



CITY OF KIRKLAND
Department of Finance & Administration
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MEMORANDUM

To: Kurt Triplett, City Manager

From: Tracey Dunlap, Director of Finance and Administration
Michael Olson, Deputy Director

Date: October 1, 2013

Subject: POST ISSUANCE COMPLIANCE POLICY FOR ISSUANCE OF TAX-EXEMPT BONDS

Recommendation

Council approves the attached resolution adopting the City of Kirkland Post Issuance Compliance Policy.

Background

Federal tax law requires the filing of an IRS form (8038-G) by a governmental issuer in connection with its tax-exempt bonds. Form 8038-G was recently amended by the IRS to include check-the-box questions inquiring whether the issuer has adopted written procedures to ensure compliance with federal tax law following the issuance of the bonds and during the life of the bond issue.

The new check box does not create or reflect any legal requirement that an issuer adopt these written procedures. However, K&L Gates, the City's Bond Counsel, recommends that governmental issuers adopt written procedures. By doing so, the City will be able to affirmatively "check the box" on the IRS Form 8038-G (Lines 43 and 44) – see Attachment A.

While there is no penalty for not having written procedures, recent written pronouncements in the Internal Revenue Manual suggest that when dealing with the IRS in the future in the event of unanticipated changes, the IRS may be more favorably disposed on the outcome (maintenance of tax-exempt status) if the issuer has written policies that monitor post issuance compliance.

The City's current Debt Management Policy addresses issues related to post issuance compliance in Section 6 at a summary level. As a matter of practice, these additional policy guidelines prepared in consultation with Bond Counsel are comprehensive and directly address the issues required by the IRS and are complimentary to the Debt Management Policy.

The policy was prepared using a model policy provided by K&L Gates (see resolution – "Exhibit A"). A sample checklist (Attachment B) documenting compliance with the policy has also been attached for reference.

The policy was discussed by the Council Finance and Administration Committee at their September 26th meeting and approval of the resolution adopting the policy is recommended.

Form **8038-G**

(Rev. September 2011)

Department of the Treasury
Internal Revenue Service

Information Return for Tax-Exempt Governmental Obligations

► Under Internal Revenue Code section 149(e)

► See separate instructions.

Caution: If the issue price is under \$100,000, use Form 8038-GC.

OMB No. 1545-0720

Part I Reporting Authority

If Amended Return, check here ►

1 Issuer's name		2 Issuer's employer identification number (EIN)	
3a Name of person (other than issuer) with whom the IRS may communicate about this return (see instructions)		3b Telephone number of other person shown on 3a	
4 Number and street (or P.O. box if mail is not delivered to street address)	Room/suite	5 Report number (For IRS Use Only)	
6 City, town, or post office, state, and ZIP code		7 Date of issue	
8 Name of issue		9 CUSIP number	
10a Name and title of officer or other employee of the issuer whom the IRS may call for more information (see instructions)		10b Telephone number of officer or other employee shown on 10a	

Part II Type of Issue (enter the issue price). See the instructions and attach schedule.

11 Education	11		
12 Health and hospital	12		
13 Transportation	13		
14 Public safety	14		
15 Environment (including sewage bonds)	15		
16 Housing	16		
17 Utilities	17		
18 Other. Describe ►	18		
19 If obligations are TANs or RANs, check only box 19a ► <input type="checkbox"/>			
If obligations are BANs, check only box 19b ► <input type="checkbox"/>			
20 If obligations are in the form of a lease or installment sale, check box ► <input type="checkbox"/>			

Part III Description of Obligations. Complete for the entire issue for which this form is being filed.

	(a) Final maturity date	(b) Issue price	(c) Stated redemption price at maturity	(d) Weighted average maturity	(e) Yield
21		\$	\$	years	%

Part IV Uses of Proceeds of Bond Issue (including underwriters' discount)

22 Proceeds used for accrued interest	22		
23 Issue price of entire issue (enter amount from line 21, column (b))	23		
24 Proceeds used for bond issuance costs (including underwriters' discount)	24		
25 Proceeds used for credit enhancement	25		
26 Proceeds allocated to reasonably required reserve or replacement fund	26		
27 Proceeds used to currently refund prior issues	27		
28 Proceeds used to advance refund prior issues	28		
29 Total (add lines 24 through 28)	29		
30 Nonrefunding proceeds of the issue (subtract line 29 from line 23 and enter amount here)	30		

Part V Description of Refunded Bonds. Complete this part only for refunding bonds.

31 Enter the remaining weighted average maturity of the bonds to be currently refunded ►	_____ years
32 Enter the remaining weighted average maturity of the bonds to be advance refunded ►	_____ years
33 Enter the last date on which the refunded bonds will be called (MM/DD/YYYY) ►	_____
34 Enter the date(s) the refunded bonds were issued ► (MM/DD/YYYY)	_____

For Paperwork Reduction Act Notice, see separate instructions.

