# Debt Monitoring Policy

I. Authority

The Fort Worth City Council is responsible for legislation, policy formulation, and overall direction setting of the government. This includes the approval of financial policies which establish and direct the operations of the City of Fort Worth. The City Manager is responsible for carrying out the policy directives of the City Council and managing the day-to-day operations of the executive departments, including the Department of Finance. This policy shall be administered on behalf of the City Manager by the Chief Financial Officer/Director of Finance.

II. Purpose

As a municipal government, the City issues both tax-exempt and taxable securities in the form of general obligation and revenue bonds as part of our on-going goal to create the most livable and best managed city in the country. The proceeds from these debt transactions are utilized to fund the City's comprehensive Capital Improvement Program for multiple sectors of our operation. It is considered best practice for the City, as part of the issuance of tax-exempt obligations, to adopt written procedures outlining how the City will maintain compliance with federal guidelines. The current version of such procedures was adopted on July 24, 2012, as Exhibit C - *Written Procedures Relating to Continuing Compliance with Federal Tax Covenants* to the City's 23rd Supplemental Ordinance authorizing the issuance and sale of the City's Water and Sewer Revenue Refunding Bonds, Series 2012 (Ordinance No. 201301-07-2012). This policy is intended to supplement such *Written Procedures*, as the same may be updated from time to time by action of the City Council.

III. Applicability and Scope

This policy shall apply to all debt issuances under the fiscal control of the City Manager and the City Council and issued by the City of Fort Worth (the "City" or "Issuer"). Sections V through IX pertain only to tax-exempt debt issuances by the City (the "Obligations").

IV. Glossary

See Definitions related to this policy provided in the appendix.

V. Arbitrage Compliance:

Federal income tax laws generally restrict the ability to earn arbitrage in connection with the Obligations. "Arbitrage," in this context, refers to any profit earned from investing the proceeds from the issuance of any Obligations at a yield that is higher than that on such Obligations.

Federal income tax laws restrict Arbitrage via two separate mechanisms: "yield restriction" and the "rebate requirement." Yield restriction prohibits the *investment* of bond proceeds at a rate higher than the yield on the related Obligations. The rebate requirement requires an issuer to *rebate* to the federal government any Arbitrage earned from the investment of Obligations.

Federal income tax laws provide exceptions to the yield restriction and rebate requirement rules, the most common of which are applicable to bond proceeds allocated to construction expenditures. Certain procedures related to these exceptions are set forth in Section VII below (see procedures A and B, related to exceptions from yield restriction, and procedure C, related to exceptions from the rebate requirement). The exceptions must be evaluated independently, as the applicability of an exception from yield restriction does not guarantee an exception from the rebate requirement. Bond Counsel should be consulted in determining the available exceptions and procedures with respect to Obligations issued for construction projects involving timelines in excess of those described below.

The Responsible Person will review the Closing Documents and Section VII below periodically (at least once a fiscal year) to ascertain compliance with Arbitrage restrictions and applicable exceptions.

VI. Review of Federal Tax Certificate for Each Issuance

The Issuer's Chief Financial Officer (such officer, together with other employees of the Issuer who report to such officer, are, collectively, the "Responsible Person") will review and track the federal tax certificate prepared in connection with each issuance of Obligations.

VII. Compliance Procedures Applicable to Obligations Issued for Construction and Acquisition Purposes

With respect to the investment and expenditure of the proceeds of the Obligations that are issued to finance public improvements or to acquire land or personal property, the Responsible Person will:

A. Instruct the appropriate person who is primarily responsible for the construction, renovation or acquisition of the facilities financed or refinanced with the Obligations (the "Project") that (i) binding contracts for the expenditure of at least 5% of the proceeds of the Obligations must be entered into within six months of the date of closing of the Obligations (the "Issue Date") and that (ii) the Project must proceed with due diligence.

