



CLARK COUNTY DEBT POLICY

Effective: February 15, 2022

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I. Introduction and Purpose

This document establishes the governing policy for the issuance and management of debt by Clark County, Washington (hereinafter referred to as “County”). The primary goal of the policy is to ensure all debt issued by the County is accomplished prudently and cost effectively in accordance with the County’s long-term financial plans. Accordingly, it establishes roles and responsibilities, eligible debt instruments and limitations, structuring preferences, and post-issuance compliance requirements.

Maintaining a formal debt policy is an effective business practice which credit rating agencies recognize as a source of credit strength. Per RCW 36.48.070 the County Finance Committee shall review and approve this policy. The policy shall be reviewed and approved at least as frequently as every four years.

II. Governing Principles

This policy is intended to achieve the following objectives:

- Minimize debt service costs;
- Preserve flexibility to provide services and set future rates, charges and taxes;
- Limit exposure to interest rate and other risks to levels commensurate with the ability to absorb those risks;
- Preserve adequate capacity to finance future capital needs with low-cost debt; and
- Contribute to the maintenance or enhancement of the County’s credit rating(s).

In addition to these policy objectives, County debt will be managed using a long-term strategic approach to borrowing at the lowest cost possible, balanced with an acceptable level of risk. Long-term debt will be used to:

- Acquire property;
- Finance the cost of design, acquisition, and/or construction of long-lived capital assets;
- Make major repairs or renovations to existing capital assets; or
- Refund outstanding debt.

Short-term debt will be used in anticipation of a definitive source of revenue, including but not limited to:

- Taxes received later in the same fiscal year;
- Proceeds from the issuance of long-term debt; or
- Grants awarded but not yet disbursed.

2.1 Governing Law

State Laws

The County is authorized to issue revenue bonds, as well as general obligation bonds and notes pursuant RCW 39.46. Limited Tax General Obligation (LTGO) and Unlimited Tax General

Obligation (UTGO) bonds are both subject to the limitations of indebtedness provided for in RCW 39.36.020 and Article VIII of the Washington State Constitution. Revenue and special assessment bonds are not subject to the same limitations. Bonds shall be issued in accordance with RCW 39.46. Refunding bonds shall be issued in accordance with RCW 39.53.

Federal Laws, Rules, and Regulations

The County shall issue and manage debt in accordance with applicable federal tax and securities laws and regulations, including but not limited to the Internal Revenue Code of 1986 as amended (for tax-exempt and tax-advantaged debt), the Securities Act of 1933, and the Securities Exchange Act of 1934.

Local Laws and Regulations

The County shall issue and manage debt in accordance with any limitations and constraints imposed by local ordinances or resolutions, rules, and regulations.

2.2 Permitted Types of Debt

All permitted types of debt require Clark County Council (herein after referred to as "Council") approval prior to issuance. Subject to changes in state law, the County may legally issue the types of debt described herein.

Security

County bonds and other debt must be secured by one (or more) of the following pledges:

- 1) **Unlimited Tax General Obligation (UTGO).** UTGO debt is secured by the full faith and credit and property taxing authority of the County. This includes voter-approved excess property tax levies not subject to statutory and constitutional limits. The County is authorized to issue UTGO debt, subject to the approval of both the Council and voters within the jurisdiction of the County.
- 2) **Limited Tax General Obligation (LTGO).** LTGO debt is secured by the full faith and credit and regular property taxing authority of the County. LTGO debt does not require voter approval.
- 3) **Revenue.** Revenue bonds are secured by a pledge of revenues generated by a project or enterprise such as water, wastewater, solid waste, or electric facilities. Revenue bonds do not require voter approval.
- 4) **Assessment.** Local Improvement District (LID) Bonds, Road Improvement District (RID) Bonds, and Utility Local Improvement District (ULID) Bonds are considered assessment bonds. LID, RID, and ULID bonds are secured by and payable from special assessments levied against the properties benefitting from the bond-financed public improvements. ULID assessments may also be pledged as part of a revenue bond financing. Assessment bonds do not require voter approval.

County debt shall generally be issued as publicly offered bonds or debt placed directly with a commercial lender (direct bank placement). The County may also issue the following types of debt (which shall be secured by one of the four pledges described above):

State and Federal Loans

Several Washington State agencies operate loan programs to finance infrastructure projects, including the Department of Ecology (wastewater), Department of Health (drinking water), Department of Commerce (general public works), and the Department of Transportation (roads, bridges, ferries, and general aviation airports). State loan programs generally provide below-market interest rates or other advantageous financing terms and are often better suited to smaller borrowings.

In addition, the U.S. government operates several loan programs, which are typically better suited for larger, more complex financing plans. The County may utilize either state or federal loan programs when such programs provide a demonstrable benefit relative to a public offering or direct bank placement of bonds.

Capital Leases

A capital lease is a lease that meets one or more of the following criteria:

- Ownership of the asset is transferred to the lessee at the end of the lease term;
- The lease contains a bargain purchase option;
- The lease term is equal to 75% or more of the estimated economic life of the leased asset; or
- The present value of the lease equals or exceeds 90% of the excess of the fair value of the leased asset.

