

COMMON COUNCIL PROCEEDINGS
September 5, 2017

The meeting was called to order at 5:30 PM by Councilwoman Szukala followed by the Pledge of Allegiance and a moment of silence led by Fire Chief Edwards in memory of Don "Buzz" Velzy. Don Velzy was a former Fire Police Captain in Dunkirk for over 25 years and a loyal member to the Dunkirk Fire Department and Hose Company #2.

Present: Councilman Williams, Councilmen Bamonto, Councilman Gonzalez, and Councilwoman Szukala.

Also present: Mayor Rosas, City Attorney Morrisroe, City Treasurer Woods, Board of Assessors Mleczko, Clerk, Fiscal Affairs Officer Pinkoski, Building Inspector Zurawski, Personnel Administrator Heyden, Executive Assistant to the Mayor Westling, Acting Public Works Director, Woodbury, Director of Development Yanus, Fire Chief Edwards, and Police Lieutenant McAfee.

Excused: Councilman-at-Large Woloszyn.

Certification of the Tuesday, August 15, 2017 Common Council Meeting was read by City Clerk Ramos.

RESOLVED: That the reading of the Tuesday, August 15, 2017 Common Council Meeting be dispensed with.

Motion by Councilman Gonzalez to accept the minutes as presented. Seconded by Councilman Williams.

Carried, all voting aye.

Councilwoman Szukala advised before moving further into the Agenda a motion was needed from the floor appointing her as acting Councilwoman-at-Large for tonight's meeting.

Councilman Williams made a motion appointing Councilwoman Szukala as Acting Councilwoman-at-Large for tonight's meeting. Seconded by Councilman Bamonto.

Carried, all voting aye.

PUBLIC COMMENTS:

James Fisher with Revitalize Dunkirk advised on Sunday, September 17th at 6:30 PM will be the next and last BYOC event for the season at the Lighthouse at, there will be tours of the Lighthouse that night at a discount rate starting at 6:00 PM, and invited all to the next monthly meeting for Revitalize Dunkirk which will be held on September 21st at 6:30 PM at the Incubator.

Mike Civileto of 138 Ruggles Street advised the Common Councilmembers that he spoke with County Executive Horrigan regarding the old steel plant site on Roberts Road, the need to have the site cleaned up, and inquired if any city official could get the county to clean up the site before the Brownfielding happens, even though the site is not the City's responsibility.

COMMUNICATIONS FROM THE MAYOR INCLUDING DISAPPROVAL MESSAGES:

Mayor Rosas advised the City has received notification that the funds for the improvements to Point Gratiot Park will be officially released to the City within the next two weeks, the City will be going out for bid on the construction shortly, and improvements to the Park are estimated to be complete by the end of this fall season. Mayor Rosas also advised with the help of the DLDC, CCIDA, and the Attorney General's Office the City was able to secure the closing of the Burtges Property on Lake Shore Drive West on August 31st with the local Marina Operator Charles Pringl. This closing not only opens up a huge opportunity for new development on the waterfront, but also removes a large liability for the City of Dunkirk. Lastly, Mayor Rosas advised the CDBG-funded first-time homebuyer program has helped a Dunkirk resident purchase their first home, two other residents are working with CHRIC on the closing process, and the program is still accepting applications from individuals who qualify.

Mayor Rosas also responded to Mr. Civileto's request regarding the Robert's Road site's that needs cleanup advising the County has been working with the City in trying to bring the cold storage warehouse to that site, there is a plan in place for the cleanup, and that is part of the process they are trying to complete with the cold storage developers.

COMMUNICATIONS FROM THE PUBLIC AND PETITIONS:

Prior Notice from Maria Rios for deteriorating asphalt surrounding a manhole cover in front of 325 Lynx Street.

Acting Councilwoman-at-Large Szukala advised a motion was needed to refer to appropriate departments as well as approve subject to appropriate insurances and usual conditions.

Councilman Bamonto made a motion to approve. Seconded by Councilman Williams.

Carried, all voting aye.

Request from SUNY Fredonia for permission to hold a beach cleanup at Point Gratiot Beach on September 16, 2017 from 12:00 PM until 2:00 PM.

Acting Councilwoman-at-Large Szukala advised a motion was needed to refer to appropriate departments as well as approve subject to appropriate insurances and usual conditions.

