

February 18, 2015

To: Mayor Bemrich and City Council
From: David Fierke, City Manager
Subject: Facility Revenue Bonds - Marion Home



ACTION: Setting Public Hearing for March 23, 2015

Brief History

The Marion Home is planning an expansion / remodel to their facility. As a not-for profit, the City can serve as a conduit for their bonds so they can enjoy income tax exemption status like a city. Jeff Nemmers and I have been in discussions with our bond counsel at Dorsey and Whitney about the Marion Home Bonds.

Analysis of Issue

As a conduit, the City's credit is not at risk, nor is this debt counted against the City's limit. The debt is counted against the City's \$10M bank qualified threshold for 2015, but we are not planning any additional public debt in 2015, only an SRF loan. Please see attached letter from John Danos explaining the process. And impact to the City.

BUDGET IMPACT

There is no impact on operations budgets.

Alternatives and Staff Conclusions

Staff recommends starting the hearing process .

Implementation

This process will contain many steps like a traditional offering of the City.

Signed

A handwritten signature in blue ink, appearing to read "David Fierke", is written over a horizontal line.

David Fierke
City Manager

February 17, 2015

Honorable Mayor and
Members of the City Council
819 1st Avenue S
Fort Dodge, Iowa

Re: City of Fort Dodge, Iowa
Facility Revenue Bond
(The Marian Home Project), Series 2015

Dear Mayor and Members of the City Council:

The purpose of this letter is to outline the authority, constitutional debt provisions and procedures for consideration with respect to the issuance of revenue bonds on behalf of The Marian Home, Fort Dodge, Iowa (the "Borrower") by the City of Fort Dodge, Iowa (the "City").

The Borrower proposes to issue \$5,500,000 in revenue debt to provide for the acquisition, construction, improving, equipping and furnishing of a nursing care facility of the Borrower located at 2400 6th Avenue North, Fort Dodge, Iowa. The Borrower is a 501(c)(3) non-profit corporation.

Bonds issued under Chapter 419 of the Code of Iowa by cities and counties are common methods in the State of Iowa of obtaining federally tax-exempt financings for industrial manufacturing, solid waste disposal and non-profit entities. Because the interest on such bonds is exempt from federal income taxes, the Borrower is able to borrow money at a lower interest rate than a conventional financing would allow.

Authority of Municipalities to Issue Revenue Debt

The City is authorized pursuant to Chapter 419.2 of the Code of Iowa to issue revenue bonds for a project within, or within eight miles, of its corporate boundaries for the purpose of defraying the cost of any "project" as defined at Section 419.1(12) of the Code. The proceeds of the bonds resulting from the purchase of the bonds by bondholders are in turn loaned to the Borrower. These types of bonds are commonly referred to as "conduit" bonds because the City acts as a conduit between the purchasers of the bonds and the Borrower. The proceeds of the

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sale of the bonds are then loaned to the Borrower pursuant to a Loan Agreement pursuant to which the Borrower agrees to make payments pursuant to the Loan Agreement corresponding to the payments on the bonds.

Revenue Bonds Cannot be Constitutional Debt of the Issuing Municipality

The City is not liable for repaying the bonds and the bonds are payable only from the amounts paid by the Borrower under the Loan Agreement. In fact, bonds issued pursuant to Chapter 419 are statutorily prohibited from being debt of the City within any state constitutional provision. Chapter 419 of the Code provides statutory protection to the City in Section 419.3, which reads:

“The principal of and interest on such bonds shall be payable solely out of the revenues derived from the project to be financed by the bonds... bonds... issued under authority of this chapter shall never constitute an indebtedness of the municipality, within the meaning of any state constitutional provision or statutory limitation, and shall not constitute nor give rise to a pecuniary liability of the municipality or a charge against its general credit or taxing powers. Such limitation shall be plainly stated on the face of each such bond.”

The documents providing for the loan from the City to the Borrower, the bond itself, and the authorizing proceedings for the bonds will clearly state the language of Chapter 419.3 in order that the Bank remains on notice that the bonds shall not constitute debt of the City.

