

## TITLE 2 - RULES OF PROCEDURE

### CHAPTER 2-8 SALE OF TRIBAL BONDS

#### 2-8-1 Authority and Purpose

(a) The authority for this Code is found in the Constitution of the Confederated Tribes of Coos, Lower Umpqua and Siuslaw Indians (Tribes) under Article I - Section 1 and Article VI - Section 2.

(b) The purpose of this Code is to establish procedures to enable the Tribal Council, as the governing body of the Tribes, to issue bonds or incur other obligations from federal and nonfederal sources under Article VI - Section 2, of the Constitution of the Tribes for public purposes (Tribal Projects).

#### 2-8-2 Definitions

Unless defined elsewhere in this Code or the context clearly requires otherwise, the definitions in this Section apply through this Code.

(a) Bond - a Full-Faith and Credit Bond, a Revenue Bond or other Obligations.

(b) Credit Enhancement Device - a letter of credit, bond insurance policy, surety bond or other device or facility used to enhance the creditworthiness or marketability of any Bonds.

(c) Full-Faith and Credit Bond - an obligation, including without limitation, a bond, a lease-purchase obligation, a line of credit or a bond anticipation Note, which is (i) incurred or issued to finance a Tribal Project and (ii) specifically designated by the Tribal Council as a Full-Faith and Credit obligation payable from taxes, if any, which may be levied or from the general revenues of the Tribes.

(d) Note - a note Obligation issued in anticipation of bonds, Revenues, taxes, grants or other sources of repayment.

(e) Obligation - an agreement that evidences an indebtedness of the Tribes, other than a Full-Faith and Credit Bond or a Revenue Bond, and includes, but is not limited to, conditional sales contracts, loan agreements, letters or line of credit, lease obligations and Notes.

(f) Revenues - with respect to the issuance of Revenue Bonds, all fees, tolls, excise taxes, assessments, property taxes and all other taxes of whatever kind or nature, rates, charges, loan agreements, rentals and all other income and receipts of whatever kind or character derived by or to which a tribal body is entitled from the operation, sale or use of facilities, projects, utilities or systems owned or operated by or on behalf of the

Tribes or a tribal enterprise and other revenues legally available to be pledged to secure Revenue Bonds.

(g) Revenue Bonds - Bonds or revenue anticipation Notes issued for any public purpose, which are secured by Revenues pledged for such public purposes.

(h) Tribal Enterprise - an enterprise of the Tribes duly established pursuant to the Constitution of the Tribes.

(i) Tribal Project - any project or projects of the Tribes or any Tribal Enterprise to be financed in whole or in part with the proceeds of bonds issued for a public purpose. Tribal Project shall also include the financing of any cash-flow needs or deficits of the Tribes or a Tribal Enterprise.

### 2-8-3 Interpretation of Constitution

Tribal Council, for purposes of this Code only, is the ultimate arbiter of the meaning of the constitution and the tribal laws, and any meaning that the Tribal Council may assign to a constitutional provision or to a tribal law by resolution shall be final and binding on the Tribes. When any party in entering into a contract or other transaction pertaining to the issuance of Bonds shall have relied on such meaning as expressed by ordinance or resolution of the Tribal Council, such meaning becomes a part of such contract or transaction and shall not thereafter be revoked or modified to the prejudice of such party.

### 2-8-4 Authority to Issue Waiver of Sovereign Immunity for Certain Purposes

The Tribal Council of the Tribes, on behalf of the Tribes, is hereby authorized to waive the sovereign immunity of the Tribes, its officers, members and staff, for the limited purpose of providing for the sale, issuance and security for the Bonds, but any such waiver may only be made by a duly authorized resolution of the Tribal Council.

### 2-8-5 Authority to Issue Bonds

(a) The Tribal Council shall provide by resolution for the issuance of bonds for payment of all or any portion of the cost and expense of any Tribal Project at Tribal Council's discretion. Said resolution will state the maximum aggregate principal amount of the Bond issue.

(b) The resolution shall describe the Tribal Project for which Bonds are to be issued. The Tribal Council or its authorized officer may determine certain particular terms and conditions of any borrowing or issuance of Bonds for an approved Tribal Project pursuant to Section 2-8-2(h) of this Code, subject to any restrictions contained in such resolution.

