issuance of Tax-Exempt Bonds for Working Capital Expenditures:

(a) The Tax-Exempt Bonds shall be structured as “draw-down loans” (as provided in Treas. Reg. § 1.150-1(c)(4));

(b) The City shall draw and receive an advance of proceeds of Tax-Exempt Bonds for Working Capital Expenditures only to the extent the Working Capital Expenditures of the City then (on the date of such draw or advance) exceed Available Amounts (within the meaning of Treas. Reg. § 1.148-6(d)(3)(iii)) of the City;

(c) The proceeds of the Tax-Exempt Bonds shall not be invested;

(d) The City shall allocate all proceeds of the Tax-Exempt Bonds to Working Capital Expenditures of the City within 30 days of receipt of such proceeds;

(e) In determining Available Amounts of the City for any date, the City shall not exclude a reasonable working capital reserve or any other amounts available to the City; and

(f) The City shall maintain written records of (i) the dates and amounts of allocation of proceeds of Tax-Exempt Bonds to Working Capital Expenditures and (ii) the amounts of Available Amounts of the City on each such date.

V. ENGAGEMENT OF PROFESSIONAL ADVISORS

The Bond Compliance Officer shall recommend to the City, for each issue of Tax-Exempt Bonds, the engagement of Bond Counsel, Financial Advisor and Underwriter.

The Financial Advisor and Underwriter may, but are not required to, be the same person or entity.

The final engagement of Bond Counsel, Financial Advisor and Underwriter shall be approved and made by the City.

VI. RESPONSIBILITIES OF PERSONS: GENERAL

The City Council President, City Treasurer, and City Administrator are responsible for, and will ensure, compliance of all Tax-Exempt Bonds with the Code.

VII. RESPONSIBILITIES OF PERSONS: INITIAL ISSUANCE OF TAX-EXEMPT BONDS

A. Bond Compliance Officer

The Bond Compliance Officer shall, upon advice of Bond Counsel and Financial Advisor/Underwriter, determine and recommend to the City the amount, purpose, structure, and terms of each issue of Tax-Exempt Bonds.

For each issue of Tax-Exempt Bonds the Bond Compliance Officer will obtain and retain a Bond transcript containing the documents and proceedings that establish the validity and tax-exempt status of the bonds.

B. Bond Counsel

The City shall rely upon the opinion of Bond Counsel regarding compliance of Tax-Exempt Bonds with state and federal law.

C. City Counsel

The City shall rely upon the advice and opinion of counsel to the City regarding compliance by the City with internal documents and policies (including without limitation the certificate of incorporation, contracts, conduct and notice of meetings, qualifications of officers and directors), and the effect, if any, of pending litigation affecting the City, respecting the issuance of Tax-Exempt

Bonds.

D. Financial Advisor / Underwriter

The City shall rely upon the advice of the Financial Advisor/Underwriter regarding the structure and credit enhancement of Tax-Exempt Bonds, including without limitation the following:

- (1) terms of redemption,
- (2) timing of sale,
- (3) credit enhancement,
- (4) determination of issue price of bonds,
- (5) structure and investments for escrow of proceeds of Tax-Exempt Bonds allocable to advance refunding of outstanding bonds.

VIII. RESPONSIBILITIES OF PERSONS: POST-ISSUANCE COMPLIANCE OF TAX-EXEMPT BONDS

A. Bond Compliance Officer

The City Council President and the Bond Compliance Officer shall ensure the City complies with all requirements of the Code that must be satisfied subsequent to the issuance of any Tax-Exempt Bonds in order that interest thereon remain tax-exempt.

The Bond Compliance Officer is authorized and directed to consult with, and engage, Bond Counsel, and financial advisors and accountants and rebate consultants, for such purposes.

B. Annual Review

The City Council President and the Bond Compliance Officer will meet annually, in conjunction with the preparation of the annual audit of the financial statements of the City, to review the Tax Certificate and Agreement for, and to determine and verify continuing compliance of, all Tax-Exempt Bonds with the Code.

C. Compliance Reports

The Bond Compliance Officer shall maintain the following records and reports with respect to each issue of Tax-Exempt Bonds:

- (1) Allocation of Proceeds for Facilities, as provided on Exhibit A-1.
- (2) Allocation of Proceeds for Working Capital Expenditures, as provided on Exhibit A-2.
- (3) Private Use Analysis, as provided on Exhibit B, for each fiscal year, with respect to agreements or arrangements made by the City with any nongovernmental or

private person (meaning any person who is not a state or local governmental unit) with respect to use of any facilities financed by Tax-Exempt Bonds.

(4) Fund Reconciliation, as provided on Exhibit C, for each fiscal year, for each fund or account established for such bonds and containing the proceeds of such bonds or amounts reasonably expected to be used to pay principal of or interest on such bonds, setting forth the dates and amounts of deposits and expenditures therefor, which report may be maintained and provided by the trustee or paying agent for such bonds.

(5) Forms of Requisitions, as provided on Exhibit D, with respect to the expenditure of proceeds of Tax-Exempt Bonds.

