

**To:** President and Members of the Munster Town Council

**From:** David F. Shafer, Clerk-Treasurer *DFA*

**Copy to:** Dustin Anderson, Town Manager

**Date:** November 24, 2014

**Re:** Resolution 1995: Municipalities Continuing Disclosure Cooperation Initiative

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*TCRM 11/24/14*

Certain municipal bond issues are required to have a continuing disclosure undertaking agreement (CDUA) which requires annual reporting of certain financial and other material data which may influence potential investors during the life of the bond. Securities and Exchange Commission (SEC) Rule 15c2-12 addresses how these disclosures are made and how they need to be documented in official statements of subsequent bond issues.

Earlier this year, the SEC created the Municipalities Continuing Disclosure Cooperation initiative (MCDC) to bring bond issuers and underwriters into compliance with this rule. The initiative was created to encourage governmental issuers to self-report any time the unit did not make accurate disclosures.

The issue was brought to the Town's attention by Indiana Association of Cities and Towns in June and Staff has been working with the Town Attorney, financial advisor Umbaugh, bond counsel Barnes and Thornburg, and the Council President to determine the Town's exposure.

This is a complex matter with a number of legal issues at play. There are potential legal and financial ramifications for self-reporting or remaining silent. At the September 22, 2014 regular meeting, the Council discussed the issue and engaged Barnes and Thornburg, LLC to review and make a recommendation to the Town regarding how to proceed.

A self-report requires the issuer to complete a questionnaire listing any inaccurate disclosure over the past ten years and those involved in the bond issue. The consequences of self-reporting, if reviewed by the SEC, include improving the annual disclosure process of the unit and making a disclosure in all official statements over the next five years of the settlement agreement with the SEC. The consequences of not self-reporting, if reviewed by the SEC, include a potentially long and costly proceeding and financial sanctions against the unit.

Barnes and Thornburg completed their research and has recommended the Town self-report. Resolution 1995 has been drafted for this purpose. Mr. Feingold has reviewed the recommendation and the resolution. The deadline to self-report is Monday, December 1, 2014.

**Recommendation:**

By motion and roll-call vote, adopt Resolution 1995 as presented.

## **RESOLUTION 1995**

### **A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF MUNSTER, INDIANA, AUTHORIZING AND RATIFYING A REVIEW OF COMPLIANCE WITH CONTINUING DISCLOSURE UNDERTAKING AGREEMENTS AND AUTHORIZING PARTICIPATION IN THE MUNICIPALITIES CONTINUING DISCLOSURE COOPERATION INITIATIVE**

**WHEREAS**, pursuant to the provisions of Rule 15c2-12 of the Securities Exchange Act of 1934, as amended (the "Rule"), promulgated by the U.S. Securities and Exchange Commission (the "SEC"), any underwriter is generally prohibited from purchasing or selling municipal securities from an issuer of such securities, unless the issuer of such municipal securities has committed in a written contract or agreement to provide continuing disclosure regarding the municipal securities and the issuer, including the issuer's financial condition, certain operating data and notices of the occurrence of certain material events; and

**WHEREAS**, in accordance with the terms of the Rule, the Town of Munster, Indiana (the "Town"), has previously entered into certain continuing disclosure agreements in connection with certain of its prior bond issues (the "Prior Issues"), pursuant to which the Town agreed to file its audited financial statements, certain unaudited annual financial information, certain operating data and certain enumerated event notices with the former nationally recognized municipal securities information repositories or the Municipal Securities Rulemaking Board's Electronic Municipal Market Access System; and

**WHEREAS**, the Town made certain representations regarding its past compliance with existing continuing disclosure agreements in bond offering documents used in connection with its Prior Issues; and