Capital leases are generally considered LTGO debt. The Washington State Treasurer's Local Option Capital Asset Leasing (LOCAL) program is a capital leasing program.

Lines of Credit

The County may enter into agreements with commercial banks or other financial institutions to acquire lines of credit. Lines of credit provide the County with access to credit under a set of specified terms and conditions. Lines of credit shall be in support of general operating expenditures and/or approved capital projects.

Bond Anticipation Notes

The County may choose to issue Bond Anticipation Notes as a source of interim financing.

Tax and Revenue Anticipation Notes

The County may issue Tax and Revenue Anticipation Notes to fund cash flow needs.

Internal Lines of Credit and Interfund Loans

The County has the authority to loan money between allowable funds and establish lines of credit using internal funding sources. These financing options must adhere to certain criteria and comply with requirements set forth in the Washington State BARS manual, specifically chapter 3.9. These internal borrowing mechanisms are not subject to continuing disclosure requirements and other forms of required federal reporting and compliance. Internal borrowing is not treated as resulting

in “debt” for state law purposes and does not require one of the specific security pledges described above.

III. Roles & Responsibilities

3.1 Clark County Council and County Manager

The Council is responsible for the approval of all forms of County borrowing, as well as the adoption of legislation necessary for the issuance and sale of all County debt. Under no circumstances can debt be issued without prior Council approval. The Council may delegate the authority to issue debt to the Treasurer pursuant to RCW 39.46.040(2).

The County Manager is responsible for the administration of County financial policies and represents the County as needed during the debt issuance process. This may include participating in credit rating agency reviews, presenting to the Council, and reviewing and approving bond documents. The County Manager leads the County Finance Team which includes, but is not limited to the County Manager, County Budget Director, County Finance Director, and Chief Deputy Treasurer. The County Finance Director and Chief Deputy Treasurer serve at the pleasure of their respective independently elected officials. The County Manager may request that this team be involved in the various debt issuance activities, assist with evaluating proposals, and make recommendations to the Council.

It should be noted that the County Finance Team is not the same as the County’s external financing team, which is generally formed to work on specific debt issuances and includes bond counsel, municipal advisor (as applicable), and underwriter(s) (for negotiated offerings only).

3.2 County Finance Committee

The County Finance Committee is responsible for approving the County’s Debt Policy in accordance with RCW 36.48.070. This Committee is composed of three elected officials: Clark County Treasurer as Chair; Clark County Auditor as Secretary; and the Chair of the Clark County Board of Councilors, *ex officio*.

3.3 Clark County Treasurer’s Office

The Clark County Treasurer’s Office (hereinafter referred to as “Treasurer”) is responsible for assisting County departments and offices in identifying potential borrowing strategies; coordinating the work necessary for the issuance of debt, including the timing, processing and sale of debt; managing the bond counsel and financial advisor contracts on behalf of the County; making debt service payments; and ensuring the County’s compliance with post-issuance procedures required by the Internal Revenue Service (hereinafter “the IRS”) and continuing disclosure undertakings (See Exhibits A and B respectively).

Additionally, the Treasurer receipts, invests, and monitors the expenditure of bond proceeds as well as the County’s debt capacity and credit rating. The Treasurer will work closely with applicable parties, including County departments and offices, to take actions necessary to maintain the tax-exempt status of tax-exempt bonds.

3.4 Clark County Departments and Offices

County departments and offices that request debt play a significant and important role in the debt issuance process. To start, they must provide the Treasurer, County Manager, and Clark County Budget Office (hereinafter “Budget Office”) with advance notification of the need for borrowing. This notification should occur prior to review and approval by the Council and include relevant details of what is being financed.

Responsibilities of departments and offices generally include, but are not limited to:

- Develop fund and revenue forecasts and financial models and options;
- Ensure sufficient resources are available to meet ongoing debt service requirements;
- Seek approval of increases to existing or new revenues;
- Request budget approval and completing other relevant administrative tasks;
- Respond to due diligence inquiries and provide complete and accurate information necessary to prepare the Preliminary Official Statement (as described in Exhibit B);
- Spend bond proceeds in accordance with the approved bond documents (tax certificate) and within specified time frames;
- Alert the Budget Office and Treasurer of any unforeseen issues impacting existing debt service or changes to the spend down of proceeds; and,
- Provide information required by the Treasurer for the issuance and administration of debt, including the County’s compliance with adopted post-issuance procedures required by the IRS.

County departments and offices are responsible for the accuracy of information they provide.

IV. Professional Services

The Treasurer shall, on behalf of the County, contract for professional services required to execute financing transactions and advise on debt management. Primary professional service providers include, but are not limited to, bond counsel and a municipal financial advisor.

Other professional services providers may include underwriters, lenders, credit rating agencies, bond insurers, verification and escrow agents, registrar/paying agent, and arbitrage and post compliance report monitoring.