Bank-Qualification

The City will also be asked to designate the bonds as bank-qualified. Section 265 of the Internal Revenue Code provides a governmental issuer may issue up to \$10,000,000 each per calendar year. It is our understanding the City has not issued and does not anticipate issuing indebtedness this calendar year. To the extent this is not correct consideration should be given to the amount of indebtedness the City would issue in calendar year 2015.

Procedures for Issuing Revenue Debt Pursuant to Chapter 419

The resolution to be considered by the City Council at a meeting in February would set forth the intent to publish a notice and set a public hearing date on the proposal to issue the bonds. The notice of the public hearing would be published at least once not less than fifteen (15) days prior to the date of the public hearing as set forth in Section 419.9 of the Code of Iowa. A

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subsequent meeting of the City Council to be held in March would provide for considering action to hold the hearing, consider the adoption of a resolution authorizing the issuance of the bonds and authorizing the Mayor and the City Clerk to execute a loan agreement, offering documents, bonds, and closing certificates. Shortly after the City Council takes action to authorize the issuance of the bonds, documents will be signed by the parties to the transaction, including the City and the Borrower and the bonds will be issued.

Our Role as Bond Counsel

Acting as Bond Counsel, our office will review each of the documents and proceedings necessary to close the transaction in order to ensure compliance with the necessary state and federal legal requirements. On the day of closing and issuance of the Bonds we will issue our opinion that all steps required to issue the Bonds have been completed and confirming that the Bonds are not a constitutional debt of the City.

I hope this information will be useful to you as the City Council proceeds with this matter and I look forward to answering any questions.

If you have any further questions in the interim, or if there is anything further I can provide to be of assistance, please do not hesitate to contact me.

Very truly yours,



John P. Danos

Memorandum of Agreement and Setting
Date for Hearing

Fort Dodge, Iowa

February 23, 2015

The City Council of the City of Fort Dodge, Iowa, met in regular session on February 23, 2015 at _____ o'clock, p.m., at City Hall, Fort Dodge, Iowa. The meeting was called to order and there were present the Mayor and the following members of the Council were present and absent:

Present: _____

Absent: _____

Matters were discussed relative to a financing for The Marian Home, Fort Dodge, Iowa pursuant to Chapter 419 of the Code of Iowa, 2015, as amended. Whereupon, Council Member _____ introduced the following resolution and moved its adoption, seconded by Council Member _____; and after due consideration thereof by the City Council, the Mayor put the question upon the motion and the roll being called, the following named members of the City Council voted:

Ayes: _____

Nays: _____

Whereupon, the Mayor declared the said motion duly carried and the resolution adopted as follows:

RESOLUTION NO. _____

Resolution authorizing the execution of a Memorandum of Agreement with The Marian Home, Fort Dodge, Iowa and fixing a date for a hearing on the proposed issuance of Facility Revenue Bonds (The Marian Home), Series 2015

WHEREAS, the City of Fort Dodge, Iowa (the “Issuer”), is a City authorized and empowered by the provisions of Chapter 419 of the Code of Iowa, 2015, as amended (the “Act”), to issue revenue bonds for the purpose of constructing a facility for an organization described in Section 501(c)(3) of the Internal Revenue Code (the “Code”) which is exempt from federal income tax under Section 501(a) of the Code (a “Tax Exempt Organization”) and located within, or within eight miles of, the Issuer; and

WHEREAS, the Issuer has been requested by The Marian Home, Fort Dodge, Iowa (the “Borrower”), a Tax Exempt Organization, to issue its Facility Revenue Bonds (The Marian Home), Series 2015 in an aggregate principal amount not to exceed \$5,500,000 (the “Bonds”) pursuant to the Act for the purpose of financing the acquisition, construction, improving, equipping and furnishing of a nursing care facility of the Borrower located at 2400 6th Avenue North, Fort Dodge, Iowa (the “Project”) and paying for costs of issuance and certain other costs associated with the issuance of the Bonds; and

WHEREAS, it is proposed to finance the foregoing through the issuance of the Bonds and to loan the proceeds from the sale of the Bonds to the Borrower under a Loan Agreement between the Issuer and the Borrower, the obligations of which will be sufficient to pay the principal of, premium, if any, and interest on the Bonds as and when the same shall be due and payable; and

