

City of Columbia

701 East Broadway, Columbia, Missouri 65201



Agenda Item Number: R99-14

Department Source: Finance

To: City Council

From: City Manager & Staff

Council Meeting Date: May 19, 2014

Re: Resolution establishing a Tax-Advantaged Financing Compliance Policy

Documents Included With This Agenda Item

Council memo, Resolution/Ordinance, Exhibits to Resolution/Ordinance

Supporting documentation includes: None.

Executive Summary

The Internal Revenue Service has advised issuers of tax-exempt bonds to adopt written procedures for monitoring post-issuance federal tax compliance. This resolution establishes these procedures.

Discussion

The Internal Revenue Service has advised issuers of tax-exempt bonds to adopt written procedures for monitoring post-issuance federal tax compliance. This resolution establishes these procedures.

Fiscal Impact

Short-Term Impact: None.

Long-Term Impact: None

Vision, Strategic & Comprehensive Plan Impact

Vision Impact: Governance and Decision Making

Strategic Plan Impact: Financial Health

Comprehensive Plan Impact: Not Applicable

Suggested Council Action

Approval of the attached resolution.

Legislative History

None.

Handwritten signature of John Blatter.

Department Approved

Handwritten signature of the City Manager.

City Manager Approved

CITY OF COLUMBIA, MISSOURI

TAX-ADVANTAGED FINANCING COMPLIANCE POLICY AND PROCEDURE

Dated as of _____, 2014

TAX-ADVANTAGED FINANCING COMPLIANCE POLICY AND PROCEDURE

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A RESOLUTION

approving a Tax-Advantaged Financing Compliance Policy and Procedure for the City of Columbia, Missouri.

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF COLUMBIA, MISSOURI, AS FOLLOWS:

ARTICLE I

DEFINITIONS

Section 1.1. Definitions. Capitalized words and terms used in this Compliance Procedure have the following meanings:

“Annual Compliance Checklist” means a questionnaire and/or checklist described in **Section 6.1** hereof that is completed each year for a Tax-Advantaged Bond issue.

“Annual Report” means the City’s audited financial statements (or unaudited financial statements as permitted by the Continuing Disclosure Undertaking for the Tax-Advantaged Bonds) and certain other financial information and operating data required to be filed annually with the MSRB for the Tax-Advantaged Bonds.

“City Council” means the City Council of the City.

“Bond Compliance Officer” means the City’s Director of Finance or, if the position of Director of Finance is vacant, the person filling the responsibilities of the chief financial officer for the City.

“Bond Counsel” means the law firm(s) selected by the City to provide a legal opinion regarding the tax status of interest on Tax-Advantaged Bonds as of the issue date or the law firm(s) selected to advise the City on matters referenced in this Compliance Procedure.

“Bond Restricted Funds” means the funds, accounts, and investments that are subject to arbitrage rebate and/or yield restriction rules that have been identified in the Tax Agreement for a Tax-Advantaged Bond issue.

“Bond Transcript” means the “transcript of proceedings” or other similar titled set of documents assembled by Bond Counsel following the issuance of Tax-Advantaged Bonds.

“City” means the City of Columbia, Missouri.

“Code” means the Internal Revenue Code of 1986, as amended.

“Compliance Procedure” means this Tax-Advantaged Financing Compliance Policy and Procedure.

“Continuing Disclosure Undertaking” means the Continuing Disclosure Agreement(s), Continuing Disclosure Undertaking(s), Continuing Disclosure Instructions or other written certification(s)

and agreements of the City setting out covenants for satisfying the City's requirements for providing information to the MSRB pursuant to SEC Rule 15c2-12 on an ongoing basis for one or more Tax-Advantaged Bond issues.

“Cost” or “Costs” means all costs and expenses paid for the acquisition, design, construction, equipping or improvement of a Project or costs of issuing Tax-Advantaged Bonds.

“EMMA” means the Electronic Municipal Market Access system for municipal securities disclosures established and maintained by the MSRB, which can be accessed at www.emma.msrb.org.

“Final Written Allocation” means the Final Written Allocation of Tax-Advantaged Bond proceeds prepared pursuant to **Section 5.4** hereof.

“Financed Assets” means that part of a Project treated as financed with Tax-Advantaged Bond proceeds as reflected in a Final Written Allocation or, if no Final Written Allocation was prepared, the accounting records of the City and the Tax Agreement for the Tax-Advantaged Bond issue.