4.1 Bond Counsel

Bond counsel serves as the County’s legal advisor in connection with the issuance of bonds and other types of debt. Typically, bond counsel provides opinions regarding the validity and enforceability of the debt, as well as its exemption from federal income tax (if applicable). Bond counsel may also serve as disclosure counsel and manage the preparation of the Preliminary Official Statement in conjunction with public offerings of bonds. The County will select through a competitive process bond counsel who have experience acting as a bond counsel to Washington counties and other municipalities in the State of Washington. Selected counsel must be deputized by the Clark County Prosecuting Attorney’s Office prior to providing services to the County.

4.2 Municipal Advisor

A municipal financial advisor provides financial advice to the County in connection with the issuance of debt and other related matters. Municipal advisors are regulated by the Security and Exchange Commission (SEC) and Municipal Securities Rulemaking Board (MSRB) and have a fiduciary duty to their clients.

The County will utilize a municipal advisor in connection with all publicly offered debt and bank placed borrowings and may use the advisor for complex state and federal loans. The County will select its municipal advisor through a competitive process. The municipal advisor must be registered with both the SEC and MSRB and have experience acting as a municipal advisor to Washington counties and other municipalities.

4.3 Other Service Providers

The Treasurer, in consultation with the County's bond counsel and municipal advisor, shall identify other professional service providers as necessary to complete each transaction and to assist the County to remain compliant with applicable federal tax and securities law requirements throughout the life of the debt.

V. Transaction Specific Policies

5.1 Maturity and Amortization

The term of County debt should not exceed the useful life of the facilities or equipment being financed. The repayment of principal on tax supported debt should generally not extend beyond 20 fiscal years unless there are compelling factors which make it necessary to extend the term.

Unless otherwise justified, debt issued by the County should be structured to provide substantially level annual debt service. Deferring the repayment of principal should be avoided except in select instances where it will take time before a bond-financed project will generate revenues sufficient to pay debt service. Ascending debt service requirements should be avoided unless justified based on the nature of the repayment source.

5.2 Method of Bond Sale

There are three primary methods of selling debt: competitive public offering, negotiated public offering, and direct bank placement.

Competitive Sale

In a competitive sale, the bonds are offered to underwriters which then make bids prior to a specified date and time. The County awards the bonds to the underwriter whose bid produces the lowest True Interest Cost (TIC) to the County. The County generally issues long-term debt through competitive sale and will do so unless the County Treasurer (in consultation with the municipal advisor) determines that approach is not in the best interest of the County.

Negotiated Sale

When market conditions, financing complexity, or other features of a debt issuance warrant, the County may pursue a negotiated sale, in which the underwriter is selected in advance of the sale. For any negotiated sale, the County will use a competitive procurement method to select the underwriter (or syndicate of underwriters), with preference being given to underwriters which have bid in recent competitive sales of County bonds.

Direct Bank Placement

Market conditions, financing complexity, or other structural aspects of a debt issuance may also lend themselves to a direct bank placement, in which the County sells bonds directly to a commercial bank or other financial institution. Absent extenuating circumstances, the County will use a competitive process to select its preferred lender for a direct bank placement of bonds.

The above methods are not applicable to state or federal loans in which another governmental entity serves as lender. Such loan programs are often designed with below-market interest rates or other favorable terms and conditions. The County may pursue state or federal loan programs to the extent such programs provide a financial or other benefit relative to a public offering or direct bank placement.

5.3 Ratings

As of May 2018, the County's outstanding limited tax general obligation bonds are rated "Aa1" by Moody's Investors Service. The County shall generally target bond credit ratings in the "Aa" category. The County will consult with its financial advisor in determining whether to apply for credit ratings prior to any issuance of debt.

5.4 Reserve Fund

A debt service reserve fund may be required in connection with the issuance of revenue bonds to meet investor and rating agency expectations. Such a reserve fund may be funded from bond proceeds or excess revenues of the applicable enterprise fund. Reserve funds for tax-exempt bonds are generally subject to arbitrage requirements under the Code, including the arbitrage rebate requirement with respect to investments held in the reserve fund.

Reserve funds are not generally required for types of debt other than revenue bonds.

5.5 Coupons

The County will generally issue debt with one or more fixed rates of interest. The County may choose to issue debt paying a rate of interest that varies according to a pre-determined formula or results from a periodic remarketing of the securities. Before proposing use of variable rate debt, departments shall develop a plan to address interest rate risk associated with these instruments.

5.6 Bond Insurance

Bond insurance is an insurance policy purchased by an issuer (the County) or underwriter for an entire series of bonds or specific maturities within that series. The policy guarantees the payment

of principal and interest on the insured maturities or series. Depending on the credit rating of the bond insurer, bond insurance may result in a higher credit rating than that of the issuer (County), and thus a lower cost of borrowing.

