

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MESQUITE, TEXAS, ADOPTING A DEBT CONTINUING DISCLOSURE AND POST ISSUANCE COMPLIANCE POLICY; AND DECLARING AN EFFECTIVE DATE THEREOF.

WHEREAS, the City Council of the City of Mesquite, Texas ("City Council"), recognizes that effective cash management is essential to good fiscal management; and

WHEREAS, the City Council realizes the need to adopt a Debt Continuing Disclosure and Post Issuance Compliance Policy for the City of Mesquite, Texas, to strengthen its financial operations.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF MESQUITE, TEXAS:

SECTION 1. That the City Council has reviewed the Debt Continuing Disclosure and Post Issuance Compliance Policy, attached hereto as Exhibit "A" and made a part hereof for all purposes, and hereby approves and adopts said policy as the official Debt Continuing Disclosure and Post Issuance Compliance Policy of the City of Mesquite, Texas.

SECTION 2. That this resolution and the aforementioned Debt Continuing Disclosure and Post Issuance Compliance Policy shall take effect immediately from and after the passage of this resolution.

DULY RESOLVED by the City Council of the City of Mesquite, Texas, on the 4th day of February 2019.

Stan Pickett
Mayor

ATTEST:

Sonja Land
City Secretary

APPROVED:



David L. Paschall
City Attorney



Financial Policy

Debt Continuing Disclosure and Post Issuance Compliance

City of Mesquite
Finance Department

Effective Date: _____

I. GENERAL

These Procedures for Post-Issuance Compliance (the “Procedures”) are for the purpose of maintaining and evidencing compliance with the federal tax requirements that apply to the bond financings of the City of Mesquite, Texas (the “City”). In furtherance of such purposes the City has adopted these Procedures with respect to the following:

- General Recordkeeping & Record Retention
- Timely return filings
- Proper and timely use of bond proceeds and proper use of bond-financed property
- Arbitrage - yield restriction and rebate
- Reissuance requirements
- Corrective Action

These Procedures apply to any obligations to which Sections 103 and 141 through 150 of the Internal Revenue Code of 1986 (the “Code”) are applicable, whether or not such obligations are in fact tax-exempt. For example, these Procedures will be followed with respect to any issue of tax credit bonds to which such sections of the Code apply. It is the intention of the City to modify or amend these Procedures in the future in order to comply with any requirements set forth in subsequent rulings and other advice published by the Internal Revenue Service (the “Service” or the “IRS”), as such authorities may apply to the City and its obligations.

II. RESPONSIBLE PARTIES

The City acknowledges that as the issuer of debt obligations subject to the Code, it is responsible for post-issuance compliance with respect to such debt obligations. The Director of Finance of the City has general oversight of the post-issuance compliance of bond financings. In addition, the following parties are responsible for the duties listed next to their title:

Director of Finance – oversees all financial functions of the City

Manager of Accounting – responsible for all accounting functions of the City

Manager of Budget & Financial Analysis – responsible for banking, cash management, investment, and certain debt administration activities of the City

Finance Administrative Aide – responsible for the cataloguing and storage of various financial records of the City

Parties responsible for the financing aspects and the operations aspects of bond-financed facilities will coordinate efforts to ensure that any actions taken with respect to a bond-financed facility will be in compliance with the requirements of the Code. The City will provide training and/or make available educational materials regarding compliance requirements (e.g., private use requirements) to the parties responsible for the oversight of bond-financed facilities.

III. GENERAL RECORDKEEPING & RECORD RETENTION

General record retention duties are the responsibility of the Director of Finance.