#### 2-8-6 Authority to Establish Letters or Lines of Credit

The Tribal Council, on behalf of the Tribes, may establish letters or lines of credit with any national bank, association or state chartered bank to be drawn upon in exchange for its Bonds, to delegate to its Chairperson or other officer specified by resolution the authority to determine the amount of credit extended and to pay interest and other finance or service charges. The interest rates on such Bonds may be a fixed rate or rates set periodically, or a variable rate or flexible rates determined by agreement of the parties.

#### 2-8-7 Authority to Secure Interim Financing

(a) Bonds or Notes authorized under this Code which are issued in anticipation of taxes or other Revenues, and any Bonds or Notes which are issued to refund such Bonds or Notes, shall not be issued prior to the beginning of, and shall mature not later than, the end of the fiscal year in which the taxes or other Revenues are expected to be received. Bonds or Notes issued in anticipation of taxes or other Revenues shall not be issued in an amount greater than one hundred percent (100%) of the amount budgeted to be received in the fiscal year in which the Bonds or Notes are issued.

(b) Bonds which are issued in anticipation of a grant will mature not later than one (1) year after the date the grant is estimated to be received. Bonds issued to provide interim financing for capital assets shall mature not later than one (1) year from the estimated date of completion or acquisition of the capital assets. Bonds issued to provide permanent or long-term financing for capital assets or a Tribal Project are not subject to the maturity limitations stated in this Section.

(c) Except as provided in this Section, bonds authorized pursuant to this Code may be in any form and contain any terms, including provisions for redemption at the option of the owner and provisions for the varying of interest rates in accordance with any index, banker's loan rate or other standard.

#### 2-8-8 Security

Absent a resolution requiring otherwise, the Tribal Council may pledge as security for bonds or Credit Enhancement Devices authorized pursuant to this Code, the Tribes' powers to take the following actions:

(a) Cause appropriations or pledges from anticipated taxes, grants, other revenues, loan repayments, the proceeds of any Bonds or other permanent financing or any combination thereof;

(b) Segregate any pledged funds into separate accounts which may be held by the Tribes or any third party trustee designated by resolution of the Tribal Council;

- (c) Enter into contracts to obtain Credit Enhancement Devices or other financial commitments designated to provide additional security for Bonds authorized for Tribal Projects;
- (d) Establish any reserves deemed necessary for the payment of the Bonds;
- (e) Adopt resolutions and enter into agreements containing covenants and provisions for protection and security of the owners of Bonds, which shall constitute enforceable contracts with such owners;
- (f) For Full-Faith and Credit Bonds and any Credit Enhancement Devices securing such Full-Faith and Credit Bonds, pledge, restrict and encumber the general revenues of the Tribes, including the Tribes' general revenue-raising and taxing powers, if any, to produce sufficient funds to pay debt service on the Full-Faith and Credit Bonds and on any reimbursement obligation on the Credit Enhancement Devices all in accordance with their terms; and
- (g) The Tribal Council may obtain a Credit Enhancement Device for Bonds.

#### 2-8-9 Amount, Terms, Conditions, Interest, Etc., of Bonds

The Tribal Council may by resolution delegate to the Chairperson or other officer of the Tribal Council, its authority to determine the interest rate or rates applicable to any Bonds issued to finance a Tribal Project. The Tribal Council may also delegate to the Chairperson or other officer of the Tribal Council its authority to determine an amortization schedule for the Bonds, provided that the maximum term does not exceed forty (40) years. Except as provided in this Code, the Chairperson or the Delegates of the Tribal Council may act on behalf of the Tribal Council to perform any and all other necessary acts pertaining to the issuance of the bonds, including, without limitation, the determination of any conditions of the Bond issue, Bond denominations, redemption rights, registration privileges, manner of execution, price, manner of sale, covenants and form, including registration of principal and interest, registration of principal only, or bearer.

#### 2-8-10 Registration System and Appointment of Financial Institutions

- (a) The Tribal Council may establish a system of registering the ownership of its Bonds as to principal and interest or principal only. Registration may include, without limitation:
  - (1) a book-entry system of recording the ownership of a Bond whether or not a physical instrument is issued or
  - (2) recording the ownership of a Bond together with the requirement that the transfer of ownership may only be effected by the surrender of the old Bond and

either the reissuance of the old Bond or the issuance of a new Bond to the new owner.