**WHEREAS**, in response to concerns that many municipal issuers have not been complying with their obligations to file continuing disclosure documents under the Rule and have therefore made potentially inaccurate statements concerning past compliance with existing continuing disclosure obligations in bond offering documents, the Division of Enforcement (the "Division") of the SEC has established the Municipalities Continuing Disclosure Cooperation Initiative (the "MCDC Initiative"), which program is currently scheduled to expire at 5:00 p.m. EST on December 1, 2014, for the purpose of encouraging municipal issuers to self-report to the Division potentially inaccurate statements made in a bond offering document during the past five (5) years concerning prior compliance with continuing disclosure agreements entered into by an issuer pursuant to the Rule; and

**WHEREAS**, if an issuer takes advantage of the MCDC Initiative by self-reporting potentially inaccurate statements and if any such statements are determined by the Division to be materially inaccurate, the Division will recommend that the SEC accept a settlement pursuant to which (i) the issuer consents to a cease and desist order, (ii) the issuer neither admits nor denies the findings of the SEC, and (iii) there is no payment of any civil penalty by the issuer; and

**WHEREAS**, any such settlement will require an issuer to (i) establish policies and procedures and training regarding continuing disclosure obligations within 180 days, (ii) comply

with existing continuing disclosure undertakings, including updating past delinquent filings, within 180 days, (iii) cooperate with any subsequent investigation by the Division regarding the false statement(s), including the roles of individuals and/or other parties involved, (iv) disclose in a clear and conspicuous fashion the settlement terms in any final official statement for an offering by the issuer for a period of five (5) years, and (v) provide the SEC staff with a compliance certification regarding the applicable undertakings by the issuer on the one-year anniversary of the date of institution of the proceedings; and

**WHEREAS**, in the release establishing the MCDC Initiative, the Division has cautioned that if an issuer does not take advantage of the MCDC Initiative by self-reporting potentially inaccurate statements made in a bond offering document with respect to prior compliance with its continuing disclosure obligations and the Division later determines that such a materially inaccurate statement was made, then the Division will likely recommend and seek financial sanctions against the issuer;

**NOW, THEREFORE, BE IT RESOLVED** by the Town Council of the Town of Munster, Indiana, as follows:

SECTION 1. The Town, through its Clerk-Treasurer or a third-party selected by the Clerk-Treasurer, is hereby directed to conduct a review of its prior compliance with existing continuing disclosure undertakings (the "Review"). Such Review shall include, but is not limited to, a historical review of the Town's continuing disclosure obligations and filings and bond offering documents in connection with its Prior Issues that are within the timeframes contemplated by the MCDC Initiative.

SECTION 2. The Town is hereby authorized to participate in the MCDC Initiative if, in the discretion of the President of the Town Council and the Clerk-Treasurer, acting jointly and not in their individual capacity, after consultation with the Town's general counsel, bond counsel and financial advisor, the President of the Town Council and the Clerk-Treasurer determine that such participation is appropriate and in the best interests of the Town.

SECTION 3. The President of the Town Council, after consultation with the Clerk-Treasurer and the Town's general counsel, bond counsel and financial advisor, is hereby authorized to execute and deliver any and all documents and instruments, including the Municipalities Continuing Disclosure Cooperation Initiative Questionnaire for Self-Reporting Entities contained in the MCDC Initiative (the "Questionnaire"), and to do and cause to be done any and all acts and things necessary or proper for participating in the MCDC Initiative and all related transactions, including the Review, contemplated by this Resolution.

SECTION 4. Any action taken by the President of the Town Council, the Clerk-Treasurer or any other officer or employee of the Town with respect to the Review prior to the adoption of this Resolution, including the engagement of a third party to conduct the Review and participation in the MCDC Initiative, is hereby ratified, confirmed and approved.

SECTION 5. This Resolution shall be in full force and effect from and after its adoption by the Town Council.

**RESOLVED** and **ADOPTED** by the Town Council of the Town of Munster, Lake County, Indiana, this 24<sup>th</sup> day of November, 2014, by a vote of \_\_\_\_ in favor and \_\_\_\_ opposed.

**TOWN COUNCIL OF THE TOWN OF  
MUNSTER, LAKE COUNTY, INDIANA**

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John Reed, President

ATTEST:

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David F. Shafer, Clerk-Treasurer