“Intent Resolution” means a resolution or ordinance of the City Council stating (a) the intent of the City to finance all or a portion of a Project with proceeds of the Tax-Advantaged Bonds, (b) the expected maximum size of the Tax-Advantaged Bonds, and (c) the intent of the City to reimburse the Costs paid by the City from proceeds of the Tax-Advantaged Bonds.

“IRS” means the Internal Revenue Service.

“MSRB” means the Municipal Securities Rulemaking Board, or any successor repository designated as such by the Securities and Exchange Commission in accordance with Rule 15c2-12(b)(5) adopted by the Securities and Exchange Commission under the Securities Exchange Act of 1934, as the same may be amended from time to time.

“Placed In Service” means that date (as determined by the Bond Compliance Officer) when the Project is substantially complete and in operation at substantially its designed level.

“Project” means all tangible or intangible property financed in whole or in part with Tax-Advantaged Bonds that is functionally related or integrated in use, that is located on the same physical site or proximate sites, and that is expected to be Placed In Service within a one-year period.

“Rebate Analyst” means the rebate analyst for the Tax-Advantaged Bonds selected pursuant to the Tax Agreement.

“Tax-Advantaged Bond(s)” means any bond, note, installment sale agreement, lease or certificate intended to be a debt obligation of the City, the proceeds of which are to be loaned or otherwise made available to the City, and the interest on which is excludable from gross income for federal income tax purposes. A list of all Tax-Advantaged Bonds outstanding or authorized to be issued and subject to this Compliance Procedure as of September 30, 2013, is attached as **Exhibit A** hereto, as may be revised from time to time without further action of the City Council.

“Tax-Advantaged Bond File” means documents and records which may consist of paper and electronic medium, maintained for each Tax-Advantaged Bond. Each Tax-Advantaged Bond File will include the following information if applicable:

- (a) Intent Resolution.

- (b) Bond Transcript.
- (c) Final Written Allocation and/or all available accounting records related to the Project showing expenditures allocated to the proceeds of a Tax-Advantaged Bond and expenditures (if any) allocated to other sources of funds.
- (d) All rebate and yield reduction payment calculations performed by the Rebate Analyst and all investment records provided to the Rebate Analyst for purposes of preparing the calculation.
- (e) Forms 8038-T together with proof of filing and payment of rebate.
- (f) Investment agreement bid documents (unless included in the Bond Transcript) including:
 - (1) bid solicitation, bid responses, certificate of broker;
 - (2) written summary of reasons for deviations from the terms of the solicitation that are incorporated into the investment agreement; and
 - (3) copies of the investment agreement and any amendments.
- (g) Any item required to be maintained by the terms of the Tax Agreement involving the use of the Project or expenditures related to tax compliance for the Tax-Advantaged Bonds.
- (h) Any opinion of Bond Counsel regarding the Tax-Advantaged Bonds not included in the Bond Transcript.
- (i) Amendments, modifications or substitute agreements to any agreement contained in the Bond Transcript.
- (j) Any correspondence with the IRS relating to the Tax-Advantaged Bonds including all correspondence relating to an audit by the IRS of the Tax-Advantaged Bonds or any proceedings under the Tax-Advantaged Bonds Voluntary Closing Agreement Program (VCAP).
- (k) Any available questionnaires or correspondence substantiating the use of the Project in accordance with the terms of the Tax Agreement for the Tax-Advantaged Bond issue.
- (l) For refunding bond issues, the Tax-Advantaged Bond File for the refunded Tax-Advantaged Bonds.

“Tax Agreement” means the Federal Tax Certificate, Tax Compliance Agreement, Arbitrage Agreement, or other written certification or agreement of the City setting out representations and covenants for satisfying the post-issuance tax compliance requirements for a Tax-Advantaged Bond issue.

ARTICLE II

PURPOSE AND SCOPE

Section 2.1. Purpose of Compliance Procedure.

(a) City's Use of Tax-Advantaged Financing. The City finances various Projects and assets with proceeds of Tax-Advantaged Bonds. The City understands that it receives favorable interest rates and terms on Tax-Advantaged Bonds but that in exchange for the right to issue Tax-Advantaged Bonds, federal tax law imposes ongoing requirements on the City that it must comply with in order for the favorable interest rates and terms to continue. These requirements focus on the investment, use and expenditure of proceeds of the Tax-Advantaged Bonds and related funds as well as restrictions on the use of the Project and Financed Assets.

(b) IRS Recommends Separate Written Policies and Procedures; Purpose of Compliance Procedure. The City recognizes that the IRS has stated all issuers of Tax-Advantaged Bonds should have a *separate* written policy and procedure regarding ongoing compliance with the federal tax requirements for Tax-Advantaged Bonds. The City is committed to full compliance with the Tax-Advantaged bond requirements for all of its outstanding and future tax-exempt or tax-advantaged financings. This Compliance Procedure is adopted by the City Council to comply with the IRS directive and to improve tax compliance and documentation.