Councilman Bamonto made a motion to approve. Seconded by Councilman Gonzalez.

Carried, all voting aye.

Request from the 716's Finest Car Club of Dunkirk, NY for permission to hold their first Car Show on October 7, 2017 at Point Gratiot.

Acting Councilwoman-at-Large Szukala advised a motion was needed to refer to appropriate departments as well as approve subject to appropriate insurances and usual conditions.

Councilman Williams made a motion to approve. Seconded by Councilman Gonzalez.

Carried , all voting aye.

Notice of Petition and Request for Judicial Intervention from Dunkirk Acquisitions, LLC.

Acting Councilwoman-at-Large Szukala advised a motion was needed to refer to appropriate departments.

Councilman Williams made a motion to refer to appropriate departments. Seconded by Councilman Bamonto.

Carried, all voting aye.

Notice of Claim from Maria Rios for injuries allegedly sustained as a result of a fall on August 8, 2017 in front of 325 Lynx Street.

Acting Councilwoman-at-Large advised Notice of Claim received and filed.

Loudspeaker application request from Charles Taber on behalf of the "Benefit for Shayn Grisanti" to use a DJ and band at the First Ward Falcon's Club, 341-342 Lake Shore Drive East on October 7, 2017 from 1:00 PM until 5:00 PM.

Acting Councilwoman-at-Large Szukala advised a motion was needed to refer to appropriate departments as well as approve subject to appropriate insurances and usual conditions.

Councilman Williams made a motion to approve. Seconded by Councilman Bamonto.

Carried, all voting aye.

REPORTS OF STANDING COMMITTEES, BOARDS AND COMMISSIONS:

Councilman Williams requested Acting Public Works Director Woodbury to send someone to clear out the turnabout at the dead end of E. Cedar Street as a resident who lives on the street has requested it be cleared out again, asked Mayor Rosas for updates on Athenex and

NRG, advised some people are skeptical that Athenex is coming since they haven't seen much happening there, and wants to keep it out there that sooner or later there will be a ground breaking, and lastly requested an update on the City's audit from Fiscal Affairs Officer Pinkoski & City Treasurer Woods and inquired why it is running late.

Mayor Rosas advised he had no updates on NRG and that Athenex is expecting to do a ground breaking ceremony sometime this month and Athenex is hoping to bring some of their executives from around the world.

Fiscal Affairs Officer Pinkoski reported the annual update document to the Comptroller's Office should be done in two weeks, the audit report or draft audit report should be done in a month, and believes the report ran late because the City has a new CPA firm and they are doing their due diligence to make sure everything is correct and up to their standards.

Councilman Bamonto thanked Acting Public Works Director Woodbury for seeing the sinkhole on Swan Street near the Middle School was repaired, asked the Mayor for details on the Picnic at the Point coming up this week end, and advised the Men's Flag Football League will be going on this Sunday with all games played at the High School, the Men's Slow Pitch League is going on now, they play five nights a week at the Stadium and they play until the end of the first week in October.

Acting Public Works Director Woodbury advised it was a team effort to get the Swan Street sinkhole repaired before school started.

Mayor Rosas advised the Picnic at the Point is on this Sunday, September 10, 2017. There will be hot dogs, a bounce house for children, live music, and more information can be found on the City's Facebook site.

Councilman Gonzalez thanked the Mayor, Development Department, and City Attorney on the closing of the Bertges Property, advised this was something that had been looming over the City, and commended them for taking the initiative to get it done quickly.

Councilman Gonzalez requested an update on the Wright Park Amenities as the last report stated work was expected to start in the fall season and advised the next Economic Development Committee Meeting will be held on September 19, 2017 at 4:00 PM.

Director of Development Yanus advised they were still going through the design phase with our consultants, wrapping up and getting materials ready to go out to bid so construction can get going this fall, and are expected to be done by Memorial Day next year.

Acting Councilwoman-at-Large Szukala requested from Acting Public Works Director Woodbury for an update on Hoyt Street and requested that somebody look at two trees of concern in front of 115 Mullet Street and that Acting Public Works Woodbury report back if the trees are on the list and where they fall on the list. Acting Councilwoman-at-Large Szukala also requested an update on the Dog Park and clarification on a recent newspaper article regarding the North County Water District and if there would be additional cost to the City if Silver Creek joins the NCWD.