The Director of Finance will maintain a copy of the following documents on file at all times:

- Audited Financial Statements
- Reports of any examinations by the Internal Revenue Service of the City's financings

With respect to each issue of obligations, the Director of Finance will retain the following for the life of the obligations (including the life of any obligations issued to refund the original debt) plus three years:

- Bond transcript, including authorizing documents, offering document, the federal tax certificate and certificates regarding issue price
- Minutes and resolution(s) authorizing the issue
- Any formal elections (e.g., election to employ an accounting methodology other than specific tracing)
- Records relating to the payment of debt service (including credit enhancement)
- Documentation relating to investments and arbitrage compliance, as described in "Arbitrage – Yield Restriction and Rebate - Recordkeeping" below
- Documentary evidence of when and for what purpose the bond proceeds were expended, as described in "Expenditures of Bond Proceeds - Recordkeeping" below
- Any grant requests or fundraising materials and documentation of grants or fundraising receipts relating to projects that also may be financed, in whole or in part, with bond proceeds
- Any agreement of a type described in "Private Business Use – Special Legal Entitlements" that relates to a bond-financed facility
- Bond paying agent/trustee statements
- Rebate compliance reports
- Related IRS filings (e.g. Form 8038-T Rebate)
- IRS correspondence regarding such issue
- Other documentation (including written advice of Bond Counsel) material to the particular requirements that are applicable to the tax status of the financing

Documents may be retained as hard copies or in an electronic format (in accordance with Revenue Procedure Revenue Procedure 97-22, 1997-1 C.B. 652), so long as such documents are retained in organized, accessible format that preserves the accuracy of such documents.

IV. RETURN FILINGS

The Director of Finance will be responsible for the timely filing of the Form 8038-G information report (or such other series 8038 form as may be applicable to a specific issue of bonds) with the Service, which filing may be completed by bond counsel after the issuance of the obligations. The City must file a separate Form 8038-G for each issue of bonds not later than the 15th day of the second calendar month after the close of the calendar quarter in which the bonds are issued.

V. EXPENDITURE OF BOND PROCEEDS

General

The Director of Finance is responsible for oversight of the expenditure of bond proceeds, including monitoring whether such expenditures are made in a timely manner for the purposes for which the bonds were authorized in order to qualify for rebate exceptions set forth in the Code and Regulations and whether investments of unexpended Bond proceeds continue to qualify for temporary period exceptions to yield-restriction requirements. Bond Counsel may be consulted regarding allocation of expenditures between each Bond issue to ensure timely expenditure of Bond proceeds.

Additionally, the Director of Finance will monitor compliance with the requirement of the Regulations that proceeds of a bond issue are to be allocated to expenditures by the later of 18 months after the expenditure was made or the date the project is placed in service (and in no event, later than 60 days after (i) the fifth anniversary of the issue date or (ii) retirement of the issue).

With respect to the reimbursement of any expenditure paid prior to the date of issue of the bonds, the Director of Finance will monitor compliance with the requirement of the Regulations that such reimbursement allocation to bond proceeds is made not later than 18 months after the later of (i) the date the original expenditure is made or (ii) the date the project is placed in service, but in no event more than three years after the original expenditure is paid. Furthermore, the Director of Finance will monitor compliance with the requirement of the Regulations that such reimbursement allocation is for the reimbursement of expenditures paid on or after 60 days prior to the date of a reimbursement resolution (including for this purpose a bond order).

Recordkeeping

With respect to each issue of obligations, the City will retain the following for the life of the obligations plus three years:

- Documentation of allocation of bond proceeds to expenditures (e.g., allocation of bond proceeds for expenditures for the construction, renovation or purchase of facilities)
- Documentation of allocations of bond proceeds to bond issuance costs
- Copies of all requisitions, draw schedules, draw requests, invoices, bills, and cancelled checks related to bond proceeds spent during the construction period
- Copies of all contracts entered into for the construction, renovation or purchase of bond-financed facilities
- Records of expenditure reimbursements incurred prior to issuing bonds for bond-financed facilities
- List or schedule of all bond-financed facilities or equipment
- Depreciation schedules, if any, for bond-financed depreciable property
- Documentation of any purchase or sale of bond-financed assets

Documents may be retained as hard copies or in an electronic format (in accordance with Revenue Procedure Revenue Procedure 97-22, 1997-1 C.B. 652), so long as such documents are retained in organized, accessible format that preserves the accuracy of such documents.