WHEREAS, the Bonds, if issued, shall be limited obligations of the Issuer, and shall not constitute nor give rise to a pecuniary liability of the Issuer or a charge against its general credit or taxing powers, and the principal of, interest and premium, if any, on the Bonds shall be payable solely out of the revenues derived from the Loan Agreement; and

WHEREAS, before the Bonds may be issued, it is necessary to conduct a public hearing on the proposal to issue the Bonds, all as required and provided for by Section 419.9 of the Act and Section 147(f) of the Internal Revenue Code; and

WHEREAS, a Memorandum of Agreement in the form and with the contents set forth in Exhibit A attached hereto, has been presented to the Issuer which sets forth certain mutual undertakings and agreements between the Issuer and the Borrower, relating to the further processing of said Bonds; and

WHEREAS, the Internal Revenue Service has issued Section 1.150-2 of the Income Tax Regulations (the “Regulations”) dealing with the issuance of the Bonds, all or a portion of the proceeds of which are to be used to reimburse the Borrower for Project expenditures made by the Borrower prior to the date of issuance of the Bonds which were not included in the expenditures for the portion of the Project financed with the proceeds of the Bonds, and the Regulations generally require that the Borrower or Issuer make a prior declaration of official intent in order

for the Borrower to reimburse itself for such prior expenditures out of the proceeds of the Bonds and that the Bonds be issued and the reimbursement allocation be made from the proceeds of the Bonds within a certain period after the payment of the expenditure or the date the Project is placed in service; and

WHEREAS, the Issuer desires to comply with requirements of the Regulations with respect to the Project and the Bonds;

NOW, THEREFORE, IT IS RESOLVED by the City Council of the Issuer, as follows:

1. The Memorandum of Agreement in the form and with the contents set forth in Exhibit A attached hereto is hereby approved, and the Mayor is hereby authorized to execute said Memorandum of Agreement and the City Clerk is hereby authorized to attest the same and to affix the seal of the Issuer thereto; said Memorandum of Agreement, which constitutes and is hereby made a part of this Resolution, to be in substantially the form, text and containing the provisions set forth in Exhibit A attached hereto.

2. Officials of the Issuer are hereby authorized to take such further action as may be necessary to carry out the intent and purpose of the Memorandum of Agreement.

3. This City Council shall meet on March 23, 2015 at 819 1st Avenue S, Fort Dodge, Iowa, at _____ o'clock p.m., at which time and place any resident or property owner of the Issuer may present oral or written objections on the proposal to issue the Bonds referred to in the preamble hereof.

4. The notice of intention to issue the Bonds is confirmed, setting forth the amount and purpose thereof, the time when and place where the hearing will be held, by publication at least once not less than fifteen (15) days prior to the date fixed for the hearing, in a newspaper published and having a general circulation within the Issuer. The notice shall be in substantially the following form:

**NOTICE OF INTENTION TO ISSUE FACILITY REVENUE BONDS
(THE MARIAN HOME), SERIES 2015**

The City Council of the City of Fort Dodge, Iowa, (the “Issuer”) will meet on March 23, 2015, at _____ o’clock p.m., at City Hall, 819 1st Avenue S, Fort Dodge, Iowa, for the purpose of conducting a hearing on the proposal to issue Facility Revenue Bonds (The Marian Home), Series 2015, of the Issuer, in an aggregate principal amount not to exceed \$5,500,000 (the “Bond”) and to loan said amount to The Marian Home, Fort Dodge, Iowa (the “Borrower”) for the purpose of financing the acquisition, construction, improving, equipping and furnishing of a nursing care facility of the Borrower located at 2400 6th Avenue North, Fort Dodge, Iowa (the “Project”) and paying for costs of issuance and certain other costs associated with the issuance of the Bonds. The Borrower will own and operate the Project.

The Bonds, when issued, will be a limited obligation and will not constitute general obligations of the Issuer nor will it be payable in any manner by taxation, but the Bonds will be payable solely and only from amounts received by the Issuer under a Loan Agreement between the Issuer and the Borrower, the obligations of which will be sufficient to pay the principal of and interest and redemption premium, if any, on the Bond as and when the same shall become due.

