

City of Saratoga Springs

VI. POST-ISSUANCE

Office of Finance

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VI. POST-ISSUANCE COMPLIANCE PROCEDURE AND POLICY FOR TAX-EXEMPT GOVERNMENTAL BONDS

Purpose

The City of Saratoga Springs, Saratoga County, New York (the "City") issues tax-exempt governmental bonds pursuant to the New York State Local Finance Law. As an issuer of tax-exempt governmental bonds, the City is required by the terms of Sections 103 and 141-150 of the Internal Revenue Code of 1986, as amended (the "Code"), and the Treasury Regulations promulgated under the Code (the "Treasury Regulations"), to take certain actions subsequent to the issuance of such bonds to ensure the continuing tax-exempt status of such bonds. In addition, Section 6001 of the Code and Section 1.6001-1(a) of the Treasury Regulations impose record retention requirements on the City with respect to its tax-exempt governmental bonds. This Post-Issuance Compliance Procedure and Policy for Tax-Exempt Governmental Bonds (this "Policy") has been developed to ensure that the City complies with its post-issuance obligations under applicable provisions of the Code and the Treasury Regulations.

Procedure

1. Responsible Persons. The Commissioner of Finance shall be the person primarily responsible for ensuring that the City successfully carries out its post-issuance obligations under applicable provisions of the Code and the Treasury Regulations. The Commissioner of Finance shall be assisted by other City staff and officials when appropriate. The Commissioner of Finance shall also be assisted in carrying out its post-issuance obligations by the following firms:
 - a. Bond Counsel (the law firm primarily responsible for providing bond counsel services to the City).
 - b. Financial Advisor (the firm primarily responsible for providing financial advisory services to the City).
 - c. Paying Agent (the person, firm or City official primarily responsible for providing paying agent services to the City).
 - d. Rebate Analyst (the firm primarily responsible for providing rebate analyst services to the City).

The Commissioner of Finance shall be responsible for assigning post-issuance compliance responsibilities to other staff of the City, Bond Counsel, the Financial Advisor, the Paying Agent and the Rebate Analyst. The Commissioner of Finance shall utilize such other professional service organizations as are necessary to ensure compliance with the post-issuance obligations of the City. The Commissioner of Finance shall provide training and educational resources to

City staff who are responsible for ensuring compliance with any portion of the post-issuance requirements of this Policy.

2. Post-Issuance Compliance Actions. The Commissioner of Finance shall take the following post-issuance compliance actions or shall verify that the following post-issuance compliance actions have been taken on behalf of the City with respect to each issue of tax-exempt governmental bonds:
 - a. The Commissioner of Finance shall prepare a transcript of principal documents (this action will be the primary responsibility of Bond Counsel).
 - b. The Commissioner of Finance shall file with the Internal Revenue Service (the "IRS"), within the time limit imposed by Section 149(e) of the Code and applicable Treasury Regulations, Form 8038-G, Information Return for Tax-Exempt Governmental Obligations, or Form 8038-GC, Information Return for Small Tax-Exempt Governmental Bond Issues, Leases, and Installment Sales (this action will be the primary responsibility of Bond Counsel).
 - c. The Commissioner of Finance shall prepare an "allocation memorandum" for each issue of tax-exempt governmental bonds in accordance with Section 1.148-6(d)(1) of the Treasury Regulations which accounts for the allocation of the proceeds of such bonds to expenditures not later than the earlier of:
 - i. eighteen (18) months after the later of (A) the date the expenditure is paid, or (B) the date the project that is financed by such bond issue is placed in service; or
 - ii. the date sixty (60) days after the earlier of (A) the fifth anniversary of the issue date of such bond issue, or (B) the date sixty (60) days after the retirement of such bond issue.

Preparation of the allocation memorandum will be the primary responsibility of the Commissioner of Finance (in consultation with the Financial Advisor and Bond Counsel).