Acting Public Works Director advised the crew was expecting to start laying down the extended water line today but last night's storm forced them to reschedule, and the City has a shared service agreement with the County to pave once the water line is in.

City Attorney Morrisroe advised a draft lease for the Dog Park was sent to the land owner's attorney, the land owner's attorney made contacted regarding the draft lease, and expects the lease may be signed by the end of the week.

Acting Public Works Director Woodbury advised the Mayor asked him to attend the North County Water District Meeting on behalf of the City of Dunkirk. Silver Creek is asking to be linked to the NCWD. Silver Creek's present contract is with Erie County. The contract has a termination date and Silver Creek would like to have some options, should they choose not to renew with Erie County. The NCWD is a county system, which the city of Dunkirk is the supplier. The City is not a member of the NCWD, it is the supplier. Silver Creek joining the NCWD would be a good thing for the City because it would give the City more customers.

PRE-FILED RESOLUTIONS:

RESOLUTION #75-2017
September 5, 2017

BY: COUNCILMAN DONALD WILLIAMS:

**AUTHORIZATION OF A LEASE AGREEMENT
FOR AN OFFICE COPIER IN THE PUBLIC WORKS DEPARTMENT**

WHEREAS, the current copier lease agreement for the Department of Public Works is scheduled to expire in November, and if allowed to join with Erie 1 BOCES on its High Speed Network Digital Printer Bid, the City of Dunkirk could obtain a replacement unit at a bulk discounted rate, be it hereby

RESOLVED, that the Mayor is hereby authorized to execute a sixty-three (63) month lease agreement with Toshiba Business Solutions as a part of Erie 1 BOCES' bid and contract for an office copier that includes maintenance, supplies and staples (excluding paper) at a monthly payment of \$86.38, a black and white per impression charge of \$.0047 per month and a color per impression charge of \$.043 per month; and, be it finally

RESOLVED, that funds for this lease be allocated from budget account #001-1490-2000, Equipment.

Carried, all voting aye.

RESOLUTION #76 -2017
September 5, 2017

BY COUNCILMAN DONALD WILLIAMS:

**AUTHORIZING BUDGET LINE MODIFICATIONS
For Fiscal Year 2017**

WHEREAS, it is anticipated that some expenses will exceed their entire budgetary essentials, and it is anticipated that some appropriations will have surpluses for Fiscal Year 2017, ending December 31, 2017; now, therefore, be it

RESOLVED, that the Fiscal Affairs Officer is hereby authorized and directed to make the following modifications to the Fiscal Year 2017 budget:

Fund 1 - General Fund

Account Number	Department	Line	Change
001.1430.4002	Personnel	Supplies	\$ 350
001.1430.4001	Personnel	Travel & Training	\$ (350)
TOTAL			\$ -

Account Number	Department	Line	Change
001.1620.4021	Building City Hall	Repair/Maint	\$ 3,100
001.1620.4036	Building City Hall	Contracted Services	\$ 1,200
001.1640.4002	Central Garage	Supplies	\$ 700
001.1640.4021	Central Garage	Repair/Maint	\$ 1,000
001.1640.4023	Central Garage	Repair/Maint Vehicles	\$ 500
001.1640.4036	Central Garage	Contracted Services	\$ 4,500
001.8120.4036	Sanitary Sewer	Contracted Services	\$ 2,000
001.1640.4061	Central Garage	Vehicle Fuel	\$ (13,000)
TOTAL			\$ -

Account Number	Department	Line	Change
001.7110.4002	Parks	Supplies	\$ 4,500
001.7110.4016	Parks	Electrical Supplies	\$ 300
001.7110.4021	Parks	Repair/Maint	\$ 4,000
001.7110.4036	Parks	Contracted Services	\$ 1,500
001.7110.2000	Parks	Equipment	\$ (10,300)
TOTAL			\$ -

Account Number	Department	Line	Change
001.7310.4013	Youth Programming	Electric	\$ 500
001.7310.4014	Youth Programming	Gas	\$ 1,400
001.7140.4013	Recreation	Electric	\$ (500)
001.7140.4014	Recreation	Gas	\$ (1,400)
TOTAL			\$ -

