

CITY OF KIRKLAND**BOND PROCEDURE AND POST ISSUANCE COMPLIANCE POLICY**

This policy is intended to guide the City of Kirkland (the “City”) in meeting its obligations under applicable statutes, regulations and documentation associated with publicly offered and privately placed securities of the City. The City maintains a separate Debt Policy with respect to matters related to the issuance of security obligations, including compliance with the City’s disclosure obligations related to securities issuance. 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 Director of Finance and Administration (the “Responsible Officer”) will be responsible for ensuring that the policy is followed and compliance checklist and records maintained. The Responsible Officer may delegate responsibility to employees and outside agents for developing records, maintaining records and compliance checklist. As detailed below, the City will support educational opportunities provided by the Government Finance Officers Association (GFOA), Washington Finance Officers Association (WFOA) and Washington Public Treasurers Association (WPTA) for the parties identified in this policy with responsibilities related to the City’s bonds in order to facilitate their performance of these obligations.

A. Transcripts.

1. The City shall receive a full transcript related to the issuance of securities (for each issue). 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 8038-G or 8038-GC, if applicable.

2. Bond transcripts will be retained by the following parties and in the following locations within the City: City Clerk’s Office and Department of Finance and Administration.

B. Federal Tax Law Requirements. This section applies to all of the City’s tax-exempt and tax-advantaged governmental bonds, and other bonds subject to comparable requirements. As used in this policy, references to “bonds” include bonds, lines of credit, bond anticipation notes, and equipment and other financing leases. This section is intended to improve the City’s ability to: prevent violations in bond requirements from occurring; timely identify potential violations; and correct identified violations through appropriate remedial steps.

1. *Use of Proceeds.* Monitoring the expenditure of bond proceeds is necessary to assure that the required amount of bond proceeds are expended for capital expenditures and that not more than 10% of the bond proceeds are expended for projects that will be used for in a private trade or business (including by the federal government and nonprofit entities).

a. If the project(s) to be financed with the proceeds of the bonds will be funded with multiple sources of funds, the City will adopt an accounting methodology that:

- ◆ maintains each source of funding separately and monitors the actual expenditure of proceeds of the securities;
- ◆ commingles the proceeds and monitors the expenditures on a first in, first out basis; or
- ◆ 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 bonds will be maintained by the Department of Finance and Administration.

c. If the project involves bond proceeds and other sources of funds and included both governmental and nongovernmental use of the financed facilities, the Responsible Officer in consultation with the project manager or other authorized City official will undertake a final reconciliation of bond proceeds expenditures and expenditures of other funds with project costs no later than 18 months after the later of the date of expenditure or the date that the project is placed in service (but in no event more than five years after the date of issue).

d. Any change in the scope of the project financed with bond proceeds should be reviewed and documented.

e. Any delay in the project and the expected spending of bond proceeds should be discussed with bond counsel and documented.

f. Records of investments and interest earnings on the proceeds of securities will be maintained by Department of Finance and Administration. 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 bonds are considered proceeds of the issue. 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).

g. Records of interest earnings on reserve funds maintained for the securities.

h. If, at the completion of the project, there are unspent bond proceeds the Responsible Officer, conferring with bond counsel, will direct application of the excess proceeds for permitted uses under federal tax law, state law, and bond authorization documents.

2. *Arbitrage Rebate.* In general, bond proceeds and certain other funds can only be invested at a rate that exceeds the yield on the bonds under limited circumstances. Furthermore, amounts earned by investing above the bond yield must be rebated to the IRS, unless the City qualifies as a small issuer or a spending exception is met. The arbitrage and rebate requirements for each bond issue are detailed in the federal tax certificate executed in connection with the applicable bond issue. The Responsible Officer or designee of the City (“Rebate Monitor”) will monitor compliance with the arbitrage rebate obligations of the City for each bond issue.