(b) The system of registration shall define the method or methods by which transfer of the registered Bonds shall be effective, and by which payment of principal and any interest or redemption premium shall be made. The system of registration may permit the issuance of Bonds in any denomination to represent several registered Bonds of smaller denominations. The system of registration may also provide for any writing relating to a Bond that is not issued as a physical instrument, for identifying numbers or other designations, for a sufficient supply of certificates, for subsequent transfers, for record and payment dates, for varying denominations, for communications to the owners of Bonds, for accounting, canceled certificate destruction, registration and release of securing interests and for such other incidental matters pertaining to the registration of Bonds as the issuer may deem to be necessary or appropriate.

(c) The Tribal Council or its designee may appoint a national banking association or state chartered bank, maintaining a minimum capital surplus of fifty million dollars (\$50,000,000) together with its bank holding company or other affiliate banks (collectively the "Bank"), to act with respect to an issue of its Bonds as authenticating trustee, transfer agent, registrar and paying or other agent, and specify the rights and duties and means of compensation for the Bank. The Tribal Council or its designee may also enter into agreements with any such Bank in connection with the establishment and maintenance by the Bank of a nationally recognized central depository system for the transfer or pledge of Bonds.

(d) The Tribal Council may by resolution appoint the Treasurer of the Tribes, or any other fiscal agency, to serve as the fiscal agency. If the Tribal Council decides to use the services of a fiscal agency other than the Treasurer of the Tribes, the Tribal Council shall so notify the Treasurer of the Tribes at the time the decision is made. The authority granted by this Section 2-8-10(d) shall be in addition to, not in lieu of, the authority granted in Section 2-8-10(c) of this Code.

(e) Nothing in this Section 2-8-10 precludes the Tribes, the Tribal Council or a trustee appointed by the Tribal Council, pursuant to any other provision of law, from itself performing, either alone or jointly with other issuers, fiscal agencies or trustees, any transfer, registration, authentication, payment or other function described in this Section..

#### 2-8-11 Form and Content of Bonds

(a) Bonds shall be in such denominations as may be provided in the resolution authorizing their issue and shall be numbered in the manner provided by such resolution. Each Bond shall

(1) be signed by the Chairperson of the Tribal Council or his or her duly authorized designee,

(2) refer to the Tribal Project for which it is issued and the resolution ordering it,

(3) provide that the principal sum therein named and the interest thereon shall be, unless otherwise provided by the resolution authorizing the Tribal Project, payable out of the general revenues of the Tribes, or out of a source of security designated for the Bonds in the resolution of the Tribal Council authorizing such Bonds and

(4) be in any form, including bearer bonds or registered bonds as provided by the resolution authorizing the issuance of such Bonds.

(b) Any Bonds may be signed by the Chairperson of the Tribal Council or his or her duly authorized designee, or in lieu thereof, may have printed thereon a facsimile of his or her signature.

#### 2-8-12 Reproduction of Physical Instrument

When the Tribal Council issues Bonds as physical instruments, the Bonds shall be printed, engraved, lithographed, photocopied, typed or reproduced and the manual or facsimile signatures of the Chairperson of the Tribal Council or his or her duly authorized designee shall be included on each Bond.

#### 2-8-13 Payment of Costs of Issuance and Sale

The proceeds of any Bonds issued may be used to pay incidental costs and costs related to the sale and issuance of the Bonds. Such costs may include, but are not limited to, payments for fiscal agent, paying agent, trustee, escrow agent, registrar fees, legal and accounting expenses, bond rating, printing, engraving, advertising, credit enhancement fees, bond insurance premiums, underwriting costs and out-of-pocket expenditures of the Tribes relating to issuance of the Bonds. These costs shall also include the establishment and funding of reserve accounts and other accounts, any amount required for working capital, capitalized interest, necessary and related engineering, architectural, planning and inspection costs and other similar activities or purposes.

#### 2-8-14 Personal Liability

Neither the holder nor owner of any Bond shall have any claim (other than a writ of mandamus, injunction or other similar writ or proceeding) against any member of the Tribal Council or any officer, employee or agent of the Tribes, for personal, contractual or monetary liability on the Bond.