VI. PRIVATE BUSINESS USE

General

To confirm that the Bonds serve governmental purposes rather than providing proscribed benefits to nongovernmental persons engaged in “private business” activity, it must be determined whether the City expects that there will be any private business use of the proceeds of the bonds. Private business use exists if proceeds of the issue or the property to be financed by the bond proceeds are used directly or indirectly by any nongovernmental person in that person’s trade or business. Private business use may occur due to arrangements (typically contractual) that give nongovernmental persons special legal entitlements with respect to the use of bond-financed property (including a sale or other transfer of bond-financed property to a nongovernmental person). Further, a bond issue is considered to have private security or payments if the payment of the debt service of an issue is either (a) secured directly or indirectly by property or payments derived from private business use or (b) to be derived from payments for a private business use. The tax-exempt status of governmental bonds may be jeopardized if both (a) the private business use associated with an issue of bonds exceeds five percent (and, in certain circumstances, ten percent) of the proceeds of an issue and (b) the private security or payments associated with an issue exceeds five percent (and, in certain circumstances, ten percent) of the proceeds of such issue. Finally, no more than five percent of the proceeds of an issue of bonds may be used to make loans or arrangement that allow a nongovernmental person to defer payments that it is obligated to make with respect to the financed property or the bonds. The City’s finance team will coordinate with the parties responsible for the use and operation of a bond-financed facility by communicating the private business use restrictions to such parties and requiring that all activity that may give rise to such use be communicated to the Director of Finance in advance of such use. The Director of Finance is responsible for tracking trade or business activity by third parties as it relates to each issue of obligations and will monitor such activity no less frequently than yearly and, in any event, upon being notified of any new activity that will give rise to a significant amount of trade or business activity by a third party.

Special Legal Entitlements that Can Create Private Business Use

A special legal entitlement that can create private business use can arise from arrangements that convey ownership rights, leasehold rights or management rights (e.g., priority rights to use the facility) or other similar rights. Recognizing that a special legal entitlement may give rise to private business use, each time the City intends to enter into one of the following, the City will determine if such agreement relates to any bond -financed facility:

- Management and other service contracts
- Research agreements
- Naming rights contracts
- Ownership

- Leases
- Subleases
- Leasehold improvement contracts
- Joint venture arrangements
- Limited liability corporation arrangements
- Partnership agreements
- Non-contractual use of bond-financed office space and/or parking facilities by any nongovernmental person
- Any other contract conferring a special legal entitlement or special economic benefit that are comparable to ownership

If such an agreement will be with respect to a bond-financed facility, the City will take measures designed to preserve the intended federal income tax status of that issue of Bonds. Such measures may include ensuring that such agreement falls into an applicable exception under the private business use rules, making a determination that private use will not exceed the applicable limit or such other action as may be recommended by bond counsel, including taking remedial actions with respect to the issue of Bonds whose federal tax status is implicated.

VII. PAYMENTS ON THE BONDS

The trustee/paying agent for the bonds shall determine the amount of principal and interest payable on each payment date for the bonds. Periodically, and no less frequently than annually, the Manager of Accounting will review the amount of the interest payments to verify that proper payments of interest have been made.

VIII. ARBITRAGE – YIELD RESTRICTION & REBATE

General

The Manager of Budget and Financial Analysis is responsible for monitoring the City's compliance with the yield restriction requirements of section 148(a) of the Code and the rebate requirements of section 148(f) of the Code. Such monitoring includes, but is not limited to:

- Tracking the allocation of bond proceeds to expenditures for compliance with any temporary period and spending exceptions, no less frequently than yearly
- Ensuring that any forms required to be filed with the IRS relating to arbitrage and any payments required pursuant thereto are filed in a timely manner
- Ensuring that "fair market value" is used with respect to the purchase and sale of investments

Additionally, the City will hire a rebate analyst to monitor compliance with rebate and yield restriction rules on a yearly basis.