a. *Funds to Monitor.* The Rebate Monitor will monitor the following funds in connection with each bond issue: bond or debt service funds/accounts; project or construction funds/accounts; any refunding accounts; debt service funds/accounts; any other accounts with bond proceeds; and any other accounts holding amounts pledged to pay bonds.

b. *Review.* The Rebate Monitor will monitor rebate compliance for each issue of tax-exempt governmental obligations issued during that calendar year.

i. During construction, the Responsible Officer is to monitor expenditures to confirm satisfaction of expected exceptions to rebate (described below).

ii. The first rebate payment is due five years after date of issue of the bonds plus 60 days,

iii. Rebate is due every succeeding five years, if there are unspent gross proceeds of the bonds.

iv. Final rebate payment is due 60 days after early redemption or retirement of the bonds.

c. *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 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.

d. *Rebate Consultant.* The Rebate Monitor shall be responsible for retaining 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 bonds issued by the City. 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.

Based on the report of the rebate consultant, file reports with and make any required payments to the Internal Revenue Service, 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.

e. *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 consult with bond counsel to determine and pay any required yield reduction payment.

3. *Use of the Facilities Financed with Proceeds.* In order to maintain tax-exemption of bonds issued on a tax-exempt or tax-advantaged basis, the financed facilities (projects) are required to be used for governmental purposes during the life of the issue. The Responsible Officer or designee of the City will monitor and maintain records regarding any private use of the projects financed with such bond 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 minimus* amounts unless cured by a prescribed remedial action. Private use may arise as a result of:

- a. Sale of all or a portion of the facilities;
- b. Lease of all or a portion 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), except for qualified management contracts under IRS Rev. Proc. 97-13;
- d. Preference arrangements (in which the City grants a third party preference of the facilities, e.g., preference parking in a public parking lot);
- e. Entering into contracts giving “special legal entitlement” to the facility (for example, selling advertising space or naming rights).

All leases and other contracts involving bond-financed property will be sent prior to execution to the Responsible Officer for review. The Responsible Officer will confer with personnel responsible for bond financed projects at least annually to discuss any existing or planned use of bond-financed or refinanced facilities. Private use for each bond-financed project will be calculated annually.

If the Responsible Officer or designee identifies private use of tax-exempt debt financed facilities, the Responsible Officer or designee 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. The private use may be allocated to those facilities (or portions of facilities) that were funded from sources other than bond proceeds. If noncompliance will be remediated under existing remedial action provisions or tax-exempt bond closing agreement programs contained in the regulations or other published guidance from the IRS,

determine the deadline for taking action and proceed with diligence to take the required remedial actions. If remedial actions are unavailable, determine whether to make a submission to the Tax-Exempt Bonds Voluntary Closing Agreement Program (“VCAP”) under Internal Revenue Manual 7.2.3.

The City will verify at least once annually that the financed projects do not have impermissible private use. The verification will be noted on the Post Issuance Compliance Policy Checklist.

4. *Refundings.* For refunding escrows, confirm that any scheduled purchases of State and Local Government Series (“SLGS”) or open market securities are made as scheduled. On the redemption date, the Responsible Officer will confirm that the refunded bonds have been redeemed and cancelled. Promptly following the redemption date, the Responsible Officer will confirm that all proceeds of the bonds and all proceeds of the refunded bonds have been spent. Verify that excess proceeds, if any, of the bonds do not exceed an amount permitted by the Regulations.

Any final rebate payment is due 60 days after early redemption or retirement of the refunded bonds.

5. *Reissuance.* A significant modification of the bond documents may result in bonds being deemed refunded or “reissued.” Such an event will require, among other things, the filing of new information returns with the federal government and the execution of a new arbitrage certificate. The City shall consult with bond counsel in the event of modification of the bond documents.

6. *Records Retention.*

a. Records with respect to matters described in this Subsection B 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.

b. 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 necessary to document the allocation of bond proceeds and other sources of funds to particular projects or portions of projects.

