

CITY OF SPOKANE DEPARTMENT POLICY AND PROCEDURE	DEPT 0410-15-01 LGL 2015-0014
TITLE: BOND POST ISSUANCE COMPLIANCE EFFECTIVE DATE: February 6, 2015 REVISION EFFECTIVE DATE: (N/A)	

1.0 GENERAL

1.1 PURPOSE

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2.0 DEPARTMENTS/DIVISIONS AFFECTED

This policy and procedure shall apply to the Finance/Accounting Departments.

3.0 REFERENCES

IRS Form 8038-G

4.0 DEFINITIONS

“Arbitrage” means (1) interest earned on the investment of the tax-exempt securities proceeds in other investments (including taxable or tax-exempt securities) in excess of the interest paid on the debt; or (2) interest earned on the investment of funds that tax-exempt securities were issued to replace in other investments (including taxable or tax-exempt securities) in excess of the interest paid on the debt.

“Code” means the Internal Revenue Code of 1986, as heretofore or hereafter amended, together with all corresponding and applicable final, temporary or proposed regulations and revenue rulings as issued or amended with respect

thereto by the United States Treasury Department or the Internal Revenue Service (the "IRS") to the extent applicable to the securities.

"De minimis" means such minimal amount determined to be too minor to be of legal impact as permitted under the Code.

"Rebate Monitor" means the Chief Financial Officer of the City or the successor to such position.

"Tax-exempt securities or governmental obligation" means bonds or other securities issued by the City on a federally tax-exempt basis.

5.0 POLICY

This policy is intended to guide the City in meeting its obligations under applicable statutes, regulations and documentation associated with publicly offered and privately placed securities of the City. This policy addresses obligations of the City that arise and will continue following the issuance of securities. These obligations may arise as a result of federal tax law (with respect to tax-exempt securities) and securities laws (with respect to ongoing disclosure) or as a result of contractual commitments made by the City. This policy outlines obligations that may be applicable to each issue of securities and identifies the party to be responsible for monitoring compliance. In the City, the Chief Financial Officer will be responsible for ensuring that the policy is followed and checklists and records maintained. The Chief Financial Officer may delegate responsibility to employees and outside agents for developing records or maintaining records and checklists. The City will provide training opportunities to attend educational programs/seminars on the topic for the parties identified in this policy with responsibilities for post-issuance compliance in order to facilitate their performance of these obligations.

6.0 PROCEDURE

6.1 Transcripts

6.1.1 The City's bond counsel shall provide the City with four copies of a full transcript related to the issuance of securities (for each issue). The transcript shall be delivered in the following form: two bound paper copies and two CD ROMs and transcripts shall be delivered to the City within six months following the date of issuance of securities. It is expected that the transcript will include a full record of the proceedings related to the issuance of securities, including proof of filing an IRS Form 8038-G or 8038-GC, if applicable.

6.1.2 Bond transcripts will be retained by the following parties and in the following locations within the City: Chief Financial Officer and City Clerk.

6.2 Federal Tax Law Requirements (Applicable only if the securities are issued as "tax-exempt" securities)

6.2.1 Use of Proceeds

- a. If the project(s) to be financed with the proceeds of the securities will be funded with multiple sources of funds, the City will adopt an accounting methodology that:
 - i. Maintains each source of funding separately and monitors the actual expenditure of proceeds of the securities;
 - ii. Commingles the proceeds and monitors the expenditures on a first in, first out basis; or
 - iii. Provides for the expenditure of funds received from multiple sources on a proportionate basis.
- b. Records of expenditures (timing of expenditure and object code) of the proceeds of securities will be maintained by the Chief Financial Officer.
- c. Records of investments and interest earnings on the proceeds of securities will be maintained by the Chief Financial Officer. Such records should include the amount of each investment, the date each investment is made, the date each investment matures and if sold prior to maturity, its sale date, and its interest rate and/or yield. Interest earnings on proceeds will be deposited in the fund in which the proceeds of the securities were deposited (if not, then the plan for use of interest earnings will be discussed with the City's bond counsel).
- d. Records of interest earnings on reserve funds maintained for the securities.