At the time and place fixed for the hearing, individuals who appear will be given an opportunity to express their views for or against the proposal to issue the Bond for the purpose of financing the Project. Written comments may also be submitted to the Issuer at the City of Fort Dodge, Iowa, City Hall, 819 1st Avenue S, Fort Dodge, Iowa, 50501. Written comments must be received by the above hearing date.

By order of the City Council of the City of Fort Dodge, Iowa.

Jeff Nemmers
City Clerk

5. On the basis of representations of the Borrower, the Issuer declares (a) that the Borrower intends to undertake the Project; (b) that other than (i) expenditures to be paid or reimbursed from sources other than the Bonds, or (ii) expenditures made not earlier than 60 days prior to the date of this Resolution, or (iii) expenditures amounting to the lesser of \$100,000 or 5% of the proceeds of the Bonds, or (iv) expenditures constituting preliminary expenditures as defined in Section 1.150-2(f)(2) of the Regulations, no expenditures for the Project have heretofore been made by the Borrower and no expenditures will be made by the Borrower until after the date of this Resolution and (c) that the Borrower reasonably expects to reimburse the expenditures made for costs of the Project out of the proceeds of the Bonds. This declaration is a declaration of official intent adopted pursuant to Section 1.150-2 of the Regulations.

6. All resolutions and parts thereof in conflict herewith are hereby repealed to the extent of such conflict.

Passed and approved February 23, 2015.

Mayor

Attest:

City Clerk

On motion and vote, the meeting adjourned.

Mayor

Attest:

City Clerk

STATE OF IOWA
COUNTY OF WEBSTER
CITY OF FORT DODGE

SS:

I, the undersigned, do hereby certify that I am the duly elected, qualified and acting City Clerk of the aforementioned City and that as such I have in my possession or have access to the complete official records of said City and of the City Council and officers; and that I have carefully compared the transcript hereto attached with the aforesaid official records and that said transcript hereto attached is a true, correct and complete copy of all of the official records showing the action taken by the City Council of said City to authorize the execution of a Memorandum of Agreement by and between The Marian Home, Fort Dodge, Iowa and said City and to set a public hearing date as set forth therein.

WITNESS my hand and the seal of said City hereto affixed this _____ day of _____, 2015.

City Clerk

(Seal)

STATE OF IOWA
COUNTY OF WEBSTER SS:
CITY OF FORT DODGE

I, the undersigned, City Clerk of the aforementioned City, do hereby certify that I caused a notice of which the printed slip annexed to the publisher's affidavit hereto attached, is a true and complete copy, to be published in _____ a legal newspaper, printed wholly in the English language, published in said City and of general circulation in such City as evidenced by the said affidavit.

WITNESS my hand and the seal of the aforementioned City hereto affixed this _____ day of _____, 2015.

City Clerk

(Seal)

(PLEASE NOTE: THIS CERTIFICATE MUST BE DATED AS OF OR SUBSEQUENT TO THE ACTUAL DATE OF PUBLICATION OF THE NOTICE.)

EXHIBIT A
MEMORANDUM OF AGREEMENT

THIS MEMORANDUM OF AGREEMENT is between the City of Fort Dodge, Iowa, (the “Issuer”) and The Marian Home, Fort Dodge, Iowa. (the “Borrower”).

1. Preliminary Statement. Among the matters of mutual inducement which have resulted in the execution of this Agreement are the following:

The Issuer is authorized by Chapter 419 of the Code of Iowa, 2015, as amended (the “Act”) to issue revenue bonds for the purpose of constructing a facility for an organization described in Section 501(c)(3) of the Internal Revenue Code (the “Code”) which is exempt from federal income tax under Section 501(a) of the Code (a “Tax Exempt Organization”); and

The Borrower wishes to obtain approvals from the Issuer that the Issuer will hold a hearing and may take steps to issue Facility Revenue Bonds (The Marian Home), Series 2015 (the “Bonds”) to finance the acquisition, construction, improving, equipping and furnishing of a nursing care facility of the Borrower located at 2400 6th Avenue North, Fort Dodge, Iowa (the “Project”) and paying for costs of issuance and certain other costs associated with the issuance of the Bonds.