(c) Continuing Disclosure Undertaking; City Commitment. The City, if a Tax-Advantaged Bond is subject to continuing disclosure, is required under the Continuing Disclosure Undertaking to provide disclosures of certain financial information and operating data and to file notices of certain material events to the marketplace to facilitate informed secondary market trading in Tax-Advantaged Bonds issued by the City. The City is committed to full compliance with the federal tax and securities law requirements for all of its outstanding and future tax-exempt and tax-advantaged financings. This Compliance Procedure is adopted by the City Council to comply with the IRS and Securities and Exchange Commission directives and to improve tax and securities law compliance and documentation.

Section 2.2. Scope of Compliance Procedure; Conflicts. This Compliance Procedure applies to all Tax-Advantaged Bonds currently outstanding and all Tax-Advantaged Bonds issued in the future. If the provisions of this Compliance Procedure conflict with a Tax Agreement, the Continuing Disclosure Undertaking or any other specific written instructions of Bond Counsel, the terms of the Tax Agreement, the Continuing Disclosure Undertaking or specific written instructions of Bond Counsel will supersede and govern in lieu of this Compliance Procedure. Any exception to this Compliance Procedure required by Bond Counsel as part of a future issue of Tax-Advantaged Bonds will be incorporated in the Tax Agreement for the future issue. Any requirements imposed on the City in the Tax Agreement will be noted by the Bond Compliance Officer and incorporated into the Annual Compliance Checklist. The City acknowledges that the Continuing Disclosure Undertaking may also apply to one or more issues of taxable securities issued by the City.

Section 2.3. Amendments and Publication of Compliance. This Compliance Procedure may be amended from time-to-time by the City Council. Copies of this Compliance Procedure and any amendments will be included in the permanent records of the City.

ARTICLE III

BOND COMPLIANCE OFFICER; TRAINING

Section 3.1. Bond Compliance Officer Duties. The Bond Compliance Officer is responsible for implementing this Compliance Procedure and may delegate the individual tasks related to compliance at his/her discretion. The Bond Compliance Officer may work with other employees that use the Project to assist in implementing this Compliance Procedure. The Bond Compliance Officer may consult with Bond Counsel, the City Counselor, accountants, tax return preparers and other outside experts to the extent necessary to carry out the purposes of this Compliance Procedure. The Bond Compliance Officer will report at least annually to the City Manager as necessary, regarding (i) implementation of this Compliance Procedure, (ii) any recommended changes or amendments to this Compliance Procedure, and (iii) results of the Annual Compliance Checklist, specifically whether any responses require further action, including those actions described in **Section 4.4** hereof.

Section 3.2. Training.

(a) General. Periodically, as individuals acting as the City's Bond Compliance Officer pass the responsibilities for carrying out the provisions of this Compliance Procedure to another individual, the outgoing individual is responsible for training, or for ensuring the training by Bond Counsel or other experts in this area, the incoming individual to ensure the City's continued compliance with the provisions of this Compliance Procedure and all Tax Agreements for any outstanding Tax-Advantaged Bonds.

(b) Training Opportunities. When appropriate, the Bond Compliance Officer will take advantage of training opportunities regarding Tax-Advantaged financing that are relevant to the City such as:

- Subscribing for IRS Newswire updates related to Tax-Advantaged financing,
- Attending training programs offered by the IRS, GFOA or other industry professionals, and
- Consulting Bond Counsel from time-to-time with questions regarding tax requirements applicable to the City.

ARTICLE IV

TAX-ADVANTAGED BONDS CURRENTLY OUTSTANDING

Section 4.1. Tax-Advantaged Bonds Covered by Article IV Procedures. This Article IV applies to all Tax-Advantaged Bonds currently outstanding or authorized to be issued on or prior to the date of this Compliance Procedure. These Tax-Advantaged Bonds are listed in the City's Fiscal Year 2013 Comprehensive Financial Report ("**FY 2013 CAFR**").

Section 4.2. Tax-Advantaged Bond File. As soon as practical, the Bond Compliance Officer will attempt to assemble as much of the Tax-Advantaged Bond File as is available for each Tax-Advantaged Bond that is listed on the FY 2013 CAFR.

