



City of Las Cruces[®]

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Council Action and Executive Summary

Item # 12 Ordinance/Resolution# 15-008

For Meeting of _____
(Ordinance First Reading Date)

For Meeting of July 7, 2014
(Adoption Date)

Please check box that applies to this item:

QUASI JUDICIAL LEGISLATIVE ADMINISTRATIVE

TITLE: A RESOLUTION ADOPTING AND APPROVING POST-ISSUANCE TAX COMPLIANCE PROCEDURES FOR TAX-EXEMPT BONDS AND LOANS OF THE CITY; OTHER MATTERS RELATING THERETO; AND RATIFYING ACTIONS PREVIOUSLY TAKEN IN CONNECTION THEREWITH.

PURPOSE(S) OF ACTION:

Adopt new post-issuance tax compliance procedures.

COUNCIL DISTRICT: N/A		
Drafter/Staff Contact: Robert Scaling	Department/Section: Finance/Treasury	Phone: 541-2035
City Manager Signature:		

BACKGROUND / KEY ISSUES / CONTRIBUTING FACTORS:

Federal Securities laws related to the issuance of bonds and loans are requiring increased scrutiny of post-issuance activities related to tax compliance of the issuer. The Internal Revenue Service is requiring issuers of tax-exempt debt to monitor compliance with the Internal Revenue Code and Treasury Regulations as well as bond document covenants regarding arbitrage, yield restrictions, and rebate requirements. The City Treasurer is identified as the official charged with overseeing compliance activities.

SUPPORT INFORMATION:

1. Resolution.
2. Exhibit "A".

(Continue on additional sheets as required)

SOURCE OF FUNDING:

Is this action already budgeted? N/A	Yes	<input type="checkbox"/>	See fund summary below
	No	<input type="checkbox"/>	If No, then check one below:
	<i>Budget Adjustment Attached</i>	<input type="checkbox"/>	Expense reallocated from: _____
		<input type="checkbox"/>	Proposed funding is from a new revenue source (i.e. grant; see details below)
		<input type="checkbox"/>	Proposed funding is from fund balance in the (_____) Fund.
Does this action create any revenue? N/A	Yes	<input type="checkbox"/>	Funds will be deposited into this fund: (_____) in the amount of \$_____ for FY__.
	No	<input type="checkbox"/>	There is no new revenue generated by this action.

BUDGET NARRATIVE

N/A

FUND EXPENDITURE SUMMARY:

Fund Name(s)	Account Number(s)	Expenditure Proposed	Available Budgeted Funds in Current FY	Remaining Funds	Purpose for Remaining Funds
N/A	N/A	N/A	N/A	N/A	N/A

OPTIONS / ALTERNATIVES:

1. Vote "Yes"; this will approve the Resolution.
2. Vote "No"; this will reject the Resolution.
3. Vote to "Amend"; this could change the intent of the Resolution.
4. Vote to "Table"; this could delay the ultimate decision to approve or reject the Resolution.

REFERENCE INFORMATION:

N/A

RESOLUTION NO. 15-008**A RESOLUTION ADOPTING AND APPROVING POST-ISSUANCE TAX COMPLIANCE PROCEDURES FOR TAX-EXEMPT BONDS AND LOANS OF THE CITY; OTHER MATTERS RELATING THERETO; AND RATIFYING ACTIONS PREVIOUSLY TAKEN IN CONNECTION THEREWITH.**

The City Council is informed that:

WHEREAS, the City of Las Cruces, New Mexico (the "City") incurs tax-exempt debt in the form of bonds and loans from time to time for the purpose of financing public projects and to refinance tax-exempt debt previously issued by the City; and

WHEREAS, to ensure that the City complies with the requirements of the Internal Revenue Code of 1986, as amended, and the Treasury Regulations promulgated thereunder (together, the "Code"), the City Council (the "Council") desires to adopt and implement post-issuance tax compliance procedures in the form attached hereto as Exhibit A (the "Post-Issuance Tax Compliance Procedures")

NOW, THEREFORE, Be it resolved by the governing body of the City of Las Cruces:

Section 1. Adoption and Approval of Post-Issuance Tax Compliance Procedures. The Post-Issuance Tax Compliance Procedures in the form attached hereto as Exhibit A are hereby adopted and approved. The Post-Issuance Compliance Procedures may be amended as deemed necessary by the Compliance Officer to comply with the Code.

Section 2. Appointment of Compliance Officer; Authority. The Council hereby designates the City Treasurer as the Compliance Officer for purposes of the Post-Issuance Tax Compliance Procedures. The Compliance Officer is hereby authorized,

empowered and directed to do all such acts and things and to execute all such documents as may be necessary to carry out and comply with the provisions of this Resolution and the Post-Issuance Compliance Procedures, and is further authorized to take any and all further actions and execute and deliver any and all other certificates, papers and documents as may be necessary or desirable to effect the actions contemplated by this Resolution and the Post-Issuance Tax Compliance Procedures.