B. Monitor progress to ensure that at least 85% of the proceeds of the Obligations to be used for the construction, renovation or acquisition of the Project are expended within three years of the Issue Date.

C. Monitor to ensure proceed expenditures from project Obligation issuances comply with one of the following applicable schedules[1,2,3]:

a) Six-Month Expenditure Schedule. All proceeds must be spent w ithin six months.

b) Eighteen-Month Expenditure Schedule:

i. By six (6) months following receipt of the proceeds, fifteen percent (15%) of the proceeds (together with any amounts received from investments thereof) must have been spent on the designated projects.

ii. By twelve (12) months following receipt of the proceeds, sixty percent (60%) of the proceeds (together with any amounts received from investments thereof) must have been spent on the designated projects.

iii. By eighteen (18) months following receipt of the proceeds, one hundred percent (100%) of the proceeds (together with any amounts received from investments thereof) must have been spent on the designated projects.

c) Two-Year Expenditure Schedule. The two-year expenditure schedule is available only for proceeds used to fund construction projects. A project will qualify as a construction project if at least 75% of the proceeds will actually be used for actual construction (versus acquisition) costs. The two-year expenditure exception requires expenditure of the proceeds within the following schedule:

i. By six (6) months following receipt of the proceeds, ten percent (10%) of the proceeds (together with any amounts received from investments thereof) must have been spent on the designated projects.

ii. By twelve (12) months following receipt of the proceeds, forty-five percent (45%) of the proceeds (together with any amounts received from investments thereof) must have been spent on the designated projects.

[1] For more information regarding these expenditure schedules, please refer to McCall Parkhurst & Horton, L.L.P.'s Memorandum entitled *Arbitrage Rebate Regulations*, attached to the Federal Tax Certificates for the Obligations at issue.

[2] The spending requirements do not generally apply to amounts held in a reasonably required reserve fund, except in certain cases related to the two-year exception period.

[3] "Proceeds" as used in this Section VII(b) generally includes investment earnings, but excludes funds held in a bona fide debt service fund.

iii. By eighteen (18) months following receipt of the proceeds, seventy-five percent (75%) of the proceeds (together with any amounts received from investments thereof) must have been spent on the designated projects.

iv. By twenty-four (24) months following receipt of the proceeds, one hundred percent (100%) of the proceeds (together with any amounts received from investments thereof) must have been spent on the designated projects.

D. Monitor the yield on the investments purchased with proceeds of the Obligations to ensure the yield of such investments is restricted to the yield on the Obligations after three years of the Issue Date;

E. Monitor the investment of all amounts deposited into a sinking fund or funds pledged (directly or indirectly) to the payment of the Obligations, such as the interest and sinking fund or debt service fund, to assure that the maximum amount invested within such applicable fund at a yield higher than the yield on the Obligations does not exceed an amount equal to the debt service on the Obligations in the succeeding twelve-month period plus a carryover amount equal to one-twelfth of the principal and interest payable on the Obligations for the immediately preceding twelve-month period; and

F. The Responsible Person will ensure that funds transferred to a debt service fund are expended within thirteen months from the date of transfer.

G. Ensure no more than 50% of the Obligation proceeds are invested in an investment with a guaranteed yield for four years or more.

## VIII. Procedures Applicable to Obligations with a Debt Service Reserve Fund

If the Issuer issues Obligations that are secured by a debt service reserve fund, the Responsible Person will assure that the maximum amount of any reserve fund for the Obligations invested at a yield higher than the yield on the Obligations will not exceed the lesser of (1) 10% of the principal amount of the Obligations, (2) 125% of the average annual debt service on the Obligations measured as of the Issue Date, or (3) 100% of the maximum annual debt service on the Obligations as of the Issue Date.

