

Council Agenda Report

Date: April 25, 2016

Submitted by: Sandra Tripp-Jones, City Manager 

Prepared by: Ginger Heatwole, Finance Director

SUBJECT: Resolution regarding post-closing bond compliance procedures

Recommendation that Council adopt a resolution of the Commissioners of Cambridge (the "City") for the purpose of approving the substantially final form of, and authorizing and directing certain officials to finalize and execute, on behalf of the City, written post-issuance tax compliance procedures for non-conduit tax-exempt obligations that are designed to promote compliance with applicable post-closing provisions of the Internal Revenue Code of 1986, as amended, and related U.S. Treasury Regulations; and determining various matters in connection therewith (Resolution 2016-005).

Discussion:

The City has substantially closed on the refunding of the Public Safety Bond and Marina Bond. When the City pays of these two bonds, the City will be obligated to comply with, and monitor the compliance with, the Post-Issuance Tax Compliance Procedures for Non-Conduit Tax Exempt Obligations. With increased concern by the IRS regarding the oversight of issuers over compliance with tax certificates, a best practice is to have separate written procedures in place that can be shared with applicable City official and employees during the life of an issue.

The written procedures outlined in Exhibit A of the Resolution are to provide written instructions on the oversight of facilities purchased with tax exempt obligations including the Public Safety Building, the Marina renovation, the "Tech Park" loan, and the upgrades to the wastewater treatment plant. The guidance for post issuance costs has historically been done through each Tax Certificate. With the sale of the Public Safety Bond, the City needs to implement written procedures.

City Manager will assign the Finance Director with primary responsibility for complying with these procedures. Steps include:

- Items to be completed promptly following closing of the bond sale such as creating an asset list and creating a tickler system
- Monitoring the use of obligation proceeds
- Accounting for the expenditures
- Reviewing and monitoring the use of obligation-funded capital projects
- Record retention
- Various other items regarding compliance

Fiscal impact: There is no anticipated fiscal impact. These steps will be handled internally by the Finance Department.

RESOLUTION NO. 16-005

A RESOLUTION OF THE COMMISSIONERS OF CAMBRIDGE (THE "CITY") FOR THE PURPOSE OF APPROVING THE SUBSTANTIALLY FINAL FORM OF, AND AUTHORIZING AND DIRECTING CERTAIN OFFICIALS TO FINALIZE AND EXECUTE, ON BEHALF OF THE CITY, WRITTEN POST-ISSUANCE TAX COMPLIANCE PROCEDURES FOR NON-CONDUIT TAX-EXEMPT OBLIGATIONS THAT ARE DESIGNED TO PROMOTE COMPLIANCE WITH APPLICABLE POST-CLOSING PROVISIONS OF THE INTERNAL REVENUE CODE OF 1986, AS AMENDED, AND RELATED U.S. TREASURY REGULATIONS; AND DETERMINING VARIOUS MATTERS IN CONNECTION THEREWITH.

RECITALS

WHEREAS, The Commissioners of Cambridge, a Maryland municipal corporation (the "City"), has from time to time issued, and expects in the future to issue, non-conduit obligations of various types the interest on which is expected to be excludable from gross income for federal income tax purposes under the provisions of the Internal Revenue Code of 1986, as amended (the "Tax Code"), and related U.S. Treasury Regulations; and

WHEREAS, the Internal Revenue Service has strongly recommended that issuers of tax-exempt obligations put in place written procedures designed to address post-issuance compliance with certain provisions of the Tax Code and the related U.S. Treasury Regulations; and

WHEREAS, the City anticipates issuing in the near future general obligation bonds for refunding purposes; and

WHEREAS, bond counsel to the City has recommended that the City adopt written post-issuance compliance procedures with respect to tax-exempt obligations issued by the City for non-conduit borrowings, which procedures will apply to any outstanding non-conduit tax-exempt obligations of the City and future non-conduit tax-exempt obligations of the City.