- d. The Commissioner of Finance, in consultation with Bond Counsel, shall identify proceeds of tax-exempt governmental bonds which must be yield-restricted and shall monitor the investments of any yield-restricted funds to ensure that the yield on such investments does not exceed the yield to which such investments are restricted.
- e. The Commissioner of Finance, in consultation with Bond Counsel, shall determine whether the City is subject to the rebate requirements of Section 148(f) of the Code with respect to each issue of tax-exempt governmental bonds. The Commissioner of Finance, in consultation with Bond Counsel, shall determine with respect to each issue of tax-exempt governmental bonds whether the City is eligible for any of the temporary periods for unrestricted investments and whether the City is eligible for any of the spending exceptions to the rebate requirements. Prior to the fifth anniversary of the date of

issuance of each issue of tax-exempt governmental bonds, the Commissioner of Finance shall consult with the Rebate Analyst to arrange for calculations of the rebate requirements with respect to such bond issue. If a rebate payment is required to be paid by the City, the Commissioner of Finance shall prepare or cause to be prepared Form 8038-T, Arbitrage Rebate, Yield Reduction and Penalty in Lieu of Arbitrage Rebate, and submit such Form 8038-T to the IRS with the required rebate payment. If the City is authorized to recover a rebate payment previously paid, the Commissioner of Finance shall prepare or cause to be prepared Form 8038-R, Request for Recovery of Overpayments Under Arbitrage Rebate Provisions, with respect to such rebate recovery and submit such Form 8038-R to the IRS.

3. Procedures for Monitoring, Verification and Inspections. The Commissioner of Finance shall institute such procedures as the Commissioner of Finance shall deem necessary and appropriate to monitor the use of the proceeds of tax-exempt governmental bonds, to verify that certain post-issuance compliance actions have been taken by the City and to provide for the inspection of the facilities financed with the proceeds of such bonds. At a minimum, the Commissioner of Finance shall establish the following procedures:
 - a. The Commissioner of Finance shall monitor the use of the proceeds of tax-exempt governmental bonds to (i) ensure compliance with the expenditure and investment requirements under the temporary period provisions set forth in Section 1.148-2(e) of the Treasury Regulations; (ii) ensure compliance with the safe harbor restrictions on the acquisition of investments set forth in Section 1.148-5(d) of the Treasury Regulations; (iii) ensure that the investments of any yield-restricted funds do not exceed the yield to which such investments are restricted; and (iv) determine whether there has been compliance with the spend-down requirements under the spending exceptions to the rebate requirements set forth in Section 1.148-7 of the Treasury Regulations.
 - b. The Commissioner of Finance shall monitor the use of all bond-financed facilities in order to (i) determine whether private business uses of such bond-financed facilities have exceeded the *de minimus* limits set forth in Section 141(b) of the Code as a result of leases and subleases, licenses, management contracts, research contracts, naming rights agreements or other arrangements which provide special legal entitlements to nongovernmental persons; and (ii) determine whether private security or payments that exceed the *de minimus* limits set forth in Section 141(b) of the Code have been provided by nongovernmental persons with respect to such bond-financed facilities. The Commissioner of Finance shall provide training and educational resources to any City staff who have the primary responsibility for the operation, maintenance or inspection of bond-financed facilities and as to the limitations on the private security or payments with respect to bond-financed facilities.
 - c. The Commissioner of Finance shall undertake the following with respect to each outstanding issue of tax-exempt governmental bonds: (i) an annual review of the books and records maintained by the City with respect to such bonds; and (ii) an annual physical

inspection of the facilities financed with the proceeds of such bonds, conducted by the Commissioner of Finance with the assistance of any City staff who have the primary responsibility for the operation, maintenance or inspection of such bond-financed facilities.