6.2.2 Arbitrage Rebate

- a. The Chief Financial Officer of the City ("Rebate Monitor") will monitor compliance with the arbitrage rebate obligations of the City for each issue ("issue") of securities which are described in further detail in the tax certificate if any,

executed by the City for each issue and included in the transcript for the issue. If the City did not execute a tax certificate in connection with an issue, the Rebate Monitor should consult with the City's bond counsel regarding arbitrage rebate requirements. The City will provide training opportunities to attend educational programs/seminars on the topic for the Chief Financial Officer or designee in order to facilitate his/her performance of these obligations.

- b. If the Rebate Monitor determines that the total principal amount of tax-exempt governmental obligations (including all tax-exempt leases, etc.) of the City issued by or on behalf of the City and subordinate entities during the calendar year, including the issue, will not be greater than \$5,000,000, the Rebate Monitor will not be required to monitor arbitrage rebate compliance for the issue, except to monitor expenditures and the use of proceeds after completion of the project (see Section 6.2.6). For purposes of this paragraph, tax-exempt governmental obligations issued to currently refund a prior tax-exempt governmental obligation will only be taken into account to the extent they exceed the outstanding amount of the refunded bonds.
- c. If the Rebate Monitor determines that the total principal amount of tax-exempt governmental obligations (including all tax-exempt leases, etc.) of the City issued or incurred any calendar year is greater than \$5,000,000, the Rebate Monitor will monitor rebate compliance for each issue of tax-exempt governmental obligations issued during that calendar year.

6.2.3 Rebate Exceptions

The Rebate Monitor will review the tax certificate, if any, in the transcript in order to determine whether the City is expected to comply with a spending exception that would permit the City to avoid having to pay arbitrage rebate. If the tax certificate identifies this spending exception (referred to as the six-month exception, the 18-month exception or the 2-year exception), then the Rebate Monitor will monitor the records of expenditures (see Section 6.2.1) to determine whether the City met the spending exception (and thereby avoid having to pay any arbitrage rebate to the federal government). If the City did not execute a tax certificate in connection with an issue, the Rebate Monitor should consult with bond counsel regarding the potential applicability of spending exceptions.

6.2.4 Rebate Compliance

If the City does not meet or does not expect to meet any of the spending exceptions described in Section 6.2.3, the City will:

- a. Review the investment earnings records retained as described in Section 6.2.1. If the investment earnings records clearly and definitively demonstrate that the rate of return on investments of all proceeds of the issue were lower than the yield on the issue (see the tax certificate in the transcript), then the City may opt not to follow the steps described in Section 6.2.4.b.
- b. Retain the services of an arbitrage rebate consultant in order to calculate any potential arbitrage rebate liability. The rebate consultant shall be selected no later than the completion of the project to be financed with the proceeds of the issue. A rebate consultant may be selected on an issue by issue basis or for all securities issues of the City. The Rebate Monitor will obtain the names of at least three qualified consultants and request that the consultants submit proposals for consideration prior to being selected as the City's rebate consultant. The selected rebate consultant shall provide a written report to the City with respect to the issue and with respect to any arbitrage rebate owed if any.
- c. Based on the report of the rebate consultant, file reports with and make any required payments to the IRS, no later than the fifth anniversary of the date of each issue (plus 60 days), and every five years thereafter, with the final installment due no later than 60 days following the retirement of the last obligation of the issue.

6.2.5 Yield Reduction Payments

If the City fails to expend all amounts required to be spent as of the close of any temporary period specified in the Tax Certificate (generally 3 years for proceeds of a new money issue and 13 months for amounts held in a debt service fund), the City will follow the procedures described in Section 6.2.4 to determine and pay any required yield reduction payment.

6.2.6 Unused Proceeds Following Completion of the Bond Project

Following completion of the project(s) financed with the issue proceeds, the Chief Financial Officer will:

- a. Review the expenditure records to determine whether the proceeds have been allocated to the project(s) intended (and if any questions arise, consult with bond counsel in order to determine the method of re-allocation of proceeds); and
- b. Direct the use of remaining unspent proceeds (in accordance with the limitations set forth in the authorizing proceedings (i.e., bond ordinance) and if no provision is otherwise made for the use of unspent proceeds, to the redemption or defeasance of outstanding securities of the issue.