Cat. No. 63773S

Form **8038-G** (Rev. 9-2011)

Part VI Miscellaneous

- | | | |
|-----|--|--|
| 35 | | |
| 36a | | |
| 37 | | |
- 35 Enter the amount of the state volume cap allocated to the issue under section 141(b)(5)
- 36a Enter the amount of gross proceeds invested or to be invested in a guaranteed investment contract (GIC) (see instructions)
- b Enter the final maturity date of the GIC ▶ _____
- c Enter the name of the GIC provider ▶ _____
- 37 Pooled financings: Enter the amount of the proceeds of this issue that are to be used to make loans to other governmental units
- 38a If this issue is a loan made from the proceeds of another tax-exempt issue, check box and enter the following information:
- b Enter the date of the master pool obligation ▶ _____
- c Enter the EIN of the issuer of the master pool obligation ▶ _____
- d Enter the name of the issuer of the master pool obligation ▶ _____
- 39 If the issuer has designated the issue under section 265(b)(3)(B)(i)(III) (small issuer exception), check box
- 40 If the issuer has elected to pay a penalty in lieu of arbitrage rebate, check box
- 41a If the issuer has identified a hedge, check here and enter the following information:
- b Name of hedge provider ▶ _____
- c Type of hedge ▶ _____
- d Term of hedge ▶ _____
- 42 If the issuer has superintegrated the hedge, check box
- 43 If the issuer has established written procedures to ensure that all nonqualified bonds of this issue are remediated according to the requirements under the Code and Regulations (see instructions), check box
- 44 If the issuer has established written procedures to monitor the requirements of section 148, check box
- 45a If some portion of the proceeds was used to reimburse expenditures, check here and enter the amount of reimbursement ▶ _____
- b Enter the date the official intent was adopted ▶ _____

Signature and Consent	Under penalties of perjury, I declare that I have examined this return and accompanying schedules and statements, and to the best of my knowledge and belief, they are true, correct, and complete. I further declare that I consent to the IRS's disclosure of the issuer's return information, as necessary to process this return, to the person that I have authorized above.			
	▶ _____	Date	▶ _____	
	Signature of issuer's authorized representative		Type or print name and title	
Paid Preparer Use Only	Print/Type preparer's name	Preparer's signature	Date	Check <input type="checkbox"/> if self-employed PTIN
	Firm's name ▶ _____	Firm's EIN ▶ _____		
	Firm's address ▶ _____	Phone no. _____		

**City of Kirkland
Post Issuance Compliance Checklist**

Transaction Parties

Date of Issuance:		Date of Review:		
Overall Responsible Office for Debt Management Activities:				
Bond Counsel:				
Paying Agent:				
Financial Advisor:				
Tax Law Requirements	Document Reference	Responsibility	Location	Complete (Date/Initial)
A. Transcripts				
1. Provide two copies of full transcript within three months of issuance of securities: • one hardcopy • one electronic copy on CD.	Transcript	Bond Counsel	Hardcopy: City Clerk Electronic: TRIM	
2. Proof of filing of Form 8038, 8038-G, 8038-CP or 8038-GC. Copies of form, etc., to State authorities as required by State procedures.	Form 8038-CP	US Bank	TRIM	
B. Federal Tax Law Requirements				
1. Use of Proceeds				
a. Private use business arrangements? (If yes, see section 4 below)				
b. Monitor expenditures generally against date of issuance expectations for three-year or five-year temporary periods or five-year hedge bond rules.	Spreadsheets	Accounting - Carol	H Drive	
c. Records of investments.	US Bank Safekeeping	Treasurer - Michael	H Drive	
d. Records of interest earnings on reserve funds maintained for the securities.	Monthly Investment Reports/Spreadsheets	Accounting - Carol	H Drive	
2. Arbitrage Rebate				
a. Tax certificate issued?	Certificate	Bond Counsel	Transcript	
b. Total principal amount of tax-exempt governmental obligations not greater than \$5,000,000:				
Not required to monitor arbitrage rebate compliance except to monitor expenditures and use of proceeds after completion of the project.	Transcript	Bond Counsel	City Clerk & TRIM	
c. Total principal amount of tax-exempt governmental obligations greater than \$5,000,000:				
Monitor rebate compliance for each issue of tax-exempt governmental issues during that calendar year.	Transcript and Investment Reports	Treasurer - Michael	City Clerk & TRIM	
3. Unused Proceeds Following Completion of Project				
a. Proceeds all used?	Spreadsheets	Accounting - Carol	H Drive and TRIM	
b. Proceeds allocated as intended?	Spreadsheets	Treasurer - Michael	H Drive and TRIM	
c. Authorization in place to direct use of unspent proceeds?	Transcript/Ordinance	Treasurer - Michael	TRIM	
4. Use of the Facilities Financed with Proceeds				
a. Current use of facility	Lease/Sale agreements	Treasurer - Michael	TRIM	
b. Any private use of facility? If yes, what %	Lease/Sale agreements	Treasurer - Michael	TRIM	
c. If yes, consult with Bond Counsel	n/a	Treasurer - Michael	n/a	
5. Records Retention				
Records to be retained by the City for the life of the securities issue and for a period of three years after:				
a. The transcript	Transcript	City Clerk	City Clerk	
b. Arbitrage rebate reports prepared by outside consultants	Consultant reports	Treasurer - Michael	Finance	
c. Work papers provided to rebate consultants	Spreadsheets	Treasurer - Michael	Finance	
d. Records of expenditures and investment receipts	Spreadsheets/Investment Reports	Accounting - Carol	TRIM	
e. Copies of all certificates and returns filed with the IRS	Form 8038-CP	Finance - Admin Assistant	TRIM	
f. Copies of all leases and user agreements	Lease/Use agreements	City Clerk	TRIM	
C. Ongoing Disclosure				
SEC Rule 15c2-12				
a. Annual filing of operating and financial information	CAFR	Accounting - Carol	EMMA	
b. If any material events - notices filed?	Dependant on material event	Treasurer - Michael	EMMA	