D. Rebate

The Bond Compliance Officer shall, with respect to each issue of Tax-Exempt Bonds, furnish to the trustee for such bonds, within 60 days after the end of each fiscal year of the City:

(1) an opinion of Bond Counsel or a report by an independent accountant stating in effect the aggregate accrued, but unpaid, rebate liability under Section 148(f) of the Internal Revenue Code as of the end of such fiscal year with respect to such bonds, or

(2) evidence that as of such date, the City has made all rebate payments to the United States Treasury Department necessary to prevent such bonds from being “arbitrage bonds” under Section 148(f) of the Code (including a copy of all forms or other documents filed with the United States Treasury Department for such purpose and any report, opinion or other document that contains the supporting conclusions and calculations).

E. Reissuance; Change in Use

The Bond Compliance Officer shall identify, and consult with Bond Counsel as to the effect of, any of the following, with respect to each issue of Tax-Exempt Bonds, which occurs subsequent to the issuance of such bonds:

(1) any change to the terms of such bonds;

(2) any change in the use of any facilities financed or refinanced by such bonds.

IX. RETENTION OF RECORDS

The Bond Compliance Officer shall maintain, with respect to each issue of Tax-Exempt Bonds, in paper or electronic format, until three (3) years after such bonds, and all related refunding bonds of all series, shall have been paid and retired, the following:

(1) Bond transcript (including without limitation Tax Certificate and Agreement and Form 8038G),

(2) Rebate reports,

- (3) Compliance Reports, prepared in accordance herewith,
- (4) Trustee reports,
- (5) Bond Counsel advice,
- (6) Agreements with any nongovernmental users of facilities financed or refinanced with the proceeds of such bonds,
- (7) Escrow Verification Reports, and
- (8) Documents relating to bidding procedures for any Investment Property.

X. CORRECTIVE AND REMEDIAL ACTION

The Bond Compliance Officer shall, upon the determination or identification of any noncompliance with, or violation of, the Code with respect to any issue of Tax-Exempt Bonds, upon consultation with Bond Counsel and counsel for the City, cause corrective or remedial action to be taken by the City, in accordance with:

- (1) applicable regulations under the Code; and
- (2) the Tax-Exempt Bonds Voluntary Closing Agreement Program of the Internal Revenue Service.

XI. POLICY REVIEW PROCESS

On an annual basis, or sooner if deemed necessary by the Bond Compliance Officer, the Bond Compliance Officer shall review this policy and assess the City's compliance with this policy. The Bond Compliance Officer shall make changes to this Policy as appropriate to ensure compliance with any covenants in the bond documents or the requirements of federal tax and securities law and any other applicable law.

Exhibit A-1

Allocation of Proceeds to Facilities

Series of Bonds: Series _____

Date of Issue: _____

<u>Amount of Proceeds</u>	<u>Allocation to Facilities Financed or Refinanced</u> ^[1]	<u>Date Placed in Service</u>	<u>Original Economic Life</u> ^[2]
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^[1] The Bond Compliance Officer shall take into account:

- (a) a single facility may be financed by multiple bond issues;
- (b) a single bond issue may finance multiple facilities;
- (c) the proceeds of refunding bonds shall be allocated to the facilities originally financed by the refunded bonds on a pro-rata basis.

^[2] That portion of an issue of Tax-Exempt Bonds (including a refunding issue) used to finance or refinance capital projects should not have a weighted average maturity greater than the remaining reasonably expected economic life of such capital projects.

Exhibit A-2

Allocation of Proceeds to Working Capital Expenditures

Series of Bonds: Series _____

Date of Issue: _____

<u>Date of Receipt of Proceeds</u>	<u>Amount of Proceeds Received</u>	<u>Date of Allocation to Working Capital Expenditures</u>	<u>Amount of Allocation to Working Capital Expenditures</u>	<u>Available Amounts on Such Date</u>
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Exhibit B

Private Use Analysis for Fiscal Year Ending _____

Series of Bonds: Series _____

Date of Issue: _____

<u>Asset or Facility</u>	<u>Allocable Proceeds of Tax-Exempt Bonds</u>	<u>Description of Private Use</u> ^[1]	<u>Proceeds Allocable to Private Use</u>
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^[1] Private Use is use of property by any person who is not a state or local government unit in the trade or business thereof, unless the property is intended to be, and is in fact, reasonably available for use on the same basis by natural persons not engaged in a trade or business.

Private Use may occur by reason of lease or license agreement, management agreement, take or pay contract, sale agreement, or other legal entitlement or special arrangement for use of facility or output or services of a facility.

Use as a member of the general public is not private use.