(v) 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);

(vi) Copies of all certificates and returns filed with the IRS (e.g., for payment of arbitrage rebate);

(vii) Records documenting the final allocation of bond proceeds to projects, including any reallocations of bond proceeds, in a format showing the timing and substance of the reallocation, if applicable;

(viii) Copies of all contracts relating to the use of the bond-financed facility including leases, concession agreements, management agreements and other agreements that give usage rights or legal entitlements with respect to the facility to nongovernmental persons (e.g., advertising displays, cell tower leases, and naming rights agreements; and

(ix) Post Issuance Compliance Checklist documented annual review.

C. Federal Securities Law Requirements. This section is intended to establish a framework for compliance by City with its disclosure and/or contractual obligations with respect to bonds, notes, and other securities it issues or that are issued on its behalf (as defined herein, the “Securities”), pursuant to the requirements of federal and state securities laws and other applicable rules, regulations, and orders. This section applies generally to all of the City’s tax-exempt and tax advantage bonds and other debt issued on the City’s behalf subject to comparable requirements. The purpose of this policy is to: facilitate compliance with applicable law and existing ongoing disclosure undertakings when preparing and distributing initial and ongoing disclosure documents, to reduce exposure (of the City and its officials and employees) to liability for damages and enforcement actions based on material misstatements and omissions in such documents, and to promote good investor relations.

It is the policy of the City to comply fully with applicable securities laws regarding disclosure in connection with the issuance of Securities and with the terms of its continuing disclosure agreements, including the Anti-Fraud Rules. The “Anti-Fraud Rules” refer to Section 17 of the Securities Act of 1933 and Section 10(b) of the Securities Exchange Act of 1934, particularly Rule 10b-5 under the Securities Exchange Act of 1934, and regulations adopted by the Securities and Exchange Commission under those Acts.¹

¹ For example, the Anti-Fraud Rules provide that “It shall be unlawful for any person, directly or indirectly, ...

(a) To employ any device, scheme, or artifice to defraud,

(b) To make any untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading, or

(c) To engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person,

in connection with the purchase or sale of any security.”

The Anti-Fraud Rules require all material information relating to the offered Securities to be provided to potential investors in connection with the sale or issuance of Securities. The information provided to investors must not contain any material misstatements, and the City must not omit material information which would be necessary to provide to investors a materially complete description of the Securities and the City's financial condition. In the context of the sale of Securities, a fact is considered to be material if there is a substantial likelihood that a reasonable investor would consider it to be important, in the total mix of information made available to investors, in determining whether or not to purchase the Securities being offered.

The Anti-Fraud Rules apply to all statements and other communication that are intended (or reasonably can be expected) to be accessible to and relied upon by investors of the City's Securities. Investor Communications include: Preliminary and final Official Statements (the offering documents used in connection with the sale of Securities), filings made on EMMA (including filings made pursuant to continuing disclosure undertakings and voluntary postings), and may include, depending on the context, information uploaded or linked or posted to the website of the City, and press releases and other formal and/or public statements of the City.

1. Guidelines for Preparing Disclosure Documents.

a. All City staff members and officials involved in the preparation or review of disclosure documents or other investor communications are responsible for being familiar with the Anti-Fraud Rules. Violations of the Anti-Fraud Rules may be punishable by civil or criminal penalties against the City and the individual staff members and officials responsible for the violations.

b. Staff members and officials involved in the preparation or review of disclosure documents and other investor communications are instructed to err on the side of raising issues when preparing or reviewing such documents and communications. Officials and staff are encouraged to consult with the City Attorney, bond counsel and/or disclosure counsel, if any, and/or the City's municipal advisor, if any, if there are questions regarding whether an issue is material. Any concerns regarding the accuracy of a disclosure document or other investor communication should be immediately reported to the City Attorney, bond counsel and/or disclosure counsel, if any.