## 2-8-15 Revenue Bonds

(a) The Tribal Council shall provide by resolution for the issuance of Revenue Bonds for the payment of the whole or any portion of the cost and expense of any Tribal Project at the discretion of Tribal Council. Said resolution will determine the maximum amount of the Revenue Bond issue, which amount may equal, but may not exceed, the total amount specified in the tribal resolution authorizing the issuance of Revenue Bonds for the Tribal Project.

(b) The Tribal Council may pledge for the payment of Revenue Bonds issued in connection with a Tribal Project all or any portion of:

- (1) the Revenues of any revenue producing facility providing services related to the services financed by the Revenue Bonds,
- (2) the Revenues of a public utility or system or an addition or extension thereto,
- (3) all of any portion of the Revenues of the Tribes or
- (4) any other legally available moneys.

(c) If the Tribal Council determines that it is necessary to provide additional security for the Revenue Bonds, the Tribal Council may, to the extent permitted by law, mortgage, grant security interests in or otherwise encumber facilities, projects, utilities or systems owned or operated by the Tribes. Such security may be given in favor of the holders of the Revenue Bonds, a trustee, therefore, or as security for its obligations arising under any Credit Enhancement Device. The Tribal Council may obtain a Credit Enhancement Device for Revenue Bonds provided that such Credit Enhancement Device is payable solely from Revenues. The Tribal Council may loan the proceeds of any Revenue Bonds to any enterprise of the Tribes or to any member of the Tribes on the terms and conditions specified in a resolution of the Tribal Council.

(d) The substance of the limitations included in this subsection shall be plainly printed, written, engraved or reproduced on:

- (1) each Revenue Bond that is a physical instrument and
- (2) each official statement associated with the Revenue Bonds.

## 2-8-16 Dispute Resolution

(a) Unless otherwise provided by the terms of the specific Bond issue or Credit Enhancement Device, a party with a claim arising from the issuance of Bonds or Credit Enhancement Device under this Code shall first file a written petition with the Tribal Court for a hearing on the claim, which hearing shall be granted within ninety (90) days

of the filing of the petition. The hearing will be on the record and shall be transcribed verbatim. The petitioner shall pay the costs of transcription.

If the Tribal Council so provides in a duly authorized resolution, a party may seek arbitration of the dispute under Tribal law. For purposes of arbitration, the Tribal Council shall not raise a sovereign immunity defense in the Tribal Court, provided that agreement to arbitrate, shall be strictly construed and shall not be construed as an agreement not to assert any such immunity in any action brought or maintained in the courts of a State or in the federal courts.

(b) In connection with authorizing a specific Bond issue, the Tribal Council (by authorization of the terms and agreements pertaining to the Bond issue or otherwise) may provide for a dispute resolution system differing from that provided in subparagraph (a) above. Such other dispute resolution system may provide, among other things, for waiving the necessity of any proceedings before the Tribal Council or Tribal Courts, for other or greater waivers of sovereign immunity, for lesser or greater powers of the arbitrators than those stated for Tribal law and for state or federal court jurisdiction.

APPENDIX A  
LEGISLATIVE HISTORY AND EDITORIAL CHANGES

## SALE OF TRIBAL BONDS

### **LEGISLATIVE HISTORY AND EDITORIAL CHANGES**

The Tribal Council of the Confederated Tribes of Coos, Lower Umpqua and Siuslaw Indians enacted the amended Tribal Bonds, Resolution No. 06-105, Ordinance No. 038, in a special Tribal Council meeting held on August 23, 2006. Vote was 7 (for), 0 (against) and 0 (abstaining). Code was renumbered to Ordinance No. 038A. Amended were: (1) Tribal Council rather than the Tribal Court as the ultimate arbiter of the interpretation of the Constitution for purposes of this Chapter only (2-8-3); and (2) providing for state court dispute resolution (2-8-16(b))

The Tribal Council of the Confederated Tribes of Coos, Lower Umpqua and Siuslaw Indians enacted the "Sale of Tribal Bonds" Code, Resolution No. 02-011, Ordinance No. 038, in a regular Tribal Council meeting on January 13, 2002. Vote was 7 (for), 0 (against) and 0 (abstaining).