Account Number	Department	Line	Change
001.8020.4036	Development	Contracted Services	\$ 2,000
001.8020.4001	Development	Travel & Training	\$ (1,300)
001.8020.4009	Development	Advertising/Fees	\$ (700)
TOTAL			\$ -

Fund 2 - Water Fund

Account Number	Department	Line	Change
002.8320.4736	Purification & Pumping	Contracted Services	\$ 1,100
002.8340.4001	Water Distribution System	Travel & Training	\$ 1,500
002.8350.2007	Water Meter Division	Meters & Parts	\$ 11,900
002.8320.4022	Purification & Pumping	Repairs to Equipment	\$ (1,100)
002.8340.4150	Water Distribution System	Rent/Lease	\$ (13,400)
TOTAL			\$ -

Carried, all voting aye.

RESOLUTION #77 -2017 **September 5, 2017**

BY COUNCILMAN DONALD WILLIAMS:

AUTHORIZING TRANSFERS TO CLOSE CERTAIN CAPITAL PROJECTS AND RELATED BUDGET LINE MODIFICATIONS For Fiscal Year 2017

WHEREAS, several capital projects have been completed and need to be closed,

WHEREAS, in addition to grants, operating funds (general, water, wastewater) loaned the projects money to cover the balance of project expenditures,

WHEREAS, the project resolutions were silent on operating fund contributions (transfers) to the projects,

WHEREAS, the projects were completed, the bills were paid, no money is available in the projects to repay the loans to the operating funds,

RESOLVED, the loans should be recognized as transfer expenditures in the operating funds and as transfer revenue in the projects, the interfund loans be eliminated, and the projects be closed.

WHEREAS, the current operating fund budgets do not include transfers to the projects,

RESOLVED, that the Fiscal Affairs Officer is hereby authorized and directed to make the following modifications to the Fiscal Year 2017 budget:

Fund 1 - General Fund

Account Number	Department	Line	Change
001.0001.0599	General Fund	Appropriated Fund Balance	\$ 10,939.52
001.9950.9004	Transfers	Transfer to Capital Projects	\$ 10,939.52
TOTAL			\$ -

Fund 9 – Dredging Project (2014-2016)

Account Number	Department	Line	Change
009.0009.5031	Transfers	Fund Transfer	\$ 10,939.52
009.8020.4036	Dredging	Contractual Expense	\$ 10,939.52
TOTAL			\$ -

Fund 1 - General Fund

Account Number	Department	Line	Change
001.0001.0599	General Fund	Appropriated Fund Balance	\$ 32,781.69
001.9950.9004	Transfers	Transfer to Capital Projects	\$ 32,781.69
TOTAL			\$ -

Fund 20 - Emergency Seawall (2015)

Account Number	Department	Line	Change
020.0020.5031	Transfers	Fund Transfer	\$ 32,781.69
020.0020.4000	Emergency Seawall	Contractual Expense	\$ 32,781.69
TOTAL			\$ -

Fund 3 – Waste Water Fund

Account Number	Department	Line	Change
003.0003.0599	Waste Water Fund	Appropriated Fund Balance	\$ 5,068.41
003.9950.9007	Transfers	Transfer to Other Funds	\$ 5,068.41
TOTAL			\$ -

(Fund 4 Waste Water Project - Prior to 1996 - Budget not in current computerized records)

Carried, all voting aye.

RESOLUTION #78 -2017
SEPTEMBER 5, 2017

BY: COUNCILMAN BAMONTO

CONSENT TO APPOINTMENT OF DIRECTOR OF PUBLIC WORKS

WHEREAS, Section 2-10.02 of the City Code provides that the Director of Public Works shall be appointed by the Mayor, with the consent of the Common Council; and

WHEREAS, pursuant to Section 2-10.02 of the City Code, Mayor Wilfred Rosas has appointed his temporarily Acting Director of Public Works, Randy J. Woodbury, 37 East Seventh Street, Dunkirk, New York, to the position of Director of Public Works for the City of Dunkirk, subject to the consent of the Common Council; now, therefore, be it

RESOLVED, that Randy J. Woodbury, be confirmed as Director of Public Works for the City of Dunkirk, effective September 6, 2017, at Fifty-Five Thousand Dollars and Zero Cents (\$55,000.00) per year, pro-rated, with no additional benefits added.