Section 3. Effective Date. This Resolution shall be in full force and effect immediately upon adoption and approval by the Council.

(I)

THAT City staff is hereby authorized to do all deeds as necessary in the accomplishment of the hereinabove.

DONE AND APPROVED this _____ day of _____, 20 _____.

APPROVED:

Mayor

ATTEST:

City Clerk

(SEAL)

Moved by: _____

Seconded by: _____

VOTE:
Mayor Miyagishima: _____
Councillor Silva: _____
Councillor Smith: _____
Councillor Pedroza: _____
Councillor Small: _____
Councillor Sorg: _____
Councillor Levatino: _____

APPROVED AS TO FORM:



City Attorney

City of Las Cruces, New Mexico Post-Issuance Tax Compliance Procedures

The City of Las Cruces, New Mexico (the "Issuer" or the "City") is adopting these Post-Issuance Tax Compliance Procedures (the "Procedures") to: (1) maximize the Issuer's compliance with the federal tax law requirements applicable to its outstanding tax-exempt bonds, (the "Bonds"); and (2) identify and resolve any noncompliance matters, on a timely basis, to preserve the tax-exempt status of the Bonds. The approval of these Procedures by the Issuer will be treated by the Issuer as the establishment of written procedures to: (1) ensure that any Bonds that no longer qualify for tax-exempt status are identified and remediated in accordance with the requirements of the Internal Revenue Code of 1986, as amended (the "Code") and applicable regulations, including the remediation provisions of Treas. Reg. Sec. 1.141-12 or other remedial actions authorized by the Commissioner of the Internal Revenue Service under Treas. Reg. Sec. 1.141-12(h); and (2) monitor compliance with the requirements of Section 148 of the Code (which include arbitrage, yield restriction and rebate requirements) and related regulations.

1. Monitoring of Post-Issuance Compliance

The Issuer's Treasurer (the "Compliance Officer") will be responsible for monitoring post-issuance compliance for the Bonds pursuant to these Procedures. The Compliance Officer may designate employees of the City to carry out the duties under these Procedures on the Compliance Officer's behalf in the same manner and with the same effect as any similar designation for any other purpose permitted by law.

2. Compliance with Covenants in Bond Documents

The Compliance Officer will ensure compliance with all covenants made by the Issuer in the documents related to the Bonds (the "Bond Documents") which must be complied with to maintain the preferential tax status of the Bonds, including, but not limited to use of the Bond-financed facilities, timely completion of arbitrage rebate calculations, required filings and restrictions on investment of Bond proceeds

3. Federal Tax Law Compliance

A. Proper Use of and Allocation of Bond Proceeds

The Compliance Officer will ensure that Bond proceeds are allocated to expenditures in a manner that is consistent with the purpose for which each Bond issue was undertaken, as set forth in the Bond Documents. The Compliance Officer will also ensure that allocations of Bond proceeds to expenditures are timely made in accordance with the applicable tax regulations. (e.g., as of the date of adoption of these Procedures, for each Bond issue, allocations of Bond proceeds to expenditures must be made within 18 months after the later of the date the expenditure was made or the date the project was placed in service, but not later than the earlier of five years after the Bonds were issued or 60 days after the Bond issue is retired.)

B. Investment of Bond Proceeds

The Compliance Officer will ensure that Bond proceeds are invested in investments that are permissible under the Bond Documents, and any applicable state laws and federal tax laws (e.g., federal tax law requires that investments purchased with Bond proceeds must be purchased and sold at fair market value).

C. Arbitrage Calculations

The Compliance Officer will ensure the timely completion of arbitrage yield restriction and rebate calculations and filings for each issue of Bonds.

D. Yield Reduction/Rebate Payments

The Compliance Officer will ensure the timely payment, if applicable, of yield reduction payments and/or rebate, for each issue of Bonds.

E. Use of Bond-financed Facilities

The Compliance Officer will review any agreement or other arrangement for the sale, lease, or use of any portion of any Bond-financed facilities, including, but not limited to, service, vendor and management contracts, research agreements, licenses to use Bond-financed property or naming rights agreements for compliance with federal tax laws and the Bond Documents. The Compliance Officer will consult bond counsel for further guidance if necessary.

F. Post-Issuance Transactions

The Compliance Officer will, as directed by the Bond Documents or as other-wise deemed appropriate by the Officer, consult with bond counsel before making any changes or amendments to Bond Documents for a Bond issue, including, but not limited to entering or modifying investment agreements; making any change in security for the Bonds, engaging in post-issuance credit enhancement transactions (e.g., change in letter of credit) or hedging transactions (e.g., interest rate swap, cap); terminating or appointing a successor trustee; changes in mode, releasing any liens; or reissuing a Bond issue.