In general, the County will use bond insurance only when the present value of the estimated debt service savings resulting from the higher rating is greater than the cost of the policy. For competitive bond sales, the County may provide for bond insurance at the bidder's option. For negotiated bond sales, the County will consult with its financial advisor and underwriter in making the savings calculation. In evaluating the use of bond insurance, the County will also consider any additional administrative or reporting requirements required by the bond insurer.

5.7 Taxable Debt

The County, like other municipal issuers, most commonly issues debt that is tax-exempt or otherwise tax-advantaged. The County may issue taxable debt for projects that do not meet IRS requirements for tax-exemption, or in circumstances where the flexibility afforded by taxable debt outweighs the additional cost of taxable interest rates.

5.8 Optional Redemption

County debt typically includes provisions for redemption prior to maturity. The County may issue debt without optional redemption features when term of the debt is less than ten years. Determination of debt redemption features shall be made by the County Treasurer in consultation with bond counsel and municipal advisor.

5.9 Capitalized Interest

The County may use capitalized interest (interest payable from proceeds of the borrowing) when debt is issued in support of a project that will not generate revenue until after completion of construction of the financed project, or to otherwise correlate with the identified source of payment of debt service on the bonds.

5.10 Green Bonds and Other Designations

Debt issued for certain types of projects may qualify for specific designations (e.g., "green bonds"). The County may designate projects and financing as eligible on a case-by-case basis. Prior to applying such designation(s), the County will review the benefits of the designation against the requirements of such designation (e.g., additional ongoing reporting, limitations on use of project, etc.).

VI. Limitation on County Indebtedness

Under Washington State law, RCW 36.67.010 and 39.36.020(2)(a)(ii), the County may contract indebtedness and issue limited tax general obligation bonds for general County purposes in an amount not to exceed 1.5 percent of the assessed value of all taxable property within the County. The Council may authorize the issuance of such limited tax general obligation bonds by resolution and without voter approval. Under RCW 36.67.010 and 39.36.020(b), the County may contract

indebtedness and issue unlimited tax general obligation (voter-approved) bonds with the affirmative vote of at least 60 percent of the votes in an election with a voter turnout equal to at least 40 percent of that of the last state general election. The total amount of outstanding unlimited and limited tax general obligation bonds may not exceed 2.5 percent of the assessed value of taxable property within the County.

The County shall manage its debt so the total amount of UTGO and LTGO debt outstanding at any time, in aggregate, does not exceed 2.5 percent of the assessed value of taxable property within the County.

The County shall manage its debt so the amount of LTGO indebtedness outstanding at any time does not exceed 1.5 percent of the assessed value of taxable property within the County.

Prior to issuing general obligation debt, the County shall identify the source of repayment of such indebtedness and review the proposed plan of finance, which may include some or all the following:

- History of the identified repayment source;
- Level of historical and projected debt service coverage;
- Availability of related fund balance and reserves for the repayment of debt;
- Revenue volatility and related risk.

Affordability analysis and investor perception

For proposed LTGO debt, the County shall prepare a financing feasibility model to assess affordability. The model will identify estimated debt service payments; sources of revenue for repayment; estimated operations, maintenance, and capital replacement costs for the underlying project (if applicable); and available reserves that may be used to pay debt service in the event of a current-year revenue shortfall. This model will use conservative estimates of revenue and expenditures. Where practical, the estimates will be verified against data from external sources.

This model will be evaluated in the context of the specific debt issuance but also compared to the County's existing debt service requirements and future financing priorities. The model shall be updated as necessary over the life of the debt.

Development of the model will be led by the County department/office requesting the debt and will include review and input from other interested parties, including the municipal advisor, County Manager, County Finance Director, County Budget Director, and Chief Deputy Treasurer.

6.1 Limitations on General Fund Loan Guarantees and Credit Support

The County may provide a limited tax general obligation pledge as credit support for non-County projects (e.g., as a guarantee for debt issued by other taxing districts or private parties). (Note that credit support for private developments is limited by "lending of credit" prohibitions in the state constitution.) While such debt is expected to be repaid from non-County resources, the limited tax general obligation pledge inherently involves risk to the County's General Fund.

Before such a commitment is made, the County shall develop specific policy goals and objectives that determine the nature and type of projects qualifying for credit support; specific limitations on the maximum amount General Fund resources pledged to such projects; and the anticipated term of the County support (i.e., whether such credit support intended to be transitional, as a project becomes self-sufficient, or permanent for the life of the financing). The County Manager shall coordinate the development of policies and goals, which shall not take effect until approval by the Council.

Limited tax general obligation loan guarantees shall be subject to the overall debt limitations set forth above. Any proposed financing utilizing a County limited tax general obligation guarantee or other credit support shall be subject to the feasibility model and related analysis as described above.

6.2 Target Limitations on the Issuance of Revenue-Secured Debt Obligations

Revenue-secured debt is generally used to finance enterprise funds (i.e., utilities). Given the limited number of County enterprise funds, the County does not generally anticipate issuing revenue-secured debt for County projects.

