POLICY – Post Issuance Compliance (for Governmental Bonds) 6103

Scope. This Post Issuance Compliance Policy addresses the District's compliance with federal tax, federal securities and state law requirements and contractual obligations applicable to the District's tax-advantaged governmental bond issues. The policy applies generally to all of the District's tax-exempt 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.

Purpose. This policy is intended to improve the District's ability to:

- Prevent violations in bond requirements from occurring in the first place,
- Timely identify potential violations, and
- Correct identified violations through appropriate remedial steps.

Schedule of Review. The policy is to be reviewed at least annually and upon each issuance of new bonds, including refunding bonds. In connection with this periodic review, the District will consider whether the policy should be amended or supplemented:

- To address any particular requirements associated with the new bond issue, or
- To reflect general changes in requirements since the prior bond issue.

Requirements at Bond Closing. Numerous federal tax, federal securities and state law requirements must be met in connection with a bond issue. In some circumstances (e.g., revenue bonds) rate and other covenant requirements will also need to be satisfied. These requirements are addressed in the bond transcript completed at bond closing and confirmed in certain respects by the legal opinions included in the bond transcript.

Requirements After Bond Closing. Other federal tax, federal securities law and state law requirements and contractual obligations require on-going monitoring after the issuance of the bonds.

- Officials or employees responsible for review. The following officers and employees of the District are identified as the responsible persons for reviewing compliance with the District's post-issuance obligations. Each responsible individual is to institute a calendaring system to track compliance with tasks in a timely manner.
    - ➢ Federal tax requirements, including arbitrage, use of proceeds, use of facilities and IRS filings:
        - ✓ Arbitrage, IRS Filings: Executive Director Financial Services in conjunction with an arbitrage specialist
        - ✓ Use of Proceeds: Director of Construction and Design; Assistant Superintendent
        - ✓ Use of Facilities: Assistant Superintendent or designee

- ✓ In addition, the District will contract with Arbitrage Compliance Specialists to complete arbitrage and rebate review.

- ➢ Continuing disclosure requirements:

  - ✓ Annual Filing: Executive Director Financial Services
  - ✓ Material Event Notices: Assistant Superintendent and Executive Director Financial Services
  - ✓ Prior to filing each annual filing or material event notice, the Assistant Superintendent is to circulate the draft filing or notice to the Superintendent and Cabinet members

- ➢ The Assistant Superintendent is responsible for reviewing the other requirements under this policy.

- ➢ The responsible persons identified above may need to confer, from time to time, with the District's bond counsel and/or financial advisor, to confirm the applicability and scope of the requirements outlined in this policy. For reference, the contact information for these advisors is provided below:

  - ✓ Pacifica Law Group LLP, as bond counsel (contact: Faith Pettis at 206-245-1715; faith.pettis@pacificalawgroup.com or Alison Benge at 206-601-1210; alison.benge@pacificalawgroup.com)

- <u>Training of the responsible official/employee</u>. The District provides opportunities for training to the responsible individuals, 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)

- <u>Records to be Maintained</u>. The following documents are maintained in connection with each bond issue. The goal is to retain adequate records to substantiate compliance with federal tax, securities law, state law and other contractual requirements applicable to the District's bonds. Generally, records should be maintained for the term of the bonds (plus any refunding) plus four years. Unless otherwise specified, the following records are to be maintained in the office of Financial Services.

- Complete bond transcript (provided by bond counsel) in electronic or hard copy.
- Records of investment of bond proceeds in a format showing the date and amount of each investment, its interest rate and/or yield, the date any earnings are received and the amount earned, and the date each investment matures and if sold prior to maturity, the sale date and sale price.
- Records of expenditure of bond proceeds in a format showing the amount, timing and the type of expenditure.
- Records of invoices or requisitions, together with supporting documentation showing payee, payment amount and type of expenditure, particularly for projects involving multiple sources of funds.
- Records necessary to document the allocation of bond proceeds and other sources of funds to particular projects or portions of projects.
- 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.
- Records demonstrating compliance with arbitrage and rebate requirements, including arbitrage calculations, documentation of spending exceptions to rebate, rebate reports and IRS filings and payments.
- Copies of 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).
- Copies of contracts relating to ongoing compliance with respect to the bonds.
- Copies of any filings or correspondence with the IRS, the SEC or other regulatory body.

- Investment of Bond Proceeds. 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 District qualifies as a small District or a spending exception is met. The arbitrage and rebate requirements for each bond issue are detailed in the federal tax certificate. The Executive Director Financial Services will monitor the investment and expenditure of the funds and accounts listed below. The Executive Director Financial Services will determine whether the bond issue meets the requirement for one of the expenditure exceptions to arbitrage rebate. The Executive Director Financial Services in consultation with bond counsel will determine whether a rebate calculation is necessary and, if so, will perform the calculation or engage a rebate consultant. The Finance Executive Director will arrange for the payment of any required rebate to the IRS together with the appropriate IRS form on the dates described below.

