

## YAKIMA COUNTY

### POST ISSUANCE COMPLIANCE POLICY FOR BONDS

This policy is intended to guide the County in meeting its obligations under applicable statutes, regulations and documentation associated with publicly offered and privately placed securities (“bonds”) of the County. This policy addresses obligations of the County that arise and will continue following the issuance of bonds. The County maintains a separate Debt Policy with respect to matters related to the issuance of security obligations, including compliance with the County’s disclosure obligations related to bond 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 County.

This policy outlines obligations that may be applicable to each issue of bonds and identifies the party to be responsible for monitoring compliance. In the County, the Treasurer (the “Compliance Officer”) will be responsible for ensuring that the policy is followed and checklists and records maintained. The Compliance Officer may delegate responsibility to employees and outside agents for developing records, maintaining records and checklists. The County will provide educational opportunities (opportunities to attend educational programs/seminars on the topic) 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 County’s bond counsel shall provide the County with 2 copies of a full transcript related to the issuance of bonds (for each issue). The transcript shall be delivered in the following form: one USB drive and one hard copy, and transcripts shall be delivered to the County within 2 months following the date of issuance of bonds. It is expected that the transcript will include a full record of the proceedings related to the issuance of bonds, 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 County: Yakima County Treasurer, 128 N. 2<sup>nd</sup> St. Room 115, Yakima, WA 98901.

#### B. Federal Tax Law Requirements (Applicable only if the bonds are issued as “tax-exempt” bonds).

##### 1. *Use of Proceeds.*

a. If the project(s) to be financed with the proceeds of the bonds will be funded with multiple sources of funds, the County will adopt an accounting methodology that maintains each source of funding separately and monitors the actual expenditure of proceeds of the bonds.

b. Records of expenditures (timing of expenditure and object code) of the proceeds of bonds will be maintained by the County Treasurer.

c. Records of interest earnings on the proceeds of bonds will be maintained by the County Treasurer. Interest earnings on proceeds will be deposited in the fund in which the proceeds of the bonds were deposited. If for any reason interest earnings will not remain in the fund in which the proceeds of bonds were deposited, then the plan for use of interest earnings will be discussed with the County's bond counsel.

d. Records of interest earnings on reserve funds maintained for the bonds (unless the original principal amount of the bonds issue, including other issues during the same calendar year, was \$5,000,000 or less).

2. *Arbitrage Rebate.* The County Treasurer ("Rebate Monitor") will monitor compliance with the arbitrage rebate obligations of the County for each issue ("issue") of bonds. The County will provide educational opportunities, through attendance at educational programs/seminars on the topic of arbitrage regulations, to support the Rebate Monitor and facilitate his/her performance of these obligations.

a. If the Rebate Monitor determines that the total principal amount of tax-exempt governmental obligations (including all tax-exempt leases) issued or incurred by the County during any 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, but will monitor expenditures and the use of proceeds after completion of the project as set forth in number 3 below.

b. If the Rebate Monitor determines that the total principal amount of governmental obligations (including all tax-exempt leases, etc.) of the County issued or incurred will be greater than \$5,000,000, the Rebate Monitor will monitor arbitrage rebate compliance.

i. *Rebate Exceptions.* The Rebate Monitor will review the tax certificate in the transcript in order to determine whether the County expected to comply with a spending exception that would permit the County 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 24-month spend-down exception), then the Rebate Monitor will monitor the records of expenditures (described in B.1. above) to determine whether the County met the spending exception. If the County met the relevant spending exception, the Rebate Monitor will retain documentation demonstrating timing of expenditures and will not need to perform arbitrage rebate calculations or pay an arbitrage rebate to the federal government.

ii. *Rebate Compliance.* If the County did not meet or does not expect to meet any of the spending exceptions described in (i) above, the County 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 "arbitrage yield" on the issue then the Rebate Monitor may retain documentation describing the basis for such determination in lieu of following the steps described in the following paragraph. The "arbitrage yield" can be found in the tax certificate or Form 8038-G in the transcript.

y. retain the services of an arbitrage rebate consultant in order to calculate any potential arbitrage rebate liability. The rebate consultant may 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 bond issues of the County. 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 County's rebate consultant. The selected rebate consultant shall provide a written report to the County with respect to the issue and with respect to any arbitrage rebate owed if any. In lieu of retaining an arbitrage rebate consultant, the Rebate Monitor may purchase specialized software designed for the purpose of facilitating the computation of arbitrage rebate requirements by County staff trained to use the software.

z. based on the report of the rebate consultant or results of computations prepared by trained staff, file reports with the Internal Revenue Service, no later than 60 days after the fifth anniversary of the date of each issue, 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.

