



Monterey County

168 West Alisal Street,
1st Floor
Salinas, CA 93901
831.755.5066

Board Order

Upon motion of Supervisor Potter, seconded by Supervisor Armenta and carried by those members present, the Board of Supervisors hereby:

Adopted a Post-Issuance Tax Compliance Procedures for Tax-Exempt and Tax-Advantaged Bonds.

PASSED AND ADOPTED on this 13th day of October 2015, by the following vote, to wit:

AYES: Supervisors Armenta, Phillips, Salinas, Parker and Potter

NOES: None

ABSENT: None

I, Gail T. Borkowski, Clerk of the Board of Supervisors of the County of Monterey, State of California, hereby certify that the foregoing is a true copy of an original order of said Board of Supervisors duly made and entered in the minutes thereof of Minute Book 78 for the meeting on October 13, 2015.

Dated: October 16, 2015
File ID: 15-1017

Gail T. Borkowski, Clerk of the Board of Supervisors
County of Monterey, State of California

By  Deputy

Post-Issuance Tax Compliance Procedures For Tax-Exempt and Tax-Advantaged Bonds

September 29, 2015

The purpose of these Post-Issuance Tax Compliance Procedures is to establish policies and procedures in connection with tax-exempt obligations, including general obligations bonds, certificates of participation, tax-exempt leases, Mello-Roos bonds, and bond anticipation notes (collectively, "Bonds") issued by or on behalf of the County of Monterey, including entities controlled by the County of Monterey, such as community facilities districts or joint powers agencies (collectively, the "Issuer"), in order to ensure that the Issuer complies with all applicable post-issuance requirements of federal income tax law needed to preserve the tax-exempt or other advantaged status of the Bonds.

General

Ultimate responsibility for all matters relating to the Issuer's financings, including any refunding and refinancing, rests with the County Board of Supervisors. Operational responsibilities for the County, the Public Improvement Corporation, the Monterey County Financing Authority, and the East Garrison Public Finance Authority are delegated to the County Debt Manager ("e.g. Responsible Officer").

Post-Issuance Compliance Requirements

External Advisors / Documentation

It is the policy of the Issuer to actively participate in discussions of its tax and state law compliance requirements during and after each issuance of Bonds. Such discussions will be with bond and tax counsel, as well as any financial advisor for the Bond issue, and other parties. The Responsible Officer shall be familiar with the representations and covenants made by the Issuer in the documents executed for the Bond issue, including, as necessary, being briefed by tax counsel on the particular requirements, as set forth in the tax document (e.g., a Tax Certificate) for each Bond issue, prior to signing such document.

The Responsible Officer and other appropriate Issuer personnel shall consult with bond counsel and other legal counsel and advisors, as needed, throughout the Bond issuance process to identify requirements and to establish procedures necessary or appropriate so that the Bonds will continue to qualify for the appropriate tax status. Those requirements and procedures shall be documented in a County resolution(s), Continuing Disclosure Agreements, Tax Certificate(s) and/or other documents finalized at or before issuance of the Bonds. Those requirements and procedures shall include future compliance with applicable arbitrage rebate requirements and all other applicable post-issuance requirements of federal tax law throughout (and in some cases beyond) the term of the Bonds.

The Responsible Officer and other appropriate Issuer personnel also shall consult with bond counsel and other legal counsel and advisors, as needed, following issuance of the Bonds to ensure that all applicable post-issuance requirements in fact are met. This shall include consultation in connection with future contracts with respect to the use or sale of Bond-financed

assets, and future contracts with respect to the use of output or throughput of Bond-financed assets (e.g., solar leases).

Whenever necessary or appropriate, the Issuer shall engage expert advisors (each a “Rebate Service Provider”) to assist in the calculation of arbitrage rebate payable in respect of the investment of Bond proceeds, to prepare written rebate reports and to assist the Issuer with any requisite filings of rebate-related forms required by and payments to the Internal Revenue Service (the “IRS”).

Role of the County of Monterey as Bond Issuer

It is the Issuer’s responsibility to know how Bond proceeds will be invested, and that such funds shall only be invested in permitted investments, as set forth in the authorizing resolution or other document pertaining to a given Bond issue. The investment earnings must be tracked and quantified, as the Issuer may not be able to keep all or a portion of said earnings, depending upon whether or not certain arbitrage rebate conditions are met. The investment activity data is a key component of rebate analysis and the Issuer will make sure such data is readily available for the Rebate Service Provider.

The documents governing the Issuer’s tax-exempt debt obligations provide for Bond proceeds to be administered by a trustee or any other agent, including a commercial bank (as used herein, a “Trustee”), and the Issuer shall arrange for such Trustee to provide regular, periodic (e.g., monthly) statements regarding the investments and transactions involving Bond proceeds.