NOW, THEREFORE, BE IT RESOLVED BY THE COMMISSIONERS OF CAMBRIDGE that:

SECTION 1. The Recitals to this Resolution are incorporated by reference in and made an integral part of this Resolution. Capitalized terms used in the Sections of this Resolution and not otherwise defined therein shall have the meanings given to such terms in the Recitals to this Resolution.

SECTION 2. The substantially final form of the Post-Issuance Tax Compliance Procedures for Non-Conduit Tax-Exempt Obligations attached hereto as Exhibit A (the "Procedures") are hereby approved, and the City Manager of the City (the "City Manager") and the Finance Director of the City (the "Finance Director"), on behalf of the City, working with bond counsel to the City, are hereby authorized and directed to make and approve changes thereto in order to conform the same to actual or recommended City practices, to correct

typographical or grammatical errors, to complete blanks, to cure ambiguities and inconsistencies, or to conform to applicable law as advised by bond counsel to the City, and to execute the final form of the Procedures on behalf of the City. The approval of the final form of the Procedures by the City Manager and the Finance Director shall be evidenced conclusively by their signatures thereon. The final Procedures shall be maintained in the records of the City but need not be filed in any court records. All appropriate officials and employees of the City are hereby authorized, directed and empowered to comply with the Procedures with respect to any obligations of the City that are, or become, subject to the Procedures.

SECTION 3. Appropriate officials or employees of the City are hereby authorized from time to time to add appropriate detail to the job descriptions of City officials or employees who are charged with responsibility for complying with the final form of the Procedures.

SECTION 4. This Resolution shall become effective immediately upon its adoption.

[CONTINUED ON FOLLOWING PAGE]

ATTEST:

THE COMMISSIONERS OF CAMBRIDGE

Sandra Tripp-Jones, City Manager

By: _____
Donald Sydnor, Acting Mayor

Introduced: April 25, 2016

Adopted by the Commissioners: April 25, 2016

APPROVED AS TO FORM AND LEGAL SUFFICIENCY THIS 25th DAY OF APRIL, 2016.

By: _____
City Attorney

#184761.58161.001

EXHIBIT A

SUBSTANTIALLY FINAL FORM OF POST-ISSUANCE TAX COMPLIANCE PROCEDURES FOR NON-CONDUIT TAX-EXEMPT OBLIGATIONS

THE COMMISSIONERS OF CAMBRIDGE

POST-ISSUANCE TAX COMPLIANCE PROCEDURES FOR NON-CONDUIT TAX-EXEMPT OBLIGATIONS

The purpose of these Post-Issuance Tax Compliance Procedures for Non-Conduit Tax-Exempt Obligations (the "Procedures") is to establish procedures to be followed by The Commissioners of Cambridge (the "City") following the issuance by the City of any tax-exempt obligations to be used for the City's purposes (i.e., excluding conduit issues). Examples of tax-exempt obligations issued for the City's purposes include, but are not limited to, general obligation bonds (including, without limitation, tax-exempt general obligation bonds issued to the Maryland Water Quality Financing Administration or the Community Development Administration to evidence loans obtained from such State-level administrations), general obligation bonds issued to the United States of America acting through the United States Department of Agriculture (USDA) and any of its agencies (including Rural Utilities Service or Rural Development) to evidence USDA loans, general obligation bond anticipation notes, revenue bonds (the proceeds of which are *not* loaned to a conduit borrower or the facilities financed by which are *not* leased to a conduit borrower), tax increment financing bonds, special taxing district bonds, loans from a bank, installment purchase agreements and lease-purchase agreements, any of such obligations the interest on which is intended to be excludable from gross income of the registered owners thereof for federal income tax purpose (collectively, the "Obligations"). References in these Procedures to "bonds" shall be construed broadly to encompass any evidences of indebtedness that are treated as tax-exempt for federal income tax purposes (including certificates, notes or other types of indebtedness).