## IX. Procedures Applicable to Escrow Accounts for Refunding Issues

In addition to the foregoing, if the Issuer issues Obligations and proceeds are deposited to an escrow fund to be administered pursuant to the terms of an escrow agreement, the Responsible Person will:

A. Monitor the actions of the escrow agent to ensure compliance with the applicable provisions of the escrow agreement, including with respect to reinvestment of cash balances;

B. Contact the escrow agent on the date of redemption of obligations being refunded to ensure that they were redeemed; and

C. Monitor any unspent proceeds of the refunded obligations to ensure that the yield on any investments applicable to such proceeds are invested at a yield that does not exceed the yield on the refunding obligations or otherwise applied.

## X. <u>Procedures Applicable to All Tax-Exempt Obligations</u>

For all issuances of Obligations the Responsible Person will:

A. Maintain any official action of the Issuer (such as a reimbursement resolution) stating the Issuer's intent to reimburse with the proceeds of the Obligations any amount expended prior to the Issue Date for the acquisition, renovation or construction of the facilities;

B. Ensure the applicable information return (e.g., Form 8038-G, 8038-GC, or any successor forms) is filed timely with the Internal Revenue Service (the "IRS"); and

C. Ensure, unless excepted from rebate and yield restriction under section 148(f) of the Code, excess investment earnings are computed and paid to the U.S. government at such time and in such manner as directed by the IRS (1) at least every five years after the Issue Date and (2) within 30 days after the date the Obligations are retired.

## XI. <u>Private Business Use:</u>

Generally, to be tax-exempt, only an insignificant amount of the proceeds of each issue of Obligations can benefit (directly or indirectly) private businesses. The Responsible Person will review the Closing Documents periodically (at least once a fiscal year) for the purpose of determining that the use of the Project does not violate provisions of federal tax law that pertain to private business use. In addition, the Responsible Person will:

A. Develop procedures or a "tracking system" to identify all property financed with tax-exempt debt;

B. Monitor and record the date on which the Project is substantially complete and available to be used for the purpose intended;

C. Monitor and record whether, at any time the Obligations are outstanding, any person, other than the Issuer, affiliates of the Issuer or members of the general public, has any contractual right (such as a lease, purchase, management or other service agreement) with respect to any portion of the Project;

D. Monitor and record whether, at any time the Obligations are outstanding, any person, other than the Issuer, affiliates of the Issuer or members of the general public, has a right to use the output of the Project (e.g., water, gas, electricity);

E. Monitor and record whether, at any time the Obligations are outstanding, any person, other than the Issuer, affiliates of the Issuer or members of the general public, has a right to use the Project to conduct or to direct the conduct of research; [not sure e is necessary.

F. Monitor and record whether, at any time the Obligations are outstanding, any person, other than the Issuer, has a naming right for the Project or any other contractual right granting an intangible benefit;

G. Monitor and record whether, at any time the Obligations are outstanding, the Project is leased, sold or otherwise disposed of; and

H. Take such action as is necessary to remediate any failure to maintain compliance with the covenants contained in the Ordinance authorizing the tax-exempt obligations used to finance the Project.

XII. Record Retention:

The Responsible Person will maintain or cause to be maintained all records relating to the investment and expenditure of the proceeds of the Obligations and the use of the facilities financed or refinanced thereby for a period ending three years after the complete extinguishment of the Obligations. If any portion of the Obligations is refunded with the proceeds of another series of tax-exempt Obligations, such records shall be maintained until the three years after the refunding Obligations are completely extinguished. Such records can be maintained in paper or electronic format.

XIII. Responsible Persons:

Each Responsible Person shall receive appropriate training regarding the Issuer's accounting system, contract intake system, facilities management and other systems necessary to track the investment and expenditure of the proceeds and the use of the Project financed or refinanced with the proceeds of the Obligations. The foregoing notwithstanding, each Responsible Person shall report to the City Council whenever experienced advisors and agents may be necessary to carry out the purposes of these instructions for the purpose of seeking City Council approval to engage or utilize existing advisors and agents for such purposes.