Carried, all voting aye.

RESOLUTION #79 -2017
SEPTEMBER 5, 2017

BY: COUNCILMAN BAMONTO AND COUNCILMAN WILLIAMS

**AUTHORIZING PROJECT AND CONSTRUCTION CONTRACT DOCUMENTS
FOR WEST HOWARD AVENUE CULVERT REPLACEMENT**

WHEREAS, the W. Howard Ave Culvert Replacement Project, P.I.N. 5762-21, was bid by public advertisement and construction bids were opened on August 25, 2017, and

WHEREAS, the NYS-DOT will reimburse the City for this culvert replacement project's costs, pursuant to Council Resolution 25-2017, with funding obtained by Mayor Rosas through Governor Cuomo's Bridge NY Program, and

WHEREAS, five sealed bids were received and opened, in the construction amounts of \$789,941, \$750,654, \$649,970, \$625,526, and \$602,929, and

WHEREAS, the low bid of \$602,929, from H & K Services of 1205 Leon Road in Leon, New York 14751, is deemed by DPW to be a responsible bid, now therefore be it

RESOLVED, that the Mayor be, and hereby is, authorized to execute all necessary agreements, certifications and reimbursement requests with the New York State Department of Transportation in connection with the W. Howard Ave Culvert Replacement Project; and be it further

RESOLVED, that after all approvals are received from NYS-DOT, the Mayor be, and hereby is, authorized to execute all necessary construction contracts with H & K Services, 1205 Leon Road, Leon NY 14751, for the W. Howard Ave Culvert Replacement at a cost of \$602,929, to be advanced by City Fund 26 and then reimbursed by the above-said NYS Bridge NY Program.

Carried, all voting aye.

RESOLUTION #80 -2017
SEPTEMBER 5, 2017

BY: ENTIRE COUNCIL

REVISION FOR TITLE INSURANCE PURPOSES:
RATIFICATION OF THE SALE OF CITY-OWNED REAL PROPERTY
(PAPER STREET) TO PIER LLC.

WHEREAS, the City of Dunkirk needs, from time to time, to transfer real property held by the City of Dunkirk; and

WHEREAS, the City of Dunkirk Charter, and the laws of the State of New York allow the Contracting Agent of the City to transfer property; and

WHEREAS, the City of Dunkirk holds title to a parcel of real property identified by section block lot (SBL) numbers 79.01-1-26.1, on Lake Shore Drive West, adjacent to the former Bertges lots now owned by DLDC Real Property, LLC; and

WHEREAS, this Council previously authorized the sale of said parcel to the Chautauqua County Industrial Development Agency (the "CCIDA"); and

WHEREAS, due to circumstances particular to these parcels, the CCIDA has assigned its purchaser rights to Pier LLC; and

WHEREAS, to ensure clear chain of title for title insurance purposes, the CCIDA has to be replaced from the previously passed resolution to relinquish any claim for right and allow for direct title transfer to Pier LLC; and

WHEREAS, the closing of the sale of said parcels had to take place by August 31, 2017 to ensure the negotiated settlement amount of DEC fines was paid, which were discounted at 61% of the full fine amount, plus interest and late fees; and

WHEREAS, the closing took place on August 31, 2017 in Jamestown, New York; be it

RESOLVED, that the Dunkirk Common Council does hereby ratify the August 31st execution of all the closing documents that were necessary to facilitate the transfer of the property to Pier LLC by the Contracting Agent, Mayor Wilfred Rosas.

Carried, all voting aye.

RESOLUTION #81 -2017
September 5, 2017

BY: ENTIRE COUNCIL

**AUTHORIZATION FOR CITY TO RELINQUISH ANY CLAIM OF RIGHT AND
TO QUIT CLAIM TRANSFER THE PAPER STREET WEST OF 468
LAKESHORE DRIVE EAST TO ERIE LAND DEVELOPMENT LLC.**

WHEREAS, the City of Dunkirk ("Dunkirk") owns the land intended as a potential street that is sixty-six feet (66') wide to the west of 468 Lakeshore Drive East, as shown in the attached survey, but never actually developed and paved; and