The City has historically used each Tax Certificate (as defined below under Part I, "Promptly Following Closing") to establish or serve as a guide for the applicable post-issuance monitoring and record-keeping requirements to be followed by the City. The purposes of these Procedures is to supplement the City's existing procedures (including any procedures set forth in the Tax Certificates) to maintain on-going compliance with the requirements of federal income tax law necessary to preserve and maintain the federal income tax exemption with regard to its outstanding Obligations and Obligations to be issued in the future.

The City may revise or amend these Procedures from time to time and, upon consultation with appropriate professionals (e.g., bond counsel, financial advisor, rebate analyst), may deviate from these Procedures in applicable cases.

For each issue of Obligations, the City Manager and the Finance Director will confirm which City official(s)/employee(s) will have primary responsibility for complying with these Procedures. In addition, the City Manager and the Finance Director shall at least annually, and

upon the resignation, termination or death of any such designated official(s)/employee(s), re-assess whether any such primary responsibility needs to be re-assigned. Any such assignment may be made in the applicable Tax Certificate or in other written form that is accessible to applicable City officials and employees, and any such re-assignment may be made in a supplement to the applicable Tax Certificate or in other written form that is accessible to applicable City officials and employees. If no such assignment is made with respect to a particular issue of Obligations, the Finance Director will be the default official responsible for complying with these Procedures. If the position of Finance Director is vacant and no other official has the authority to act in such titled official's stead as described further herein, the City Manager will be the default official responsible for complying with these Procedures.

Notwithstanding the provisions of the previous paragraph, in the event the position of City Manager or Finance Director is vacant at any time that the City Manager and the Finance Director are to make an assignment in accordance with this paragraph, and no other official has the authority to act in such titled official's stead as described further herein, the remaining official shall be responsible for determining which City official(s)/employee(s) shall have primary responsibility for compliance with these Procedures, and in the event both such positions are vacant at such time and no other officials have the authority to act in such titled officials' stead as described further herein, The Commissioners of Cambridge, the governing body of the City (the "Commissioners"), shall be responsible for determining which City official(s)/employee(s) shall have primary responsibility for compliance with these Procedures with respect to the affected Obligations.

The finalization and approval of these initial Procedures were authorized by Resolution No. _____, adopted by the Commissioners on _____, 2016 and effective on _____, 2016.

Unless and until responsibility for complying with these Procedures with respect to any outstanding Obligations is otherwise provided for herein or is delegated to one or more other City official(s)/employee(s) in accordance herewith, the Finance Director shall have primary responsibility for complying with these Procedures with respect to such outstanding Obligations.

References in these Procedures to any official by title shall be deemed to refer (i) to any official authorized under the Charter of the City (the "Charter") or the code of ordinances of the City (the "City Code") or other applicable law to act in such titled official's stead during the absence or disability of such titled official, (ii) to any person who has been elected, appointed or designated to fill such position in an acting capacity under the Charter or the City Code or other applicable law, (iii) to any person who serves in a "Deputy" or "Assistant" capacity as such an official, provided that the applicable responsibilities, rights or duties referred to herein have been delegated to such deputy or assistant in accordance with applicable law or authority, and/or (iv) to the extent an identified official commonly uses another title not provided for in the Charter or the City Code, the official, however known, who is charged under the Charter or the City Code or other applicable law or authority with the applicable responsibilities, rights or duties referred to herein.

All of the following provisions of these Procedures may not be applicable to each series of Obligations.