3. *Unused Proceeds Following Completion of the Project.* Following completion of the project(s) financed with the issue proceeds (or three years from the date of issuance if this occurs first), the Compliance Officer 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 resolution) and if no provision is otherwise made for the use of unspent proceeds, to the redemption or defeasance of outstanding bonds of the issue.

c. If after three years unused proceeds remain, the Compliance Officer will consult with bond counsel regarding potential yield restriction or yield reduction payments relating to the unspent bond proceeds.

4. *Facilities and Use of the Facilities Financed with Proceeds; Private Use.* The Compliance Officer will monitor and confirm that the County maintains an asset list or other record regarding all facilities and equipment that are bond-financed, and depreciation schedules for such facilities and equipment. In order to maintain tax-exemption of bonds 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 Compliance Officer will coordinate with County staff to 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*

*minus* amounts unless cured by a prescribed remedial action. Private use may arise as a result of:

- a. Sale of the facilities;
- b. Lease or sub-lease of the facilities (including leases, easements or use arrangements for areas outside the four walls, e.g., hosting of cell phone towers) or leasehold improvement contracts;
- c. Management contracts (in which the County authorizes a third party to operate a facility, e.g., cafeteria), research contracts and naming rights contracts;
- d. Preference arrangements (in which the County permits a third-party preference, such as parking in a public parking lot); and
- e. Joint-ventures, limited liability companies or partnership arrangements.

If the Compliance Officer identifies private use of tax-exempt debt financed facilities, the Compliance Officer will consult with the County'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 Compliance Officer should retain all documents related to any of the above potential private uses.

#### 5. *Records Retention.*

a. Records with respect to matters described in this Subsection B will be retained by the County for the life of the bond issue (and any issue that refunds the bond 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) Detailed records of expenditures of bond proceeds (including interest earnings);
- iv) Work papers that were provided to the rebate consultants; and
- v) If no rebate report was prepared, then 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; however, if those documents are maintained as a matter of policy in electronic form, then 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) and all reports regarding IRS examinations of County or its bond financings.

vii) Copies of all documents related to potential private use as set forth in B.4 above, including 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.

viii) Documents to establish valuation and source of funding for bond-financed project, including appraisals, demand and feasibility studies and grant contracts.

ix) Construction and purchase contracts.

x) Records related to investment contracts, credit enhancement contracts, derivatives and all related bidding documents.

xi) Any other documentation necessary to establish the qualification for tax-exemption of the bonds.

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 bonds. Unless the County 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 County to comply with the Rule. The Compliance Officer will monitor compliance by the County with its undertakings.

1. Publicly Offered Securities. For each publicly offered security (bonds), the Rule requires that the County is obligated to enter into a continuing disclosure undertaking (“CDA”). The CDAs each require that the County post certain financial and operating information on the Municipal Securities Rulemaking Board’s (“MSRB”) Electronic Municipal Marketplace Access system (“EMMA”).

a. Annual Filings. Each CDA requires that the County file audited financial statements. The financial statements are required to be filed within nine months of the end of the County’s fiscal year (December 31). If audited financial statements are not available in time, then unaudited statements should be filed, and the audited financial statements filed when they become available. There are, however, significant distinctions among the CDAs:

In addition, the County is required to file the following data for general obligation indebtedness (unless it is included in the audited financial statements or unless the County has a final official statement with the filing period that includes the information):

- i) The assessed valuation of taxable property in the County;
- ii) Ad valorem taxes due (and percentage of taxes collected for the County’s LTGO Bonds, 2009, LTGO Bonds 2010 and LTGO Bonds, 2014;
- iii) Property tax levy rates per \$1,000 of assessed valuation; and
- iv) Lodging tax rates and collections (while the County’s LTGO Bonds, 2020 are outstanding);

v) Outstanding general obligation debt of the County.