6.2.7 Use of the Facilities Financed with Bond Proceeds

In order to maintain tax-exemption of securities issued on a tax-exempt basis, the financed facilities (projects) are required to be used for governmental purposes during the life of the issue. The Chief Financial Officer of the City will monitor and maintain records regarding any private use of the projects financed with tax-exempt proceeds. The IRS Treasury Regulations prohibit private business use (use by private parties (including nonprofit organizations and the federal government)) of tax-exempt financed facilities beyond permitted *de minimis* amounts under the Code unless cured by a prescribed remedial action. Private use may arise as a result of:

- a. Sale of the facilities;
- b. Lease of the facilities (including leases, easements or use arrangements for areas outside the four walls, e.g., hosting of cell phone towers);
- c. Management contracts (in which the City authorizes a third party to operate a facility (e.g., cafeteria);
- d. Preference arrangements (in which the City grants a third party preference of the facilities, e.g., preference parking in a public parking lot).

If the Chief Financial Officer identifies private use of tax-exempt debt financed facilities, the Chief Financial Officer will consult with the City's bond counsel to determine whether private use will adversely affect the tax-exempt status of the issue and if so, what remedial action is appropriate.

6.2.8 Records Retention

Records with respect to matters described in Section 6.2.8.a will be retained by the City for the life of the securities issue (and any issue that refunds the securities issue) and for a period of three years thereafter.

- a. Records to be Retained
 - i. The transcript;
 - ii. Arbitrage rebate reports prepared by outside consultants;
 - iii. Work papers that were provided to the rebate consultants;
 - iv. Records of expenditures and investment receipts (showing timing of expenditure and the object code of the expenditure and in the case of investment, timing of receipt of interest earnings). (Maintenance of underlying invoices should not be required provided the records include the date of the expenditure, payee name, payment amount and object code; however, if those documents are maintained as a matter of policy in electronic form, then the City should continue to maintain those records in accordance with this policy);
 - v. Copies of all certificates and returns filed with the IRS (e.g., for payment of arbitrage rebate); and
 - vi. Copies of all leases, user agreements for use of the financed property (agreements that provide for use of the property for periods longer than 30 days), whether or not the use was within the four walls (e.g., use of the roof of the facility for a cell phone tower).

6.2.9 On-Going Disclosure

Under the provisions of Securities and Exchange Commission Rule 15c2-12 (the "Rule"), underwriters are required to obtain an agreement for ongoing disclosure in connection with the public offering of securities. Unless the City is exempt from compliance with the Rule as a result of certain permitted exemptions, the transcript for each issue will include an undertaking by the City to comply with the Rule. The Chief Financial Officer of the City will

monitor compliance by the City with its undertakings. These undertakings may include the requirement for an annual filing of operating and financial information and will include a requirement to file notices of listed "material events." For some types of material events (early bond calls), the State's fiscal agent has undertaken the responsibility of filing notice of the applicable material event.

6.2.10 Other Notice Requirements

In some instances, the proceedings authorizing the issuance of securities will require the City to file information periodically with other parties, e.g., bond insurers, banks, rating agencies. The types of information required to be filed may include (1) budgets, (2) annual financial reports, (3) issuance of additional debt obligations, and (4) amendments to financing documents. The Chief Financial Officer of the City will maintain a listing of those requirements and monitor compliance by the City.

7.0 RESPONSIBILITIES

The Chief Financial Officer is responsible for administering this policy and procedure.

8.0 APPENDICES

APPROVED BY:



City Attorney, Assistant

2/04/15

Date



Chief Financial Officer

2/04/15

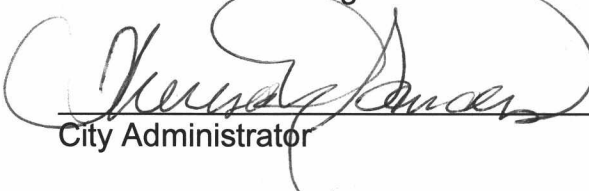
Date



Director - Accounting

02/04/15

Date



City Administrator

02/04/15

Date