I. Promptly Following Closing:

- Create, or to the extent already created update, a list of buildings, facilities, improvements and equipment that have been or will be financed, reimbursed or refinanced in whole or in part with proceeds of Obligations (the “Obligation-Funded Capital Projects”) OR if a master list of City capital assets is maintained, indicate on such master list which assets constitute Obligation-Funded Capital Projects (in either such case, the “Asset List”). To the extent possible, the Asset List should indicate (i) the scheduled maturity date of Obligations and (ii) any date(s) as of which Obligations are prepaid/redeemed in whole or in part prior to maturity.
- Confirm whether the bond year referenced in the tax certificate (by whatever name known—e.g., Tax and Section 148 Certificate, Non-Arbitrage Certificate, Tax Compliance Agreement and Arbitrage Certificate, etc.--the “Tax Certificate”) will be followed or another bond year will be followed. Sometimes the provisions that constitute a Tax Certificate are not set forth in a separate document; for example, for a local government borrower participating in the Community Development Administration’s Local Government Infrastructure Financing Program, the provisions constituting the Tax Certificate are typically found within the General Certificate of the borrower.
- Confirm internally the method to be used of allocating expenditures of Obligation proceeds and investment earnings thereon, particularly with respect to capital projects to be funded from multiple sources (e.g., specific tracing, first-in/first-out, ratable allocation, gross proceeds spent first).
- Advise City officials and employees with responsibility for selling, leasing, otherwise allowing use of (by concession, license or other type of use arrangement), providing for the operation and management of, or disposing of City assets which Obligation-Funded Capital Projects have been added to the Asset List, and that the planned use of such Obligation-Funded Capital Projects and any change in such planned use must be vetted in accordance with Part V, “Use of Obligation-Funded Capital Projects” below.
- Set up tickler system with reminders for complying with applicable yield restriction requirements, arbitrage rebate calculation requirements and periodic review of Asset List.

II. Investments, Yield Restriction and Arbitrage Rebate:

- During acquisition/construction period for Obligation-Funded Capital Projects, monitor investment and expenditure of Obligations proceeds and any replacement proceeds to comply with investment temporary periods and investment yield restriction periods and compliance with 6-month, 18-month or 24-month spending period exceptions from arbitrage rebate requirements, if applicable.
- With respect to Obligations issued for advance refunding or current refunding purposes, monitor investment and expenditure of Obligations proceeds to comply with investment temporary periods, investment yield restriction purposes, treatment of any transferred proceeds and applicable expenditure periods outlined in the Tax Certificate.
- Confirm that any intended investments are within the City’s adopted investment policy and are allowed by federal and Maryland law.

- Determine likelihood of compliance with arbitrage rebate spending period exceptions, including small issuer exception, if applicable. The Tax Certificate will address certain matters relating to arbitrage rebate requirements.
- Review copies of investment statements as received to determine if investments are within any required restriction limits and retain copies of investment statements as described below under Part VI, “Record Retention”.
- Make/sell investments at fair market value. For investments to be made in securities traded on established markets, yield-restricted defeasance escrows, guaranteed investment contracts and certificates of deposit, consult with bond counsel, financial advisor and/or other applicable advisors to ensure compliance with applicable bidding regulations or safe harbors.
- If arbitrage rebate exception not likely to be available, determine whether rebate calculations to be made by qualified City officials or employees or engage City accountant or rebate analyst to perform necessary calculations and filings.
- Provide copies of investment statements and any other materials requested to permit proper calculation of arbitrage rebate payments or payments in lieu thereof.
- Assure timely payment of required rebate amounts or payments in lieu thereof by using tickler system.
- Retain copies of all rebate calculations and filings made in connection with rebate payments or payments in lieu thereof as described below under Part VI, “Record Retention”.

III. Use of Obligations Proceeds:

- Monitor use of Obligations proceeds (including sale, net sale, gross, replacement or transferred proceeds and investment earnings thereon) throughout term of issue to ensure compliance with covenants and restrictions contained in the Tax Certificate and in authorizing ordinances/resolutions (to ensure that Obligations proceeds are applied to authorized capital projects and other authorized costs, if applicable (e.g., costs of issuance and capitalized interest)).
- Consult immediately with bond counsel if the City (i) desires to spend Obligations proceeds on capital projects or other authorized costs not listed in authorizing ordinances/resolutions or (ii) determines that Obligations proceeds have not been spent on capital projects or other authorized costs listed in authorizing ordinances/resolutions.