4. Record Retention Requirements. The Commissioner of Finance shall collect and retain the following records with respect to each issue of tax-exempt governmental bonds and with respect to the facilities financed with the proceeds of such bonds: (i) audited financial statements of the City; (ii) appraisals, demand surveys or feasibility studies with respect to the facilities financed with the proceeds of such bonds; (iii) publications, brochures and newspaper articles related to the bond financing; (iv) Paying Agent or trustee statements; (v) records of all investments and the gains (or losses) from such investments; (vi) Paying Agent or trustee statements regarding investments and investment earnings; (vii) reimbursement resolutions and expenditures reimbursed with the proceeds of such bonds; (viii) allocations of proceeds to expenditures (including costs of issuance) and the dates and amounts of such expenditures (including requisitions, draw schedules, draw requests, invoices, bills and cancelled checks with respect to such expenditures); (ix) contracts entered into for the construction, renovation or purchase of bond-financed facilities; (x) an asset list or schedule of all bond-financed depreciable property and any depreciation schedules with respect to such assets or property; (xi) records of the purchases and sales of bond-financed facilities; (xii) private business uses of bond-financed facilities that arise subsequent to the date of issue through leases and subleases, licenses, management contracts, research contracts, naming rights agreements or other arrangements which provide special legal entitlements to nongovernmental persons and copies of any such agreements or instruments; (xiii) arbitrage rebate reports and records of rebate and yield reduction payments; (xiv) resolutions or other actions taken by the City Council with respect to such bonds subsequent to the date of issue of such bonds; (xv) formal elections authorized by the Code or the Treasury Regulations that are taken with respect to such bonds; (xvi) relevant correspondence, including letters, faxes or e-mails, relating to such bonds; (xvii) documents relating to guaranteed investment contracts or certificates of deposit, credit enhancement transactions and financial derivatives entered into subsequent to the date of issue of such bonds; (xviii) bidding of financial products for investment securities; (xix) copies of each Form 8038-T and Form 8038-R filed with the IRS and any other forms or documents filed with the IRS; (xx) the transcript of proceedings prepared with respect to such bonds, including but not limited to (A) official statements, private placement documents or other offering documents, (B) minutes and resolutions, orders, ordinances or other similar authorizations for the issuance of such bonds, and (C) certification of the issue price of such bonds; and (xxi) documents related to government grants associated with the construction, renovation or purchase of bond-financed facilities.

The records collected by the Commissioner of Finance shall be stored in any format deemed appropriate by the Commissioner of Finance and shall be retained for a period equal to the life of the tax-exempt governmental bonds with respect to which the records are collected (which shall include the life of any bonds issued to refund any portion of such tax-exempt governmental bonds or to refund any refunding bonds) plus three (3) years. The

Commissioner of Finance shall also collect and retain reports of any IRS examination of the City or any of its bond financings.

5. Remedies. In consultation with Bond Counsel, the Commissioner of Finance shall become acquainted with the remedial actions (including redemption or defeasance) under Section 1.141-12 of the Treasury Regulations to be utilized in the event that private use of bond-financed facilities exceeds the *de minimus* limits under Section 141(b)(1) of the Code. In consultation with Bond Counsel, the Commissioner of Finance shall become acquainted with the Tax Exempt Bonds Voluntary Closing Agreement Program described in Notice 2008-31, 2008-11 I.R.B. 592, to be utilized as a means for an issuer to correct any post-issuance infractions of the Code and the Treasury Regulations with respect to outstanding tax-exempt governmental bonds.
6. Continuing Disclosure Obligations. In addition to its post-issuance obligations under applicable provisions of the Code and the Treasury Regulations, the City has agreed to provide continuing disclosure, such as annual financial information and material event notices, pursuant to an undertaking to provide continuing disclosure or similar document prepared by Bond Counsel and made a part of the transcript of proceedings with respect to each issue of tax-exempt governmental bonds that is subject to such continuing disclosure requirements. The undertaking to provide continuing disclosure is executed by the City to assist the underwriters of such bonds in meeting their obligations under Rule 15c2-12 of the Securities and Exchange Commission. The continuing disclosure obligations of the City are governed by the undertaking to provide continuing disclosure and by the terms of Rule 15c2-12. The Commissioner of Finance is primarily responsible for undertaking such continuing disclosure obligations and monitoring compliance with such obligations.
7. Other Post-Issuance Actions. If, after consultation with Bond Counsel, the Financial Advisor, the Rebate Analyst, the Mayor, the City Attorney or the City Council, the Commissioner of Finance determines that any additional action not identified in this Policy must be taken by the Commissioner of Finance to ensure the continuing tax-exempt status of any issue of tax-exempt governmental bonds, the Commissioner of Finance shall take such action. If, after consultation with Bond Counsel, the Financial Advisor, the Rebate Analyst, the Mayor, the City Attorney or the City Council, the Commissioner of Finance determines that this Policy must be amended or supplemented to ensure the continuing tax-exempt status of any issue of tax-exempt governmental bonds, the Commissioner of Finance shall recommend to the City Council that this Policy be so amended or supplemented.
8. Effective Date and Term. The effective date of this Policy is the date of approval by the City Council (December 5, 2011). This Policy shall remain in effect until superseded or terminated by action of the City Council.