**City of Kirkland
Post Issuance Compliance Checklist**

Tax Law Requirements	Document Reference	Responsibility	Location	Complete (Date/Initial)
D. Other Notice Requirements				
a. Other notice requirements by the proceedings authorizing the issuance of the security?	As required	Treasurer - Michael	As required	
E. Transfer of Property				
a. Restrictions on transfer of cash.	As required	Treasurer - Michael	As required	
b. Restrictions on releases of property	As required	Treasurer - Michael	As required	
c. Restrictions on granting liens or encumbering property	As required	Treasurer - Michael	As required	

Material Event Disclosure (were there any material events and, if yes, indicate date of notice)		
Notification by obligated person to SID and each NRMSIR, in timely manner, of any following events with respect to bonds, if event is material within the meaning of the federal securities laws:	Yes	No
a. Principal and interest payment delinquencies.		
b. Non-payment related defaults.		
c. Unscheduled draws on debt service reserves reflecting financial difficulties.		
d. Unscheduled draws on credit enhancements reflecting financial difficulties.		
e. Substitution of credit or liquidity providers, or their failure to perform.		
f. Adverse tax opinions or events affecting the tax-exempt status of the bonds.		
g. Modifications to rights of the holders of the bonds.		
h. Bond calls.		
i. Defeasances.		
j. Release, substitution or sale of property securing repayment of the bonds.		
k. Rating changes		

RESOLUTION R-5004

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF KIRKLAND ADOPTING THE KIRKLAND POST ISSUANCE COMPLIANCE POLICY SETTING FORTH THE POLICY OF THE CITY OF KIRKLAND WITH RESPECT TO MEETING ITS OBLIGATIONS UNDER FEDERAL TAX LAW FOLLOWING THE ISSUANCE OF SECURITIES.

WHEREAS, the City of Kirkland has certain obligations under federal tax law with respect to its publicly offered and privately placed securities; and

WHEREAS, many of these obligations continue to apply throughout the entire term of the securities issued; and

WHEREAS, the City of Kirkland Post Issuance Compliance Policy has been written in consultation with the City's bond counsel; and

WHEREAS, the Kirkland City Treasurer (Deputy Director of Finance) has recommended that the City Council formally adopt the Post Issuance Compliance Policy that the City is following, and will continue to follow, to maintain compliance with applicable federal tax law;

NOW, THEREFORE, be it resolved by the City Council of the City of Kirkland as follows:

Section 1. The "City of Kirkland Post Issuance Compliance Policy," which is attached as "Exhibit A" and incorporated by reference, is adopted as the official policy of the City of Kirkland for meeting its obligations under federal tax law following the issuance of securities by the City of Kirkland.

Passed by majority vote of the Kirkland City Council in open meeting this ____ day of _____, 2013.

Signed in authentication thereof this ____ day of _____, 2013.