Section 4.3. Annual Compliance Checklists. As soon as practical following the adoption of this Compliance Procedure, the Bond Compliance Officer will work with Bond Counsel and/or the City Counselor and cause Annual Compliance Checklists to be completed for all outstanding Tax-Advantaged

Bonds and will follow the procedures specified in **Article VI** hereof to complete the Annual Compliance Checklists and thereafter include each completed Annual Compliance Checklist in the Tax-Advantaged Bond File.

Section 4.4. Correcting Prior Deficiencies in Compliance. In the event the Bond Compliance Officer determines any deficiency in compliance with a Tax Agreement for an outstanding Tax-Advantaged Bond listed on the FY 2013 CAFR, the Bond Compliance Officer will consult with the City Counselor's office or Bond Counsel and, as necessary, follow the procedures described in the Regulations or the Tax-Advantaged Bonds Voluntary Closing Agreement Program (VCAP) to remediate the noncompliance. If remediation of the noncompliance requires the City to submit a request under VCAP, the Bond Compliance Officer will undertake this step only after reporting the violation to the City Manager.

ARTICLE V

COMPLIANCE PROCEDURE FOR NEW TAX-ADVANTAGED BOND ISSUES

Section 5.1. Application. This **Article V** applies to Tax-Advantaged Bond financings issued on or after the date of this Compliance Procedure.

Section 5.2. Prior to Issuance of Tax-Advantaged Bonds.

(a) Intent Resolution. The City Council will authorize and approve the issuance of Tax-Advantaged Bonds. Prior to or as a part of such authorizing resolution or ordinance, the City Council may adopt an Intent Resolution.

(b) Directions to Bond Counsel. The Bond Compliance Officer will provide a copy of this Compliance Procedure to Bond Counsel with directions for Bond Counsel to structure the documentation and procedural steps taken prior to issuing the Tax-Advantaged Bonds so that they conform to the requirements of this Compliance Procedure, except to the extent Bond Counsel determines that different procedures are required. The Bond Compliance Officer will consult with Bond Counsel so that appropriate provisions are made to fund or reimburse the City's costs and expenses incurred to implement this Compliance Procedure.

(c) Tax Agreement. Each Tax-Advantaged Bond issue will include a Tax Agreement signed by the Bond Compliance Officer. The Tax Agreement will (1) describe the Project and the anticipated Financed Assets, (2) identify all Bond Restricted Funds and provide for arbitrage and rebate compliance, (3) for new money financings, require the City to complete a Final Written Allocation, and (4) contain a form of the Annual Compliance Checklist for the Tax-Advantaged Bond issue. The Bond Compliance Officer will confer with Bond Counsel and the City's counsel regarding the meaning and scope of each representation and covenant contained in the Tax Agreement.

(d) Preliminary Cost Allocations. For new money financings, the Bond Compliance Officer in consultation with Bond Counsel, will prepare a preliminary cost allocation plan for the Project. The preliminary cost allocation plan will identify the assets and expected costs for the Project, and, when necessary, will break-out the portions of Costs that the City expects to finance with Tax-Advantaged Bonds from the portions expected to be financed from other sources.

(e) Tax Review with Bond Counsel. Prior to the sale of Tax-Advantaged Bonds, the Bond Compliance Officer and Bond Counsel will review this Compliance Procedure together with the draft Tax Agreement to ensure that any tax compliance issues in the new financing are adequately addressed by this

Compliance Procedure and/or the Tax Agreement. If Bond Counsel determines that this Compliance Procedure conflicts with the draft Tax Agreement, or must be supplemented to account for special issues or requirements for the Tax-Advantaged Bonds, the Bond Compliance Officer will ask Bond Counsel to include the written modifications or additions in the final Tax Agreement. The Bond Compliance Officer will request Bond Counsel to prepare a form of Annual Compliance Checklist for use in monitoring the ongoing compliance requirements for the Tax-Advantaged Bond issue.

Section 5.3. Accounting and Recordkeeping.

(a) Accounting for New Money Projects. The Bond Compliance Officer will be responsible for accounting for the investment and allocation of proceeds of the Tax-Advantaged Bonds. The Bond Compliance Officer will establish separate accounts or subaccounts to record expenditures for Costs of the Project. Where appropriate, the Bond Compliance Officer may use accounts established as part of the City's financial records for this purpose. In recording Costs for the Project, the Bond Compliance Officer will ensure that the accounting system will include the following information: (1) identity of person or business paid, along with any other available narrative description of the purpose for the payment, (2) date of payment, (3) amount paid, and (4) invoice number or other identifying reference.

(b) Accounting for Refunded Bonds and Related Refunded Bond Accounts. For Tax-Advantaged Bonds that refund prior issues, the Tax Agreement will set out special accounting and allocation procedures for the proceeds of the financing, and if necessary proceeds of the refinanced debt.