2. Undertakings on the Part of the Issuer.

(a) The Issuer, when appropriate, will adopt the proceedings necessary to authorize the issuance of such Bonds, in an aggregate principal amount not to exceed \$5,500,000.

(b) Subject to due compliance with all requirements of law and the terms of this Agreement, including the provisions of and the public hearing required by the Act, it will cooperate with the Borrower in the issuance and sale of such Bonds, and the proceeds from the issuance of such Bonds shall be loaned to the Borrower for the purpose of financing the Project.

(c) The Issuer shall determine when, in what amount, and if the Bonds may be issued without causing the Issuer to lose its qualification as a “qualified small issuer” within the meaning of Section 265(b)(3)(C) of the Code.

3. Undertakings on the Part of the Borrower.

(a) It will use all reasonable efforts to cooperate with the Issuer and comply with the Act and all other provisions of law relating to financing of the Project and the issuance and sale of such Bonds.

(b) It will enter into a Loan Agreement with the Issuer under the terms of which the Borrower will obligate itself to pay to the Issuer sums sufficient to pay the principal of and interest and redemption premium, if any, on such Bonds as and when the same shall become due and payable.

4. General Provisions.

(a) All commitments on the part of the Issuer and the Borrower herein are subject to the condition that on or before one year from the date hereof (or such other date as shall be mutually agreed to) the Issuer and the Borrower shall have agreed to mutually acceptable terms relating to the issuance and sale of such Bonds, and mutually acceptable terms and conditions of the documents referred to in paragraph 3 and the proceedings referred to in paragraphs 2 and 3 hereof.

(b) Whether or not the events set forth in (a) of this paragraph take place within the time set forth or any extension thereof, the Borrower agrees (i) to pay all applicable deposits and review fees required by the Issuer at the times and in the amounts requested and (ii) to reimburse the Issuer for all reasonable and necessary direct out-of-pocket expenses which the Issuer may incur, including but not limited to, legal fees, administrative costs, printing and publication costs and filing fees arising from the execution of this Agreement and the performance by the Issuer, or preparation to perform its obligations hereunder, or done at the request of the Borrower.

(c) All commitments of the Issuer hereunder are further subject to the conditions that the Issuer shall in no event incur any liability for any act or omission hereunder, and that such Bonds described herein shall not constitute an indebtedness of the Issuer within the meaning of any constitutional or statutory provision and shall not constitute nor give rise to a pecuniary liability of the Issuer or a charge against its general credit or taxing powers.

(d) The execution of this Memorandum of Agreement by the Issuer is not intended to, nor does it, create a binding commitment on the part of the Issuer to proceed with the issuance of the Bonds. It is further understood that the issuance of the Bonds is subject to further review by the City Council of the Issuer and compliance with all provisions of the Act and the Code, including the holding of a public hearing with respect thereto.

(e) The Borrower represents that the information contained in Section 5 of the resolution of the Issuer approving this Memorandum of Agreement has been provided to the Issuer by the Borrower and is true and correct.

(f) Preparation of all resolutions, agreements, instruments, certificates or other documents in final form for adoption and execution shall be the sole responsibility of Bond Counsel.

(g) Counsel for the Issuer shall timely certify the non-existence of threatened litigation, pending litigation or claims with respect to the proposed Bond issue. All other attorneys' opinions or certificates with respect to issuing authority, non-arbitrage, regularity of proceedings, or otherwise shall be the responsibility of Borrower Counsel or Bond Counsel.

(h) In the event Sections 145 and 146 of the Code, restrict the aggregate principal amount of Bonds for Tax-Exempt Organizations which the Issuer may issue in any calendar year, the Issuer may, in its discretion, rescind its commitments under Paragraph 2 hereof, without liability on the part of the Issuer.

(i) All commitments of the Issuer hereunder are further subject to the condition that the Bonds will only be issued if the Issuer determines, as described in Section 2(c), that such issuance will not cause the Issuer to lose its qualification as a “qualified small issuer” in any year.

Dated this ____ day of _____, 2015.

CITY OF FORT DODGE, IOWA

By _____
Mayor

Attest:

By: _____
City Clerk

(Seal)

THE MARIAN HOME, FORT DODGE, IOWA

By _____