MAYOR

Attest:

City Clerk

Governmental Bonds

**CITY OF KIRKLAND
POST ISSUANCE COMPLIANCE POLICY**

This policy is intended to guide the City of Kirkland in meeting its obligations under applicable statutes, regulations and documentation associated with publicly offered and privately placed securities of the City of Kirkland. This policy addresses obligations of the City of Kirkland that arise and will continue following the issuance of securities. The City of Kirkland maintains a separate Debt Policy with respect to matters related to the issuance of security obligations, including compliance with the City of Kirkland'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 of Kirkland. 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 of Kirkland, the Director of Finance and Administration will be responsible for ensuring that the policy is followed and compliance checklist and records maintained. The Director of Finance and Administration may delegate responsibility to employees and outside agents for developing records, maintaining records and compliance checklist. The City of Kirkland will support educational opportunities provided by the Government Finance Officers Association (GFOA), Washington Finance Officers Association (WFOA) and Washington Municipal Treasurers Association (WMTA) for the parties identified in this policy with responsibilities for post-issuance compliance in order to facilitate their performance of these obligations.

A. Transcripts.

1. The City of Kirkland's bond counsel shall provide the City of Kirkland with two copies of a full transcript related to the issuance of securities (for each issue). The transcript shall be delivered in the following form: one hardcopy (paper) and one electronic on a CD; and transcripts shall be delivered to the City of Kirkland within three month[s] 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 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 of Kirkland: City Clerk's Office.

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

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 of Kirkland 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 securities will be maintained by the Department of Finance and Administration.

c. 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 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 of Kirkland's bond counsel).

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

2. *Arbitrage Rebate.* The Director of Finance and Administration or designee of the City of Kirkland ("Rebate Monitor") will monitor compliance with the arbitrage rebate obligations of the City of Kirkland for each issue ("issue") of securities which are described in further detail in the tax certificate if any, executed by the City of Kirkland for each issue and included in the transcript for the issue. If the City of Kirkland did not execute a tax certificate in connection with an issue, the Rebate Monitor should consult with the City of Kirkland's bond counsel regarding arbitrage rebate requirements.

a. If the Rebate Monitor determines that the total principal amount of tax-exempt governmental obligations (including all tax-exempt leases, etc.) of the City of Kirkland issued by or on behalf of the City of Kirkland 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 #3 below). 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.

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 of Kirkland 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.

i. *Rebate Exceptions.* The Rebate Monitor will review the tax certificate, if any, in the transcript in order to determine whether the City of Kirkland is expected to comply with a spending exception that would permit the City of Kirkland 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 B.1 above) to determine whether the City of Kirkland met the spending exception (and thereby avoid having to pay any arbitrage rebate to the federal government). If the City of Kirkland 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.

ii. *Rebate Compliance.* If the City of Kirkland does not meet or does not expect to meet any of the spending exceptions described in (i) above, the City of Kirkland will:

x. review the investment earnings records retained as described in B.1 above. 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 of Kirkland may opt not to follow the steps described in the following paragraph.

y. 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 of Kirkland. 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 of Kirkland rebate consultant. The selected rebate consultant shall provide a written report to the City of Kirkland with respect to the issue and with respect to any arbitrage rebate owed if any.

z. 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.

c. *Yield Reduction Payments.* If the City of Kirkland 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 of Kirkland will follow the procedures described in B.2.b.ii above to determine and pay any required yield reduction payment.

3. *Unused Proceeds Following Completion of the Project.* Following completion of the project(s) financed with the issue proceeds, the Director of Finance and Administration or designee 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.

4. *Use of the Facilities Financed with 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 Director of Finance and Administration or designee of the City of Kirkland 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 minimus* amounts 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 of Kirkland authorizes a third party to operate a facility (e.g., cafeteria);
- d. Preference arrangements (in which the City of Kirkland grants a third party preference of the facilities, e.g., preference parking in a public parking lot).

If the Director of Finance and Administration or designee identifies private use of tax-exempt debt financed facilities, the Director of Finance and Administration or designee will consult with the City of Kirkland'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 the City of Kirkland determines that it is appropriate to complete a final allocation and accounting certification with respect to the expenditure of bond proceeds, pursuant to Treasury Regulation §1.148-6(d), the City of Kirkland will complete the allocation certification not later than the Final Allocation Date. The City of Kirkland may also elect to follow available remedial action procedures available under Treasury Regulations, e.g., allocate sales proceeds to other qualifying capital expenditures.

The City of Kirkland 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.

5. *Records Retention.*

a. Records with respect to matters described in this Subsection B will be retained by the City of Kirkland 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 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 of Kirkland 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); and
- (vii) Post Issuance Compliance Checklist documented annual review.

C. Ongoing Disclosure. Under the provisions of SEC 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 of Kirkland 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 of Kirkland to comply with the Rule. The Department of Finance and Administration of the City of Kirkland will monitor compliance by the City of Kirkland 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.

D. Other Notice Requirements. In some instances, the proceedings authorizing the issuance of securities will require the City of Kirkland 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 of Kirkland will maintain a listing of those requirements and monitor compliance by the City of Kirkland.