Before issuing revenue-secured debt, County departments or offices will develop financial plans and projections demonstrating the feasibility of the planned financing, required rates and charges needed to support the planned financing and impact on ratepayers, property owners, County departments and other affected parties. The amount of revenue-secured debt obligations issued by a County department or office will be limited by the feasibility of the overall financing plan.

VII. Refundings

A refunding is generally the process of paying off maturing or callable debt with proceeds of a new bond issue. The Treasurer, in consultation with the financial advisor, will monitor the County's outstanding debt obligations to determine whether present value savings can be achieved through refunding such debt.

Prior to undertaking a refunding bond issue, the County will review an estimate of the net present value (NPV) savings achievable from the refunding. The County will also evaluate the possibility of redeeming outstanding debt with existing resources, in lieu of or as a supplement to a refunding bond transaction.

Unless warranted by exceptional circumstances, the County will not refund outstanding debt to extend the final maturity of a series of bonds, or to avoid making regularly scheduled principal and interest payments on a series of bonds.

Unless otherwise justified, the County will generally consider refunding outstanding bonds as authorized under RCW 39.53 if one or more of the following conditions exist:

- 1) For an advance refunding, net present value (NPV) savings is at a minimum of 3 percent of the par amount of the refunding bonds and refunding efficiency exceeds 70 percent.
- 2) For a current refunding, NPV savings exceeds \$50,000.
- 3) The bonds to be refunded have restrictive or outdated covenants.
- 4) Refunding or restructuring the debt will aid in other County goals.

Related Definitions

- Advance Refunding: A method of refinancing outstanding debt in which the refunded bonds' call date is more than 90 days after the issue date of the refunding bonds. An advance refunding is generally accomplished by issuing new (refunding) bonds and investing the proceeds in an escrow account in a portfolio of U.S. government securities structured to provide enough cash flow to pay interest on the refunded bonds until the call date, and to pay and retire on the call date the principal of the refunded bonds. As of the date of this policy, the issuance of tax-exempt advance refunding bonds is not permitted under the Code. The County may, in consultation with its municipal advisor, consider structural alternatives to a taxable advance refunding.
- Current Refunding: When refunding bonds are issued within 90 days of the call date of the refunded bonds.
- Gross Savings: Difference between the debt service on refunding bonds and refunded bonds.
- Net Present Value (NPV) Savings: Net present value of gross savings discounted at the refunding bond yield to the closing date, plus refunding funds on hand and less any cash contribution toward the refunding from a reserve or debt service fund.
- Negative Arbitrage: The difference in interest earnings on a refunding escrow at the actual reinvestment rate vs. the permitted maximum rate. Represents "opportunity cost" and reduces potential savings in a refunding transaction.
- Refunding Efficiency: Actual or estimated net present value savings, divided by the sum of actual/estimated NPV savings plus negative arbitrage. Represents the attainable net present value savings as a percentage of hypothetical potential savings.

VIII. Miscellaneous

8.1 Derivatives

If and to the extent permitted under RCW 39.96, the County may use interest rate swaps or similar derivative products and related transactions to meet the financial and management objectives as outlined in this policy. Prior to entering into any swap or derivative product, the County shall, in consultation with its financial advisor and bond counsel, adopt a separate derivatives policy guiding the use of such derivatives.

8.2 Post-Issuance Compliance

The County shall adhere to post-issuance tax compliance requirements and continuing disclosure requirements as further described in exhibits A and B, respectively.

8.3 Investment of Bond Proceeds

The Treasurer will be responsible for investing proceeds of County borrowings in accordance with the County's investment policy and in compliance with IRS requirements for tax-advantaged bonds.

CLARK COUNTY FINANCE COMMITTEE

By: 

Alishia Topper, Chair
Clark County Treasurer

By: 

Greg Kimsey, Secretary
Clark County Auditor

By: 

Karen Bowerman,
Clark County Council, Chair

EXHIBIT A

POST-ISSUANCE COMPLIANCE PROCEDURES FOR TAX-EXEMPT BONDS

1. Purpose. The purpose of these post-issuance compliance procedures (“Compliance Procedures”) for tax-exempt bonds and other obligations (sometimes collectively referred to herein as “bonds” or “tax-exempt bonds”) issued by Clark County, Washington (the “County”) for which federal tax exemption is provided by the Internal Revenue Code of 1986, as amended (the “Code”), is to facilitate compliance by the County with the applicable requirements of the Code that must be satisfied after the issue date of the bonds to maintain the tax exemption for the bonds after the issue date.

2. Responsibility for Monitoring Post-Issuance Tax Compliance. The County Finance Committee has the overall, final responsibility for monitoring whether the County is in compliance with post-issuance federal tax requirements for the County’s tax-exempt bonds. However, the County Finance Committee has delegated the primary operating responsibility to monitor the County’s compliance with post-issuance federal tax requirements for the County’s bonds to the County Treasurer (the “Treasurer”) and has authorized and directed the Treasurer to adhere to these Compliance Procedures on behalf of the County.