    - Funds to Monitor.
        - ✓ Bond or debt service funds/accounts
        - ✓ Project or construction funds/accounts
        - ✓ Debt service reserve funds/accounts
        - ✓ Other accounts with bond proceeds or amounts pledged to pay bonds

- Arbitrage Reports; Rebate May Be Due.
  - ✓ During construction, monitor expenditures to confirm satisfaction of expected exception to rebate (such as six-month exception, 18 month exception, 24 month exception)
  - ✓ The first rebate payment is due five years after date of issue plus 60 days
  - ✓ Rebate is due every succeeding five years, if there are unspent gross proceeds of the bonds
  - ✓ Final rebate payment is due 60 days after early redemption or retirement of the bonds

- Limitations on Type of Investments. Bond proceeds must be invested as permitted under state law. In addition, the bond ordinance, bond resolution or any bond insurance agreement may further limit the permitted investments. To monitor compliance with these investment restrictions, the District has adopted its Investment Policy 7280 Investment of Funds adopted on 2/3/1986 and reviewed 10/20/2009, which details these requirements.

• Use of Bond Proceeds During the Construction Period. 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).

- The Assistant Superintendent, in consultation with the Construction Project Manager, is responsible for reviewing the transcript for the bonds, and in particular the authorizing documents and the federal tax certificate, as well as invoices and other expenditure records to monitor that the bond proceeds are spent on authorized project costs.
- If, at the completion of the project, there are unspent bond proceeds the Assistant Superintendent, conferring with bond counsel, will direct application of the excess proceeds for permitted uses under federal tax law, state law, and bond authorization documents.
- If the project involves bond proceeds and other sources of funds and included both governmental and nongovernmental use of the financed facilities the Assistant Superintendent in consultation with the Construction Manager will undertake a final reconciliation of bond proceeds expenditures 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).

• Use of Bond-Financed Facilities. Monitoring (and limiting) any private use of the bond-financed facility is important to maintaining the federal tax treatment of governmental bonds. In general, no more than 10% of the bond-financed facility can be used in a private trade or business (including by the federal government and nonprofit entities). Private use can arise through any of the following arrangements, either directly or indirectly.

- Types of Private Use
  - ✓ Selling all or a portion of the facility
  - ✓ Leasing all or a portion of the facility
  - ✓ Entering into a management contract for the facility (except for qualified management contracts under IRS Rev. Proc. 2017-13 and any successor guidance)
  - ✓ Use of all or a portion of the facility for research purposes under a research contract (except for qualified research contracts under IRS Rev. Proc. 2007-47 and any successor guidance)
  - ✓ Entering into contracts giving "special legal entitlement" to the facility (for example, selling advertising space or naming rights)

- Procedures for monitoring private use; procedures reasonably expected to timely identify noncompliance.
  - ✓ All leases and other contracts involving bond-financed property will be sent prior to execution to the Executive Director of Financial Services for review.

- Procedures ensuring that the District will take steps to timely correct noncompliance.
  - ✓ If the District takes official action to sell, lease or otherwise change the use of bond-financed facilities to private use, action should be taken under Treas. Reg. § 1.141-12 within 90 days to apply net proceeds of the sale or lease of the facility to other qualifying capital expenditure or to redeem or defease bonds. Upon a determination that there has been or could be a change in use of a bond-financed facility under the monitoring procedures described above, the Executive Director of Financial Services shall consult with bond counsel and apply net proceeds of the change in use as required

- <u>Continuing Disclosure</u>. The District is required to make annual filings with the Municipal Securities Rulemaking Board ("MSRB") as described in the continuing disclosure undertaking for each bond issue (which may include tax-exempt, or taxable bonds), and to file notice of certain material events.

  - Submissions will be made in electronic form through the MSRB's web-based system known as Electronic Municipal Market Access ("EMMA"), currently available at http://www.emma.msrb.org . Submissions will be made in word-searchable PDF.
  - Annual filings
    - ✓ Financial information and operating data about the issuer included in the Official Statement for the bonds
    - ✓ Change in fiscal year; other information described in the continuing disclosure undertaking
    - ✓ Audited financial statements
    - ✓ These reports must be filed no later than nine months after the end of the District's fiscal year (currently August 31)

- Material event notices.
  - ✓ The District is required to provide or cause to be provided to the MSRB, in a timely manner, notice of certain events with respect to the bonds. Amendments to SEC Rule 15c2-12 (the "Rule") in 2010 expanded the list of events requiring disclosure and added a 10-day compliance period for undertakings effective after December 1, 2010. Amendments to the Rule in 2018 further expanded the list of events requiring disclosure for undertakings effective on or after February 27, 2019.
  - ✓ Generally, if any of the following events occur, the District shall provide, or cause to be provided, to the MSRB, in a timely manner not in excess of ten business days after the occurrence of the event, notice of the occurrence of the any of the following events with respect to the bonds:

    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 District
    13. The consummation of a merger, consolidation, or acquisition involving the District or the sale of all or substantially all of the assets of the District, 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 District, if material, or agreement to covenants, events of default, remedies,

priority rights, or other similar terms of a financial obligation of the District, any of which affect bondholders, if material

16. Default, event of acceleration, termination event, modification of terms, or other similar events under the terms of a financial obligation of the District, any of which reflect financial difficulties

✓ For purposes of the list above, the term "financial obligation" means (A) a debt obligation, (B) a 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) a guarantee of clause (A) or (B).

- Procedure for ensuring that notice of the above events is provided to the responsible individual(s) identified above: Assistant Superintendent and Executive Director Financial Services

- Periodic check of information regarding bonds on EMMA. Prior to each new bond issue, the District will search EMMA for its continuing disclosure filings to confirm proper filings have been made.

Adopted: May 19, 2020 North Thurston Public Schools Board of Directors