(c) Tax-Advantaged Bond File. The Bond Compliance Officer will be responsible for assembling and maintaining the Tax-Advantaged Bond File. The Annual Reports, other reports and notices of certain material events filed by the City with the MSRB will be publicly available on EMMA and need not be separately maintained in the Tax-Advantaged Bond File.

Section 5.4. Final Allocation of Bond Proceeds.

(a) Bond Compliance Officer Responsible for Preparation of Final Written Allocation; Timing. The Bond Compliance Officer is responsible for making a written allocation of Tax-Advantaged Bond proceeds to expenditures and the identification of Financed Assets. This process will be memorialized in the Final Written Allocation. For a new money financing, the Bond Compliance Officer will commence this process as of the earliest of (1) the requisition of all Tax-Advantaged Bond proceeds from any segregated Tax-Advantaged Bond funded account, (2) the date the Project has been substantially completed or (3) four and one-half years following the issue date of the Tax-Advantaged Bonds. For Tax-Advantaged Bonds issued only to refund a prior issue of Tax-Advantaged Bonds, the Bond Compliance Officer will prepare and/or document the Final Written Allocation for the Project financed by the refunded Tax-Advantaged Bonds in accordance with the advice of Bond Counsel and include it in the Tax Agreement.

(b) Contents and Procedure. The Bond Compliance Officer will consult the Tax Agreement and, if necessary, contact Bond Counsel to seek advice regarding any special allocation of Tax-Advantaged Bond proceeds and other money of the City to the Costs of the Project. If no special allocation is required or recommended, the Bond Compliance Officer will allocate Costs of the Project to the proceeds of the Tax-Advantaged Bonds in accordance with the City's accounting records. Each Final Written Allocation will contain the following: (1) a reconciliation of the actual sources and uses to Costs of the Project, (2) the percentage of the cost of the Project financed with proceeds of the Tax-Advantaged Bonds (sale proceeds plus any investment earnings on those sale proceeds), (3) the Project's Placed in Service date, (4) the estimated economic useful life of the Project, and (5) any special procedures to be followed in completing the Annual Compliance Checklist (e.g., limiting the Annual Compliance

Checklist to specific areas of the Project that the Final Written Allocation or the Tax Agreement treats as having been financed by Tax-Advantaged Bonds).

(c) Finalize Annual Compliance Checklist. As part of the preparation of the Final Written Allocation, the Bond Compliance Officer will update the draft Annual Compliance Checklist contained in the Tax Agreement. The Bond Compliance Officer will include reminders for all subsequent arbitrage rebate computations required for the Tax-Advantaged Bonds in the Annual Compliance Checklist.

(d) Review of Final Written Allocation and Annual Compliance Checklist. At the discretion of the Bond Compliance Officer, each Final Written Allocation and Annual Compliance Checklist may be reviewed by the City Counselor or Bond Counsel for sufficiency and compliance with the Tax Agreement and this Compliance Procedure. Following the completion of the review, if requested, the Bond Compliance Officer will execute the Final Written Allocation.

ARTICLE VI

ONGOING MONITORING PROCEDURES

Section 6.1. Annual Compliance Checklist. An Annual Compliance Checklist will be completed by the Bond Compliance Officer each year following completion of the Final Written Allocation. Each Annual Compliance Checklist will be designed and completed for the purpose of identifying potential noncompliance with the terms of the Tax Agreement or this Compliance Procedure and obtaining documents (such as investment records, arbitrage calculations, or other documentation for the Project) that are required to be incorporated in the Tax-Advantaged Bond File. The Bond Compliance Officer will refer any responses indicating a violation of the terms of the Tax Agreement to the City Counselor or Bond Counsel and, if recommended by counsel, will follow the procedure set out in **Section 4.4** hereof to remediate the non-compliance. The Bond Compliance Officer may modify the form of the Annual Compliance Checklist, from time to time, to address changes in law or regulations relating to the City's Tax-Advantaged Bonds.

Section 6.2. Arbitrage and Rebate Compliance. The Bond Compliance Officer will monitor the investment of Bond Restricted Funds, if any, and, unless an issue of Tax-Advantaged Bonds is exempt from rebate, will provide investment records to the Rebate Analyst on a timely basis. The Bond Compliance Officer will follow the directions of the Rebate Analyst with respect to the preparation of and the timing of rebate or yield reduction computations.

ADOPTED this _____ day of _____, 2014.

ATTEST:

City Clerk

Mayor and Presiding Officer

APPROVED AS TO FORM:

City Counselor