Compliance with the investment rules will require that the City be able to account for, in terms of dates and amounts, all uses (including disbursements and investment activity) of particular categories of bond-related money. The Manager of Budget and Financial Analysis will account

for all of the following disbursements: monies in the project fund, debt service fund and any other fund into which proceeds of the obligations have been deposited, including any reserve fund. In doing so, the Manager of Budget and Financial Analysis will use any reasonable consistently applied accounting method to account for gross proceeds, investments and expenditures of an issue.

Recordkeeping

With respect to each issue of obligations, the City will retain the following for the life of the obligations plus three years:

- Documentation of allocations of investments and calculations of investment earnings
- Documentation for investments of the bond proceeds related to:
 - a) Investment contracts (*e.g.*, guaranteed investment contracts)
 - b) Credit enhancement transactions (*e.g.*, bond insurance contracts)
 - c) Financial derivatives (*e.g.*, swaps, caps, etc.)
 - d) Bidding of financial products
- Documentation regarding arbitrage compliance, including:
 - a) Computation of bond yield
 - b) Computation of rebate and yield reduction payments
 - c) Form 8038-T, Arbitrage Rebate, Yield Reduction and Penalty in Lieu of Arbitrage Rebate
 - d) Form 8038-R, *Request for Recovery of Overpayments Under Arbitrage Rebate Provisions*

Documents may be retained as hard copies or in an electronic format (in accordance with Revenue Procedure Revenue Procedure 97-22, 1997-1 C.B. 652), so long as such documents are retained in organized, accessible format that preserves the accuracy of such documents.

IX. REISSUANCE

Prior to making any changes to the terms of an obligation, including its underlying security, the City will consult with bond counsel to determine whether such change will result in the reissuance of such obligation for federal tax law purposes. If it is determined that a change will result in a reissuance, the City will take such action, including the recalculation of yield, the filing of a new form 8038-G and the payment of rebate obligations, as is necessary to maintain the tax status of the bonds.

X. CORRECTIVE ACTION

Reports regarding the aforementioned compliance policies with respect to any issue of bonds will be made by the party given responsibility for such area to the Director of Finance no less frequently than annually. At such time, the Director of Finance will determine whether any corrective action is required with respect to the applicable issue.

A corrective action may be required if, for example, it is determined that bond proceeds were not

properly expended, the City is not in compliance with the arbitrage requirements imposed by the Code or the City has taken a deliberation action that results in impermissible private business use (e.g., sale of bond-financed property). If the City determines or is advised that corrective action is necessary with respect to any issue of its obligations, the City will, as may be applicable, in a timely manner:

- Seek to enter into a closing agreement under the Tax-Exempt Bonds Voluntary Closing Agreement Program described in Notice 2008-31 (or any successor notice thereto)
- Take remedial action described under Section 1.141-12 of the Regulations
- Take such other action as recommended by bond counsel

XI. ADDITIONAL PROVISIONS APPLICABLE TO TAX CREDIT BONDS

Calculation of Available Project Proceeds

At closing on an issue of tax credit bonds, the Director of Finance is responsible for approving the amount of “available project proceeds,” which, if the tax credit bonds are issued under Section 54A of the Code, is the excess of the sale proceeds of the bonds, over the costs of issuance financed by the bonds (to the extent such costs of issuance do not exceed two (2) percent of the sale proceeds of the bonds), and the proceeds of the investment of such excess (the “Available Project Proceeds”). The Director of Finance will work with the City’s financial advisor to provide information that the City’s financial advisor deems pertinent to the calculation, including but not limited to a draw down schedule showing the expected expenditures of bond proceeds.

Timely Expenditure and Allocation to Qualified Purposes

The Director of Finance is responsible for oversight of the expenditure of bond proceeds, including monitoring of whether such expenditures are made in a timely manner for the purposes for which the bonds were authorized. The Director of Finance will ensure that 100% of the available project proceeds of a tax credit bond issue are spent for a “qualified purpose” of such issue within the three year period beginning on the issue date. Unless an extension is requested and granted prior to the expiration of such three year period, the Director of Finance shall take action such that, to the extent that less than 100% of the available project proceeds of a tax credit bond issue are spent, all of the nonqualified bonds are redeemed within 90 days after the end of such period.