b. Additional Filings. In addition to the annual filings and operating data referred to in (a) above, the County is required to make certain additional filings upon the occurrence of the following events ("Listed Events"). The County is required to provide notice of the following Listed Events no later than ten business days after the occurrence of the event:

- 1) Principal and interest payment delinquencies;
- 2) Nonpayment related defaults, if material;
- 3) Unscheduled draws on debt service reserves reflecting financial difficulties;
- 4) Unscheduled draws of 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 Internal Revenue Service 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 Bond holders, 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;
- 12) Bankruptcy, insolvency, receivership or similar event of the County;
- 13) The consummation of a merger, consolidation, or acquisition involving the County or the sale of all or substantially all of the assets of the County, 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 County, if material, or agreement to covenants, events of default, remedies, priority rights, or other similar terms of a financial obligation of the County, 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 County, any of which reflect financial difficulties.

Items numbered (15) and (16) are required only for publicly offered bonds that are issued after February 27, 2019. The Rule provides that the term “financial obligation” means a (i) debt obligation; (ii) derivative instrument entered into in connection with, or pledged as security, or a source of payment for, an existing or planned debt obligation; or (iii) guarantee of (i) or (ii). The term “financial obligation” shall not include municipal securities as to which a final official statement has been provided to the MSRB consistent with the Rule.

For the purposes of compliance with Item number (15), the following obligations shall be deemed “financial obligations” of the County:

i) Bank loans (whether evidenced by lease/lease back documentation or a loan agreement) to the extent that they are financed through bank loans that do not involve a final official statement. At a minimum, filings will be made on EMMA that are linked to the outstanding issues payable from the same source of revenues, but may also be linked, whether for convenience or otherwise, to other County CUSIPs;

ii) Loans issued through the State or Federal Government. At a minimum, filings will be made on EMMA that are linked to the CUSIPs of debt payable from the same source (e.g., general obligation, revenue), but also may be linked, whether for convenience or otherwise, to other County CUSIPs;

iii) Long term leases or installment purchases, however designated, that provide for the acquisition of property (real property or personal property) over a term. For these obligations, the County will establish a materiality threshold. The thresholds are: (a) for obligations that are payable from general funds of the County, disclosure will be made for contracts with a dollar amount in excess of \$5,000,000 which is less than 5% of the County’s annual general fund budget; and (b) for obligations that are payable from an identified source of revenues, e.g. County revenue or enterprise fund, disclosure will be made for contracts with a dollar amount in excess of 5% of the annual revenues of the enterprise fund. The County Treasurer will periodically make affirmative inquiries as to whether obligations of this nature have been incurred.

The County Treasurer will maintain records of these contracts in order to confirm future compliance with this policy.

For purposes of compliance with Item number (16), the County Treasurer will monitor amendments identified in (i) through (iii) above in order to confirm that the amendment was made for commercial purposes (in the ordinary course of business) or whether the amendment reflected financial difficulties. In addition, the County Treasurer, in the course of her role in the financial affairs of the County, will be aware of circumstances that reflect financial difficulties and make determinations as necessary whether disclosure is required under CDAs.

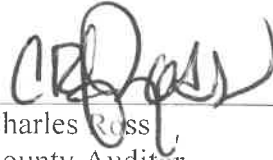
2. Bank Loans. The County borrowing resolution or loan documents may include its own set of annual disclosure requirements for each Bank loan. As a result, a chart should be maintained that identifies the annual disclosure responsibilities for each transaction. In some instances, the filings on EMMA may satisfy those annual disclosure requirements. The County Treasurer will monitor compliance with those filing requirements by filing the required information with the respective bank.

D. Other Notice Requirements. In some instances, the proceedings authorizing the issuance of bonds will require the County 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 Compliance Officer will maintain a listing of those requirements and monitor compliance by the County.

E. Approval and Adoption. Approved and adopted this 12th day of February, 2020, by the Yakima County Finance Committee.



Ilene Thomson  
County Treasurer  
Chairman, County Finance Committee



Charles Ross  
County Auditor  
Secretary, County Finance Committee



Norm Childress  
Chairman of Board  
Member, County Finance Committee



Ron Anderson, Commissioner  
Board of County Commissioners



Vicki Baker, Commissioner  
Board of County Commissioners