3. Arbitrage Yield Restriction and Rebate Requirements. The Treasurer will maintain or cause to be maintained records of:

(a) purchases and sales of investments made with bond proceeds (including amounts treated as “gross proceeds” of bonds under section 148 of the Code) and receipts of earnings on those investments;

(b) expenditures made with bond proceeds (including investment earnings on bond proceeds) in a timely and diligent manner for the governmental purposes of the bonds, such as for the costs of purchasing, constructing and/or renovating property and facilities;

(c) information showing, where applicable for a particular calendar year, that the County was eligible to be treated as a “small issuer” in respect of bonds issued in that calendar year because the County did not reasonably expect to issue more than \$5,000,000 of tax-exempt bonds in that calendar year;

(d) calculations that will be sufficient to demonstrate to the Internal Revenue Service (“IRS”) upon an audit of a bond issue that, where applicable, the County has complied with an available spending exception to the arbitrage rebate requirement in respect of that bond issue;

(e) calculations that will be sufficient to demonstrate to the IRS upon an audit of a bond issue for which no exception to the arbitrage rebate requirement was applicable, that the

rebate amount, if any, that was payable to the United States of America in respect of investments made with gross proceeds of that bond issue was calculated and timely paid with Form 8038-T timely filed with the IRS; and

(f) information and records showing that investments held in yield-restricted advance refunding or defeasance escrows for bonds, and investments made with unspent bond proceeds after the expiration of the applicable temporary period, were not invested in higher-yielding investments.

4. Restrictions on Private Business Use and Private Loans. The Treasurer will adopt procedures calculated to educate and inform the principal operating officials of those departments, including utility departments, if any, of the County (the “users”) for which land, buildings, facilities and equipment (“property”) are financed with proceeds of tax-exempt bonds about the restrictions on private business use that apply to that property after the bonds have been issued, and of the restriction on the use of proceeds of tax-exempt bonds to make or finance any loan to any person other than a state or local government unit.

In particular, following the issuance of bonds for the financing of property, the Treasurer shall provide to the users of the property a copy of these Compliance Procedures and other appropriate written guidance advising that:

(a) “private business use” means use by any person other than a state or local government unit, including business corporations, partnerships, limited liability companies, associations, nonprofit corporations, natural persons engaged in trade or business activity, and the United States of America and any federal agency, as a result of ownership of the property or use of the property under a lease, management or service contract (except for certain “qualified” management or service contracts), output contract for the purchase of electricity or water, privately sponsored research contract (except for certain “qualified” research contracts), “naming rights” contract, “public-private partnership” arrangement, or any similar use arrangement that provides special legal entitlements for the use of the bond-financed property;

(b) under section 141 of the Code, no more than 10% of the proceeds of any tax-exempt bond issue (including the property financed with the bonds) may be used for private business use, of which no more than 5% of the proceeds of the tax-exempt bond issue (including the property financed with the bonds) may be used for any “unrelated” private business use—that is, generally, a private business use that is not functionally related to the governmental purposes of the bonds; and no more than the lesser of \$5,000,000 or 5% of the proceeds of a tax-exempt bond issue may be used to make or finance a loan to any person other than a state or local government unit;

(c) before entering into any special use arrangement with a nongovernmental person that involves the use of bond-financed property, the user must consult with the Treasurer, provide the Treasurer with a description of the proposed nongovernmental use

arrangement, and determine whether that use arrangement, if put into effect, will be consistent with the restrictions on private business use of the bond-financed property;

(d) in connection with the evaluation of any proposed nongovernmental use arrangement, the Treasurer should consult with nationally recognized bond counsel to the County as may be necessary to obtain federal tax advice on whether that use arrangement, if put into effect, will be consistent with the restrictions on private business use of the bond-financed property, and, if not, whether any “remedial action” permitted under section 141 of the Code may be taken by the County as a means of enabling that use arrangement to be put into effect without adversely affecting the tax-exempt status of the bonds that financed the property; and

(e) the Treasurer and the user of the property shall maintain records of such nongovernmental uses, if any, of bond-financed property, including copies of the pertinent leases, contracts or other documentation, and the related determination that those nongovernmental uses are not inconsistent with the tax-exempt status of the bonds that financed the property.

5. Records to be Maintained for Tax-Exempt Bonds. It is the policy of the County that, unless otherwise permitted by future IRS regulations or other guidance, written records (which may be in electronic form) will be maintained with respect to each bond issue for as long as those bonds remain outstanding, plus three years. For this purpose, the bonds include refunding bonds that refund the original bonds and thereby refinance the property that was financed by the original bonds.