Unless otherwise provided as in the prior paragraph, unexpended Bond proceeds shall be tracked by the Issuer, and the investment of Bond proceeds shall be managed or overseen by the Responsible Officer. The Responsible Officer shall maintain records and shall prepare regular, periodic statements to the Issuer regarding the investments and transactions involving Bond proceeds.

Arbitrage Rebate and Yield

The Issuer has obligations to prepare or cause to be prepared calculations related to rebate for each Bond issue. Unless the applicable Tax Certificate or other document sets forth bond counsel has advised the Issuer that arbitrage rebate will not be applicable to an issue of Bonds:

- the Issuer shall engage the services of a qualified Rebate Service Provider (if not performed internally), and the Issuer or the Trustee shall deliver periodic statements concerning the investment of Bond proceeds to the Rebate Service Provider on a prompt basis;
- upon request, the Responsible Officer and other appropriate Issuer personnel shall provide to the Rebate Service Provider additional documents and information reasonably requested by the Rebate Service Provider;
- the Responsible Officer and other appropriate Issuer personnel shall monitor efforts of the Rebate Service Provider and assure payment of required rebate amounts, if any, no later than 60 days after each 5-year anniversary of the issue date of the Bonds, and no later than 60 days after the last Bond of each issue is redeemed; and
- during the construction period of each capital project financed in whole or in part by Bonds, the Responsible Officer and other appropriate Issuer personnel shall monitor the

investment and expenditure of Bond proceeds and shall consult with the Rebate Service Provider to determine compliance with any applicable exceptions from the arbitrage rebate requirements during each 6-month spending period up to 6 months, 18 months or 24 months, as applicable, following the issue date of the Bonds.

The Issuer shall retain copies of all arbitrage reports, investment and expenditure records, and trustee statements as described below under “Record Keeping Requirements.”

Allocation of Bond Proceeds

Within the proper timelines, which are currently no later than 18 months after expenditure or the project’s placed-in-service date, but in no event after 5 years from the date of issuance of the applicable issue of new money bonds, the Issuer will allocate Bond proceeds to expenditures for rebate and private use purposes.

Use of Bond Proceeds

In order to preserve the tax-exempt or tax-advantaged status of the Bonds, the Issuer is responsible for making sure that the facilities financed or refinanced with Bond proceeds cannot be used by private businesses (or non-profit corporations or the U.S. Government) in amounts that exceed the permitted limits, or sold while the Bonds are outstanding, unless a remedial action is taken to preserve the tax-exempt or tax-advantaged status. The Responsible Officer and other appropriate Issuer personnel shall:

- monitor the use of Bond proceeds, the use of Bond-financed assets (e.g., facilities, furnishings or equipment) and the use of output or throughput of Bond-financed assets throughout the term of the Bonds (and in some cases beyond the term of the Bonds) to ensure compliance with covenants and restrictions set forth in applicable Issuer resolutions and Tax Certificates;
- maintain records identifying the assets or portion of assets that are financed or refinanced with proceeds of each issue of Bonds;
- consult with Bond Counsel and other professional expert advisers in the review of any contracts or arrangements involving use or sale of Bond-financed facilities to ensure compliance with all covenants and restrictions set forth in applicable district or Issuer resolutions and Tax Certificates;
- maintain records for any contracts or arrangements involving the use or sale of Bond-financed facilities as might be necessary or appropriate to document compliance with all covenants and restrictions set forth in applicable district or Issuer resolutions and Tax Certificates; and
- meet at least annually with personnel responsible for Bond-financed assets to identify and discuss any existing or planned use or sale of Bond-financed, assets or output or throughput of Bond-financed assets, to ensure that those uses are consistent with all covenants and restrictions set forth in applicable district or Issuer resolutions and Tax Certificates.

All relevant records and contracts shall be maintained as described below.

Record Keeping Requirements

The Issuer will adopt, incorporate and follow procedures to maintain appropriate records while the Bonds are outstanding and up to 3 years afterward. The Issuer acknowledges that it is both prudent practice to maintain comprehensive records, but it is also necessary in the event that the IRS requests such documents in the course of an examination.

Unless otherwise specified in applicable district or Issuer resolutions or Tax Certificates, the Issuer shall maintain the following documents for the term of each issue of Bonds (including refunding Bonds, if any) plus at least three years:

- a copy of the Bond closing transcript(s) and other relevant documentation delivered to the Issuer at or in connection with closing of the issue of Bonds;
- a copy of all material documents relating to capital expenditures financed or refinanced by Bond proceeds, including (without limitation) construction contracts, purchase orders, invoices, trustee requisitions and payment records, as well as documents relating to costs reimbursed with Bond proceeds and records identifying the assets or portion of assets that are financed or refinanced with Bond proceeds;
- a copy of all contracts and arrangements involving private use of Bond-financed assets or for the private use of output or throughput of Bond-financed assets; and
- copies of all records of investments, investment agreements, arbitrage reports and underlying documents, including trustee statements.