Costs of Issuance Limitation

The Director of Finance will ensure that the costs of issuance financed by any issue of tax credit bonds do not exceed two (2) percent of the sale proceeds of the bonds by determining at closing the applicable limit and informing the party responsible for payment of the costs of issuance that any amounts in excess of such limitation should be paid out of amounts that are not proceeds of such tax credit bonds. After payment of all costs of issuance, the Director of Finance will be

responsible for determining whether such directions have been followed and, if not, take such actions to reallocate the source of payment.

Special Rule Relating to Arbitrage

The Director of Finance is responsible for ensuring that any amounts set aside by the City that are reasonably expected to be used to repay an issue of tax credit bonds, whether formally required under the documents or as a matter of practice by the City, are (i) funded at a rate not more rapid than equal annual installments, (ii) funded in a manner reasonably expected to result in an amount not greater than an amount necessary to repay the issue, and (iii) yield restricted to the permitted sinking fund yield applicable on the sale date of the issue of tax credit bonds.

Applicable to “Direct Pay” Bonds Only

A “direct pay bond” is a qualified tax credit bond with respect to which the City has made an irrevocable election, under section 6431 of the Code, to receive federal direct payments of allowances of refundable tax credits to subsidize a prescribed portion of the City’s borrowing costs instead of the federal tax credits that otherwise would be allowed to holders of the qualified tax credit bonds under section 54A of the Code.

1. Pricing Parameters

In connection with the requirement that none of the maturities of the tax credit bonds are issued with more than a de minimus amount of premium, determined under rules similar to the rules of Section 1273(a)(3) of the Code, the Director of Finance will consult with the City’s financial advisor and the City’s bond counsel to confirm that the permissible level of premium for each maturity of the tax credit bonds, and will review the final pricing of each issue of tax credit bonds to ensure that such levels have not been exceeded. Generally, under Section 1273(a)(3) of the Code, a de minimus amount of premium is equal to .25% of the stated redemption price at maturity multiplied by the number of complete years to maturity. However, the rules regarding computation may differ based on the structure of the tax credit bonds (e.g. the inclusion of optional redemption provisions).

2. Post- Sale Trading Activity Records

In connection with each issue of tax credit bonds, the Director of Finance will request from the purchaser/underwriter of such issue of bonds, the trading activity of such issue after the sale date of the bonds, but before the bonds are delivered on the date of issue. The Director of Finance will keep records, including any requested explanation from the underwriter, regarding such trading activity for the tax credit bonds.

3. 8038-CP

The Director of Finance will be responsible for tracking the timely filing of the Form 8038-CP, which filing may be completed by an outside consultant engaged by the City.

For tax credit bonds issued at a fixed rate, the Form 8038-CP must be filed no later than 45 days before and no earlier than 90 days before the relevant interest date. For tax credit bonds issued at a variable rate, the Form 8038-CP must be filed no later than 45 days after the last interest payment date within the quarterly period for which the Direct Pay Credit is requested.

The Director of Finance will ensure that the proper amount of refundable credit is reported on the Form 8038-CP by confirming with the City's financial advisor or other consultant engaged by the City for such purpose, (i) for tax credit bonds issued at a fixed rate, the amount of interest payable that is expected to be payable on the relevant interest payment date, and (ii) for tax credit bonds issued at a variable rate, the amount of interest that was payable on the relevant interest payment date.

The Director of Finance is responsible for the City's final review of the information included on the 8038-CP, including the verification that entity to whom payment is to be made is correct.

Recordkeeping

With respect to each issue of obligations, the City will retain documentation relating to compliance with the requirements of this Section XI for the life of the obligations, plus three years.

Other

The Director of Finance will be responsible for consulting with the City's Bond Counsel to determine additional compliance requirements relating to each specific type of tax credit bond issued by the City.