G. Remedial Action

If at any time during the life of a Bond issue, the Compliance Officer discovers that a violation of federal tax law requirements applicable to that issue may have occurred, the Compliance Officer may consult with bond counsel to determine whether any such violation actually has occurred. If the Compliance Officer determines that a violation has in fact occurred, the Compliance Officer will inform the City Council (the "Council") and the Council will take prompt action to accomplish an available remedial action under applicable regulations or to enter into a closing agreement with the IRS under the IRS's Voluntary Closing Agreement Program or other future published guidance.

4. Recordkeeping

A. Responsibility for Records Maintenance

1. The Compliance Officer will be responsible for maintaining records related to the Bonds.
2. The Compliance Officer will maintain a central list of records related to each issue of Bonds. The list shall identify:
 - i. The name and date of the document related to the issue,
 - ii. The person or office responsible for the document, and
 - iii. The physical or electronic location of the document.

B. Bond Records to be Maintained

1. The following documents will be maintained at the Compliance Officer's office (the "Bond Records") in electronic and/or hard-copy for-format for the term of each issue of Bonds (including refunding Bonds, if any), plus at least three years after the April 15 of the year the last Bond of each issue is retired:
 - i. The bond transcript for each Bond issue (which includes among other Bond Documents, the trust indenture, loan, lease, or other financing agreement, the relevant IRS Form 8038 (including Forms 8038-G or 8038, as applicable) with proof of filing, the bond counsel opinion and the tax agreement including all attachments, exhibits and any verification report);
 - ii. Records of debt service payments for each issue of Bonds;
 - iii. Documentation evidencing the expenditure of Bond proceeds, such as construction or contractor invoices and receipts for equipment and furnishings, bond trustee requisitions and project completion certificates, as well as records of any special allocations made for tax purposes including post-issuance changes in allocations;
 - iv. Documentation evidencing the lease or use of Bond-financed property by public and private sources, including, but not limited to, service, vendor, and management contracts, research agreements, licenses to use Bond-financed property, or naming rights agreements;
 - v. Documentation pertaining to investment of Bond proceeds, including the yield calculations for each class of investments, actual investment income received from the investment of proceeds, investment agreements, payments made pursuant to

- investment agreements and rebate calculations and copies of any 8038-T or 8038-R filed with respect to the Bonds;
- vi. Documentation pertaining to remedial action and other change-of-use records;
- vii. Amendments and other changes to the Bond Documents (including interest rate conversions and defeasances);
- viii. Letters of credit and other guarantees for Bond issues; and
- ix. Interest rate swaps and other derivatives that are related to Bond issues.

5. Bond Counsel Review

- A. The Compliance Officer may engage bond counsel to assist in implementing these Procedures, including, but not limited to, assistance in the following areas:
 - 1. Rebate calculations and compliance;
 - 2. Records retention;
 - 3. Periodic review of the Bond Records for compliance with federal tax laws regarding private business use;
 - 4. Determination of whether a violation of federal tax law requirements applicable to that Bond issue may have occurred and the Issuer's options to address the violation so the preferential tax status of the Bond issue is maintained;
 - 5. Termination or modification of any interest rate swaps or other derivatives;
 - 6. Review of investment agreements;
 - 7. Modifications to Bond Documents; and
 - 8. Other federal tax law compliance, including any annual reporting requirements that may be imposed by the IRS.

6. Review

The Compliance Officer is responsible for an annual review of each outstanding Bond issue pursuant to these Procedures. The initial review of each outstanding Bond issue must occur within eight (8) months of the adoption of these Procedures and subsequent reviews must be completed by December 31st of each year. Subsequent reviews will focus on events that happened in the immediately preceding year (e.g., new investment agreements, whether a spending exception threshold was met, whether there was a change in use of a portion of the Bond-financed facility). The Compliance Officer is required to present the annual review to the Board. The Compliance Officer may delegate all or any portion of the reviews to other

employees, but such employees must report their findings to the Compliance Officer. The Compliance Officer will recommend changes to these Procedures to the Board as appropriate to ensure compliance with any covenants in the Bond Documents and other federal tax law requirements which must be complied with to maintain the preferential tax status of the Bonds.

7. Training Requirements

Within six (6) months of the Compliance Officer's appointment or designation, and on an annual basis every year thereafter, the Compliance Officer and the Officer's designees will undergo training regarding basic federal tax concepts relating to the Bonds and records required to be maintained under these Procedures. Such training may include, but is not limited to attending post-issuance compliance sessions presented by the Government Finance Officers Association (GFOA), National Association of Bond Lawyers (NABL) or other similar trade organizations and public finance law firms and arbitrage compliance specialists.

8. Deadline Reminder System

For any Bond issues issued after the date of adoption of these Procedures, a deadline reminder sheet will be completed within two weeks of the date such adoption.