IV. Accounting for Expenditures:

- Maintain and update Asset List as applicable.
- Allocate expenditures and investment of Obligations proceeds by consistently applied accounting method.
- Maintain records identifying expenditures of Obligations proceeds, including investment earnings.
- Make written reimbursement allocations in timely manner to extent required by U.S. Treasury Regulation Section 1.150-2 (commonly referred to as the “reimbursement regulations”).

- Make written final allocation of expenditure of Obligations proceeds, including investment earnings, not later than 18 months after the date an expenditure is made or, if later, the date the Obligation-Funded Capital Project is placed in service, and within outside limit of the earlier of 60 days after fifth (5th) anniversary of the issue date or 60 days after retirement of the issue (including by prepayment/redemption), whichever is earlier.

V. Use of Obligation-Funded Capital Projects:

- Review Asset List and confer with City officials and employees responsible for overseeing use of City capital assets at least annually to determine whether existing or any planned use of Obligation-Funded Capital Projects is/will be in compliance with the covenants and restrictions contained in the Tax Certificate.
- Immediately consult with bond counsel in the event any existing or planned use of Obligation-Funded Capital Projects is/will not be in compliance with covenants and restrictions contained in the Tax Certificate and follow advice of bond counsel to remediate such non-compliance (which advice may include compliance with the “change-in-use” provisions as described in the succeeding bullet point, if such option is still available time-wise, or participating in the Internal Revenue Service’s Voluntary Closing Agreement Program).
- Before selling, leasing, otherwise allowing the use of (by concession, license or other type of use arrangement), arranging for the operation and management of, or disposing of, Obligation-Funded Capital Projects, that was not specifically provided for in the Tax Certificate, and before modifying or extending any such arrangements, even if contemplated by the Tax Certificate, consult with bond counsel and other advisors (including financial advisor, as necessary) to determine whether such planned use or disposition is in accordance with the Tax Certificate and applicable law and to determine whether the “change-in-use” provisions of the Internal Revenue Code of 1986, as amended (the “Code”), and the applicable U.S. Treasury Regulations need to be complied with. *Notes—(1) Any such consultation should be made before contemplated use or disposition is approved or any agreements relating to the same are entered into. (2) Consult with bond counsel and other applicable advisors even if intended user is another Maryland municipal corporation or county or other Maryland governmental entity to ensure that (A) such user’s intended use does not contemplate private business use/private payments or security through further underlying arrangements, and (B) that a governmental entity other than a Maryland municipal corporation or county qualifies as a governmental entity for purposes of the Code and the applicable U.S. Treasury Regulations. (3) Non-profit corporations (including 501(c)(3) entities) and the federal government and its departments, agencies and instrumentalities qualify as private business users for purposes of the Code and the applicable U.S. Treasury Regulations.*
- To the extent bond counsel advises that compliance with “change-in-use” provisions of the Code and the applicable U.S. Treasury Regulations is necessary, do not take any contemplated actions without consulting with bond counsel and following bond counsel’s advice, and promptly comply with any filing or other requirements as advised by bond counsel.

VI. Record Retention:

Retain the following while the Obligations are outstanding (either to maturity or redemption/prepayment in full), plus three (3) years, unless applicable provisions of the Code or the U.S. Treasury Regulations have been changed—

- Closing transcript (whether in binder or CD form).
- CP Notice 152 received from the Internal Revenue Service upon filing of the related Form 8038-G or 8038-GC.
- Copies of all materials relating to acquisition/construction of Obligation-Funded Capital Projects, including acquisition contracts, construction contracts, installation contracts, purchase orders, invoices, etc.
- Copies of reimbursement allocations made in accordance with U.S. Treasury Regulation Section 1.150-2, if applicable.
- Copies of written allocations of expenditures of Obligation proceeds (including investment earnings thereon and proceeds of Obligations spent to refund other Obligations).
- Copies of all investment statements, investment agreements, investment purchase agreements, investment sale agreements, investment confirmations, investment receipts and records of paid administrative costs and any bidding documents or evidence of safe harbor compliance related to investments.