Exhibit C

Bond Proceeds Fund

Series of Bonds: Series _____

Date of Issue: _____

<u>Date</u>	<u>Credit or Deposit</u> ^[1]	<u>Disbursement or Expenditure</u>	<u>Total after 6 Months</u> ^[2]	<u>Total after 18 Months</u> ^[3]	<u>Total after 24 Months</u> ^[4]	<u>Total after 36 Months</u> ^[5]
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Totals \$_____ \$_____ \$_____ [2] \$_____ [3] \$_____ [4] \$_____ [5]

[1] Deposits of funds and credit of investment earnings

[2] 6 Months Total ÷ Total Credits and Deposits: _____%

[3] 18 Months Total ÷ Total Credits and Deposits: _____%

[4] 24 Months Total ÷ Total Credits and Deposits: _____%

[5] 36 Months Total ÷ Total Credits and Deposits: _____%

Bond Fund or Account

Series of Bonds: Series _____

Date of Issue: _____

Bond Year: _____

<u>Date</u>	<u>Credit or Deposit</u> ^[1]	<u>Disbursement or Expenditure</u>	<u>Balance at Beginning of Bond Year</u>	<u>Balance at End of Bond Year</u> ^[2]
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^[1] Deposits of funds and credit of investment earnings.

^[2] Not to exceed the greater of (1) earnings on such fund for immediately preceding bond year or (2) 1/12th of principal and interest payments on the Bonds for the immediately preceding bond year.

Reserve Fund or Account

Series of Bonds: Series _____

Date of Issue: _____

Fiscal Year: _____

<u>Date</u>	<u>Credit or Deposit</u> ^[1]	<u>Disbursement or Expenditure</u>	<u>Balance at Beginning of Fiscal Year</u>	<u>Balance at End of Fiscal Year</u>	<u>Permitted Maximum Amount for Reserve Fund</u> ^[2]
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^[1] Deposit of funds and credit of investment earnings

^[2] Not to exceed the lesser of the following, determined in accordance with the Code: (1) 10% of stated principal amount of Bonds, or (2) maximum annual principal and interest requirements on the Bonds, or (3) 125% of the average annual principal and interest requirements on the Bonds.

Exhibit D

Form of Requisition

REQUISITION NO. _____

TO: _____ AS CUSTODIAN AND DISBURSING AGENT FOR THE CITY OF
FOLEY _____ WARRANT PROCEEDS ACCOUNT

You are hereby authorized and directed to make the following payment(s) from the above
referenced Warrant Proceeds Account:

Name & Address Of Payee	Amount of Payment	Purpose of Payment
City of Foley PO Box 1750 Foley, AL 36536	\$	Reimburse expenditures....

CITY OF FOLEY, ALABAMA

By: _____
Duly Authorized Officer

Date: _____

Via facsimile to _____
Via USPS to: _____

Certificate of Publication

I, the undersigned City Clerk /Treasurer of the City of Foley, Alabama, hereby certify that the above and foregoing ordinance was published by me by publication in the _____, a newspaper published and of general circulation in the City of Foley, Alabama, in the issue thereof published on _____.

In Witness Whereof, I have hereunto set my hand and affixed the seal of the City of Foley, Alabama.

City Clerk

S E A L

It was moved by Councilmember _____ that all rules and regulations which, unless suspended, would prevent the immediate consideration and adoption of the said ordinance be suspended and that unanimous consent to the immediate consideration and adoption of the said ordinance be given. The motion was seconded by Councilmember _____ and on roll call was unanimously adopted, those answering aye being:

Ayes: J. Wayne Trawick
Ralph G. Hellmich
Charles J. Ebert III
Vera J. Quaite
Rick Blackwell

Nays: None

The President declared the motion unanimously carried.

After said ordinance had been discussed and considered in full by the Council, it was moved by Councilmember _____ that said ordinance be now placed upon its final passage and adopted. The motion was seconded by Councilmember _____. The question being put as to the adoption of said motion and the final passage and adoption of said ordinance, the roll was called with the following results:

Ayes: J. Wayne Trawick
Ralph G. Hellmich
Charles J. Ebert III
Vera J. Quaite
Rick Blackwell

Nays: None

The President thereupon declared said motion carried and the ordinance passed and adopted as introduced and read.

* * * *

There being no further business to come before the meeting, it was moved and seconded that the meeting be adjourned. Motion carried.

Minutes approved:

President

Member of the City Council

Member of the City Council

Member of the City Council

Member of the City Council

S E A L

Attest:_____
City Clerk

STATE OF ALABAMA)
BALDWIN COUNTY)

CERTIFICATE OF TOWN CLERK

I, the undersigned, do hereby certify that (1) I am the duly elected, qualified and acting City Clerk of the City of Foley, Alabama (the "Municipality"); (2) as Clerk of the Municipality I have access to all original records of the Municipality and I am duly authorized to make certified copies of its records on its behalf; (3) the above and foregoing pages constitute a complete, verbatim and compared copy of excerpts from the minutes of a regular meeting of the City Council of the Municipality duly held on December 17, 2012, the original of which is on file and of record in the minute book of the City Council in my custody; (4) the ordinance set forth in such excerpts is a complete, verbatim and compared copy of such ordinance as introduced and adopted by the City Council on such date; and (5) said ordinance is in full force and effect and has not been repealed, amended or changed.

IN WITNESS WHEREOF, I have hereunto set my hand as Clerk of the Municipality and have affixed the official seal of the Municipality, this ____ day of December, 2012.

Clerk of the City of Foley, Alabama

S E A L