The records to be maintained are to include:

(a) the official Transcript of Proceedings for the original issuance of the bonds;

(b) records showing how the bond proceeds were invested, as described in 3(a) above;

(c) records showing how the bond proceeds were spent, as described in 3(b) and 4(c) above, including purchase contracts, construction contracts, progress payment requests, invoices, cancelled checks, payment of bond issuance costs, and records of “allocations” of bond proceeds to make reimbursement for project expenditures made before the bonds were actually issued;

(d) information, records and calculations showing that, with respect to each bond issue, the County was eligible for the “small County” exception or one of the spending exceptions to the arbitrage rebate requirement or, if not, that the rebate amount, if any, that was payable to the United States of America in respect of investments made with gross proceeds of that bond issue was calculated and timely paid with Form 8038-T timely filed with the IRS, as described in 3(c), (d) and (e) above; and

(e) records showing that special use arrangements, if any, affecting bond-financed property made by the County with nongovernmental persons, if any, are consistent with applicable restrictions on private business use of property financed with proceeds of tax-exempt bonds and restrictions on the use of proceeds of tax-exempt bonds to make or finance loans to any person other than a state or local government unit, as described in 4 above.

The basic purpose of the foregoing record retention policy for the County's tax-exempt bonds is to enable the County to readily demonstrate to the IRS upon an audit of any tax-exempt bond issue that the County has fully complied with all federal tax requirements that must be satisfied after the issue date of the bonds so that those bonds continue to be tax-exempt under the Code.

6. Identification and Remediation of Potential Violations of Federal Tax Requirements for Tax-Exempt Bonds.

(a) So long as any of the County's tax-exempt bond issues remain outstanding, the Treasurer will periodically consult with the users of the County's bond-financed property to review and determine whether current use arrangements involving that property continue to comply with applicable federal tax requirements as described in these Compliance Procedures. This may be accomplished, for example, by periodically meeting with users, providing questionnaires to users about current use arrangements, or adopting other protocols reasonably calculated to ensure compliance with applicable federal tax requirements on a continuing basis. This periodic review may be scheduled, for example, at or before the times that the County is required to file with the Municipal Securities Rulemaking Board the annual financial information and operating data pursuant to the County's undertaking to provide continuing disclosure with respect to outstanding bond issues.

(b) If at any time during the life of an issue of tax-exempt bonds, the County discovers that a violation of federal tax requirements applicable to that issue may have occurred, the Treasurer will consult with bond counsel to determine whether any such violation actually has occurred and, if so, take prompt action to accomplish an available remedial action under applicable Internal Revenue Service regulations or to enter into a closing agreement with the Internal Revenue Service under the Voluntary Closing Agreement Program described under Notice 2008-31 or other future published guidance.

7. Education Policy With Respect to Federal Tax Requirements for Tax-Exempt Bonds. It is the policy of the County that the Treasurer and his or her staff, as well as the principal operating officials of those departments of the County for which property is financed with proceeds of tax-exempt bonds should be provided with education and training on federal tax requirements applicable to tax-exempt bonds. The County recognizes that such education and training is vital as a means of helping to ensure that the County remains in compliance with those federal tax requirements in respect of its bonds. The County therefore will enable and encourage those

personnel to attend and participate in educational and training programs offered by, among others, the Washington Public Treasurers Association and the Washington Finance Officers Association with regard to the federal tax requirements applicable to tax-exempt bonds.

Adopted :# _____ #

EXHIBIT B

Publicly Offered Bonds

- 1. Purpose.** As an issuer of municipal securities (hereinafter referred to as “Bonds”), the County is subject to the antifraud provisions of the Securities Act of 1933 and the Securities and Exchange Act of 1934, as well as the antifraud provisions of the Securities Act of Washington (chapter 21.70 RCW). These acts impose various obligations on the County, including requiring disclosure of material information regarding its publicly offered Bonds to allow investors to make informed decisions about whether to purchase, hold or sell the County’s Bonds. Documents prepared in connection with the marketing of the County’s Bonds cannot contain any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements made not misleading. The procedures contained in the “Disclosure Procedures) are designed to assist the County in its compliance with securities laws and promote best practices regarding disclosure.

The County has three major disclosure obligations when it publicly offers Bonds: (a) to prepare an official statement for all public offerings of its Bonds that is delivered to the underwriter(s) for distribution to potential and actual purchasers and that sets forth the terms of the Bonds and information regarding the County; (b) to provide ongoing disclosure required by the County’s undertakings made pursuant to paragraph (b)(5) of Securities and Exchange Commission (“SEC”) Rule 15c2-12 (“Rule 15c2-12”); and (c) if and when the County provides information that can reasonably be expected to be relied on by the market, to ensure that the information is not inaccurate or misleading.

2. Official Statements. The County prepares a preliminary and final official statement for each publicly offered series of Bonds.