VII. Miscellaneous:

- Promptly following adoption of these Procedures, the assigned or default official(s)/employee(s) shall comply with the applicable provisions of these Procedures with regard to any outstanding Obligations of the City.
- The official(s)/employee(s) with primary responsibility for complying with these Procedures shall be allowed to use the services of other appropriate City officials or employees in carrying out their responsibilities.
- To the extent practical and feasible, the City shall use electronic tickler systems to comply with these Procedures, with back-up paper tickler systems employed for critical dates.
- The official(s)/employee(s) of the City primarily responsible for complying with these Procedures shall be allowed to consult with bond counsel and other advisors (e.g. financial advisor, rebate analyst), at the cost of the City, as necessary to ensure compliance herewith.
- The official(s)/employee(s) of the City primarily responsible for complying with these Procedures shall periodically review the “Tax Exempt Bonds” section of the Internal Revenue Service’s website at www.irs.gov (after typing in address, go to “Information For” drop down bar at upper right of homepage) (as such section may be reorganized from time to time) to see if new information has been posted to such site that impacts the City’s tax-exempt obligations, including under the sub-tab marked “Issuers”.
- The official(s)/employee(s) of the City primarily responsible for complying with these Procedures shall, as he/she/they deem necessary or advisable, request authorization to attend conferences or webinars regarding tax-exempt obligations and to purchase

resource guides and, in undertaking any continuing education (e.g., at Maryland Municipal League or Maryland Government Finance Officers Association conferences), shall take advantage of seminars or presentations offered on tax-exempt obligations.

- Before establishing funds or accounts or identifying other sources of revenue to pay debt service on the Obligations that are not contemplated by the Tax Certificate, consult with bond counsel to determine whether the same constitute “replacement proceeds” that are subject to yield restriction and arbitrage rebate requirements and comply with bond counsel’s advice, including supplementing the Tax Certificate, if necessary.
- For any calendar year in which the City has designated Obligations as “qualified tax-exempt obligations” earlier in the year, ensure that any tax-exempt obligations issued later in such calendar year for any purpose will not cause the City to exceed the \$10 million “bank-qualified” limit or any other bank-qualification limit applicable for such calendar year. *Note: tax-exempt lease-purchase agreements count against the bank-qualification limit as do, under applicable law in effect in 2016, “qualified 501(c)(3) bonds”.* Consult with bond counsel before issuing any Obligations that may cause the applicable “bank-qualification” limit to be exceeded.
- To the extent a potential or actual violation of the Tax Certificate is discovered, consult immediately with bond counsel and other applicable advisors to determine a course of action to remediate such violation.
- Consult with bond counsel immediately in the event any change in interest rate is triggered under the applicable bond documents in order to determine whether a “reissuance” of the Obligations has occurred for purposes of the Code and the applicable U.S. Treasury Regulations that requires further action. Examples of such interest rate changes include exercise by the registered owner of a right to adjust the interest rate or a change in the federal income tax treatment of a registered owner triggering such an adjustment, in each case in accordance with the applicable Obligation documents.
- Consult with bond counsel before determining to enter into an agreement or arrangement with registered owners of the Obligations (or other applicable parties) to change interest rates, amortization schedules, payment dates, prepayment/redemption provisions, security for the Obligations or a change in obligor in order to determine whether such contemplated action will cause a “reissuance” of the Obligations for purposes of the Code and applicable U.S. Treasury Regulations and the actions needed to be taken in connection with any such reissuance, and promptly comply with the recommendations of bond counsel.
- If the City maintains written job descriptions for official(s)/employee(s) who have responsibility for compliance with these Procedures, the City, to the extent practical and feasible, shall add references to complying with these Procedures as part of the duties set forth in such job descriptions.

[SIGNATURES ON FOLLOWING PAGE]

The foregoing Procedures are approved on behalf of the City as of the _____ day
of _____, 2016.

APPROVED:

Sandra Tripp-Jones, City Manager

Ginger Heatwole, Finance Director