c. The officers and employees charged by this policy with performing or refraining from any action may depart from this policy when they and the Responsible Officer in good faith determine that such departure is in the best interests of the City and consistent with the duties of the City under the Anti-Fraud Rules. The Responsible Officer is encouraged to first consult with bond counsel, disclosure counsel and/or other legal counsel to the City prior to any such departure.

d. Prior to the public release of any disclosure document or communication to be posted on EMMA, the Responsible Officer or designee shall complete a final review of the material, consisting of comparing and resolving any material discrepancies between the City's audited (and unaudited, if needed) financial statements and other source materials, and cover-to-cover review of the communication. The review and any source materials shall be documented.

2. **Preliminary and Final Official Statements.** For the purpose of satisfying the underwriter's compliance with the SEC Rule 15c2-12 under the Securities Exchange Act of 1934, as amended (the "Rule"), the Responsible Officer (and/or any other official designated by the City Council, if any) shall be responsible for "deeming final" the Preliminary Official Statement as of its date, except for the omission of information as to offering prices, interest rates, selling compensation, aggregate principal amount, principal amount per maturity, maturity dates, delivery dates, and other terms of the Securities dependent on such matters or permitted under the Rule to be omitted.

Prior to release of a Final Official Statement, the Responsible Officer or designee shall be responsible for reviewing and approving the document. The Responsible Officer's approval may be documented in the form of the signed closing certificate. In connection with the closing of the transaction, the Responsible Officer (and any other official designated by the City Council, if any) will execute a certificate under the Anti-Fraud Rules stating that the Preliminary and final Official Statements, as of their respective dates and as of the dates of pricing and closing, as applicable, do not contain any untrue statement of material fact or omit to state any material fact necessary to make the statements contained therein not misleading in light of the circumstances under which they were made.

3. **Ongoing Disclosure.** Under the provisions of the Rule, underwriters are required to obtain an agreement for ongoing disclosure in connection with the public offering of securities. The transcript for each issue subject to the Rule (e.g. all publicly sold Securities) will include an undertaking by the City to comply with the Rule. The Responsible Officer or designee will be responsible for and 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 certain "listed events."

a. **Annual Filings.** The City shall file, on a timely basis, its audited financial statements and any operating data as required under its continuing disclosure agreements. If audited financial information is not available by the filing date, unaudited information must be filed, and the audited information must be filed as soon as it is available. Further, the Responsible Officer is responsible for providing, in a timely manner, notice of any failure to provide required annual financial information, on or before the date specified in the applicable continuing disclosure agreement.

Prior to posting an annual filing, the Responsible Officer will complete a final review, consisting of comparing and noting material discrepancies with source materials and compliance with the Anti-Fraud Rules. Each continuing disclosure filing shall be sent to the Responsible Officer or other authorized officer for approval prior to posting on EMMA. The Responsible Officer must exercise reasonable care to file the annual filings in word-searchable PDF format and with the identifying information required by the Continuing Disclosure Agreements, including applicable CUSIP numbers for the Securities. The Responsible Officer shall enroll on the EMMA website to receive annual email reminders of annual filing deadlines.

b. Listed Events. Notice of certain listed events must be filed in a timely manner not more than *ten (10) business days* after the occurrence of the event. As of the date of this policy, the listed events include the following:

- (1) Principal and interest payment delinquencies
- (2) Non-payment related defaults, if material
- (3) Unscheduled draws on debt service reserves reflecting financial difficulties
- (4) Unscheduled draws on credit enhancements reflecting financial difficulties
- (5) Substitution of credit or liquidity providers, or their failure to perform
- (6) Adverse tax opinions, the issuance by the IRS of proposed or final determinations of taxability, Notices of Proposed Issue (IRS Form 5701-TEB) or other material notices or determinations with respect to the tax status of the bonds, or other material events affecting the tax status of the bonds
- (7) Modifications to the rights of bondholders, if material
- (8) Bond calls, if material, and tender offers
- (9) Defeasances
- (10) Release, substitution, or sale of property securing repayment of the Bonds, if material
- (11) Rating changes (both upgrades and downgrades)
- (12) Bankruptcy, insolvency, receivership or similar event of the City
- (13) The consummation of a merger, consolidation, or acquisition involving the City or the sale of all or substantially all of the assets of the City, other than in the ordinary course of business, the entry into a definitive agreement to undertake such an action or the termination of a definitive agreement relating to any such actions, other than pursuant to its terms, if material
- (14) Appointment of a successor or additional trustee or the change of name of a trustee, if material
- (15) Incurrence of a Financial Obligation of the City, if material, or agreement to covenants, events of default, remedies, priority rights, or other similar terms of a Financial Obligation of the City, any of which affect Security holders, if material; and
- (16) Default, event of acceleration, termination event, modification of terms, or other similar events under the terms of a Financial Obligation of the City, any of which reflect financial difficulties.

Disclosure of events 15 and 16 is required by continuing disclosure agreements executed after February 27, 2019. "Financial Obligation" is defined in the Rule to mean a (A) debt obligation; (B) derivative instrument entered into in connection with, or pledged as security or a source of payment for, an existing or planned debt obligation; or (C) guarantee of clause (A) or (B) of this definition. The term financial obligation does not include municipal securities as to which a final Official Statement has been provided to consistent with the Rule.

To facilitate compliance with these listed events, the Responsible Officer will maintain an inventory of all Financial Obligations of the City. The Responsible Officer will review each Financial Obligation (with the assistance of disclosure counsel and/or bond counsel as needed) to

determine whether it is material and subject to reporting under the City's continuing disclosure agreements. The Responsible Officer will periodically review the definition of Financial Obligations and the inventory of existing Financial Obligations with the appropriate City officers and employees. If there is a foreseeable possibility of any default, event of acceleration, termination event, modification of terms or other similar event is reasonably possible occur, the Responsible Officer will be informed.

4. Other Investor Communications. The Anti-Fraud Rules apply to all investor communications. Such investor communications may include, but are not limited to, voluntary filings made on EMMA, information on the City's website (such as on an investor relations webpage), communications with investors (or potential investors), press releases and other formal statements of the City that are intended to reach investors. The Responsible Officer and other officers of the City shall exercise reasonable care to make sure that the information in investor communications is materially accurate and complete and otherwise in compliance with this policy.

5. Document Retention. The following documents are to be maintained in connection with each Security. The goal is to retain adequate records to substantiate compliance with the Anti-Fraud Rules. Unless otherwise specified, the following records are to be maintained.

- Complete bond transcript in electronic format or hard copy, including (if applicable) copies of the continuing disclosure agreements.
- A written record of any Financial Obligation or the occurrence of other notice event that is determined to be immaterial or not reflecting financial difficulty and thus not requiring disclosure, and the facts and circumstances used to reach such conclusion.
- Documentation of the actions taken to prepare, check, review and approve each Investor Communication made pursuant to these procedures, including the sources of the information included.
- Electronic copies of confirmations from EMMA of all continuing disclosure filings.
- Copies of any filings or correspondence with the SEC or other regulatory body.

D. Training. The City will provide opportunities for training to the Responsible Officer, legal counsel, department managers/directors, elected officials and other individuals responsible for complying with this policy, as needed, specifically including the following training opportunities: at or after bond closing, a conference call or meeting with bond counsel to review the requirements applicable to a new bond issue; participation in in-house training sessions, CPE seminars, or seminars/webinars conducted by professional organizations (e.g., GFOA, WPTA, WFOA, PSFOA); and training will be provided as necessary to address any changes in Federal Tax or Federal Securities Laws or this policy.

E. Other Notice Requirements. In some instances, the proceedings authorizing the issuance of bonds 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 Department of Finance and Administration of the City will maintain a listing of those requirements and monitor compliance by the City.