(a) Procedure and Timeline for Preparing Official Statements. As noted previously, in advance of issuing any series of publicly offered Bonds, the Treasurer, or such other officer of the County who may in the future perform the duties of that office, if any, will select the financing team which includes: bond counsel, municipal advisor (as applicable) and underwriter(s) (for negotiated offerings only). The County’s bond counsel (or other member of the financing team selected by the Treasurer) drafts the preliminary and final official statements on behalf of the County. The municipal advisor or underwriter(s) will prepare a schedule for each series of Bonds, including dates for distributing drafts of the preliminary and final official statements. The Treasurer will coordinate among county staff and consultants (including, but not limited to, bond counsel) the review of the County’s preliminary and final official statements, and should assign or cause to be assigned to staff and consultants the review of those portions of the preliminary and final official statements about which staff and consultants have particular knowledge (e.g., bond counsel’s review of portions of the preliminary and final official statements that describe the federal income tax treatment of interest on Bonds). Prior to “deeming final” any preliminary official statement, the County may be required to participate in a “due diligence” call with the municipal advisor, underwriter(s) and bond counsel. The objective

of the due diligence call is to verify that the preliminary official statement prepared in connection with the public offering of Bonds provides a complete and accurate description of Bonds and the County. The municipal advisor or underwriter(s) is expected to provide a questionnaire to the County and bond counsel that is designed to confirm and/or obtain information that will be used in the preliminary official statement.

(b) *“Deeming Final” the Preliminary Official Statement.* The Treasurer, or such other County official, if any, designated by the Council, shall: (i) review and “deem final” (within the meaning of Rule 15c2-12), upon such official’s satisfaction, any preliminary official statement prepared in connection with all of the County’s publicly offered Bonds; (ii) authorize the “deemed final” preliminary official statement to be distributed prior to the date any underwriter or purchaser bids for, purchases, offers or sells such Bonds; and (iii) acknowledge in writing any action taken pursuant to clauses (i) and (ii) of this paragraph.

(c) *Final Official Statement.* The Treasurer, or such other County official, if any, designated by the Council, shall review and approve on behalf of the County a final official statement with respect to any of the County’s publicly offered Bonds, substantially in the form of the “deemed final” preliminary official statement for that series of Bonds, as supplemented or amended to reflect the Bond pricing and other information as the Treasurer, or such other County official, if any, designated by the Council, deems necessary, desirable, or appropriate. The Treasurer is authorized to execute each such official statement and the County is authorized to deliver or cause to be delivered that official statement to the underwriter in the manner required by Rule 15c2-12, the Municipal Securities Rulemaking Board (“MSRB”), and the provisions of the applicable notice of competitive sale or bond purchase agreement for a negotiated sale of the County’s Bonds.

(d) *Training.* The County is expected to provide periodic training opportunities to finance staff who participate in the County’s Bond offerings regarding disclosure obligations and best practices. Such training sessions will include education regarding the County’s disclosure obligations under applicable securities laws and responsibilities and potential liabilities regarding such obligations.

(e) *Document Retention.* The County’s Treasurer, or such other officer of the County who may in the future perform the duties of that office, if any, shall retain for a period of at least five years printed copies of each preliminary and final official statement and any written certifications or opinions relating to disclosure matters. The Treasurer is not required to retain drafts of any disclosure materials.

3. Ongoing Disclosure. Each time the County issues publicly offered Bonds, the County will enter into a written undertaking to provide continuing disclosure for the benefit of the holders and beneficial owners of the Bonds as required by Rule 15c2-12. The undertakings require the County, not later than nine months after the end of each fiscal year, to provide to the MSRB an annual report consisting of the County’s unaudited financial statements (and audited financial

statements when available) and specified historical financial and operating data. In each undertaking, the County also agrees to provide or cause to be provided, in a timely manner, not to exceed 10 business days after the occurrence of the event, to the MSRB notice of the occurrence of the “Listed Events,” as defined in the undertaking.

The Treasurer is responsible for complying with each undertaking, including to file the annual financial information within the specified time and to provide timely notice of any Listed Event. In addition, the Treasurer (or his/her designee) is registered with the MSRB’s Electronic Municipal Market Access (“EMMA”) and familiar with the filing requirements and procedures. The duty to comply with the undertakings will be included in the job description for the Treasurer. The Treasurer shall keep a record of each undertaking and a copy of each filing pursuant to the undertakings. Any material failure to comply with an undertaking generally must be disclosed in future County’s official statements for a period of five years after the failure occurs. The Treasurer (or his/her designee) is expected to sign up with EMMA for email reminders.

4. Speaking to the Market. The SEC has stated that, when a municipal issuer of outstanding securities provides, “information to the public that is reasonably expected to reach investors and the trading market, those disclosures are subject to the antifraud provisions,” and the information provided cannot be misleading or contain incorrect information. A statement made outside of the context of a public offering of Bonds possibly could violate the antifraud rules if the statement: (a) is a misrepresentation; (b) is made publicly; (c) is material; (d) involves a security traded on an efficient market; and (e) would induce a reasonable investor, relying on the statement, to misjudge the value of the security. Examples of information that might be relied on by investors in the County’s outstanding Bonds include ongoing disclosure filings, unaudited and audited financial statements, investor presentations, and financial information posted on the county’s website.

5. Legal References. Disclosure Procedures For Publicly Offered Bonds: Resolutions of the Council, adopted and to be adopted, authorizing the issuance of bonds; Securities Act of 1933; Securities and Exchange Act of 1934; Chapter 21.70 RCW; and SEC Rule 15c2-12