WHEREAS, after negotiations, Dunkirk and Erie Land Development LLC have agreed to address the developer's request for the land intended as a street that has been vacant since mapped by quit claim transfer to Erie Land Development LLC; and

WHEREAS, Dunkirk will neither lose nor gain property tax revenue by the quit claim transfer, thus making it a revenue-neutral action for the City; nor will the City lose any access to other City-owned property; therefore, be it

RESOLVED, that the Dunkirk Common Council hereby endorses and approves said Quit Claim Title Transfer, and directs the Mayor to execute said Deed between Erie Land Development LLC and Dunkirk on behalf of the City of Dunkirk for the transfer to take place by the end of September, 2017.

Carried, all voting aye.

RESOLUTION #82 -2017
SEPTEMBER 5, 2017

BY: THE ENTIRE COUNCIL

**AUTHORIZING CONTRACTS FOR INFORMATION TECHNOLOGY EQUIPMENT
UPGRADES & SERVICE AGREEMENT
(DFT Communications)**

WHEREAS, the City of Dunkirk and its departments have the need for professional computer and information technology services on a regular basis; and

WHEREAS, it has been in the best interest of the City to contract for such services with DFT Communications since 2014; and

WHEREAS, the City has a serious need for equipment upgrades such as server replacement, internet router replacement, phone system replacement, improved Wi-Fi services, and PC replacements; and

WHEREAS, the City has would like to renew its service contract with DFT Communications; and

WHEREAS, DFT Communications has proven ready, willing and able to continue to provide such services to and on behalf of the City in a good and workmanlike manner, and

WHEREAS, after much negotiations, City Clerk Edwin Ramos and our *de facto* internal IT specialist, Dunkirk Police Desk Sergeant Manzella negotiated the following contracts that will save Dunkirk approximately \$5,174.50 a year in operating costs; now, therefore, be it

RESOLVED, that the Mayor is directed and authorized to execute any and all agreements necessary to engage the services of DFT Communications, 40 Temple Street, Fredonia, New York 14063, as an independent contractor to provide independent computer and information technology upgrades and maintenance services for the City for the period January 1, 201 through December 31, 2020, with separate contracts for the following system upgrades, services and the associated cost:

- Replace and Upgrade Phone System with VOIP Phone System, \$14,570.00
- City Hall 3-year service contract at \$799.44 per month
- Replace and Upgrade a Dell Server, \$6,820.00
- Wastewater Treatment Plant point to point internet service connection and maintenance at \$106.90 per month
- 16-month City IT contract for programming server, phone equipment installation and set up, and all computer services, \$1,305.00 per month

Acting Councilwoman-at-Large Szukala thanked City Clerk Ramos and Dunkirk Police Desk Sergeant Manzella for negotiating the contracts with DFT Communications.

Carried, all voting aye.

NEW BUSINESS:

RESOLUTION #83 -2017
SEPTEMBER 5, 2017

BY: Councilman Williams

**ADOPTING POST-ISSUANCE OF TAX-EXEMPT BONDS TAX
COMPLIANCE PROCEDURES**

WHEREAS, the Internal Revenue Service has issued regulations requiring issuers of tax-exempt obligations to certify on various forms that they actively monitor compliance with federal tax rules following the issuance of such obligations; and

WHEREAS, the City is an occasional issuer of tax-exempt obligations and thus is subject to the aforementioned compliance requirements which are critical for the preservation of the preferential tax status of those obligations; and

WHEREAS, it is therefore in the best interest of the City to adopt formal written procedures to ensure such compliance and to designate an official responsible for ensuring that such procedures are followed; and

WHEREAS, the City previously adopted interim post-issuance tax compliance procedures (the "Original Procedures"); and

WHEREAS, it was intended that the Original Procedures would be periodically updated and supplemented; and

WHEREAS, Hodgson Russ LLP, as bond counsel to the City, has prepared and has recommended that the City adopt updated and more comprehensive post-issuance tax compliance procedures; and

WHEREAS, this resolution was discussed and approved at the Council Finance Committee meeting of Thursday, August 17, 2017;

NOW THEREFORE, BE IT RESOLVED, that the City hereby adopts the updated and more comprehensive post-issuance tax compliance procedures that are attached hereto as "Schedule A" and resolves to be governed thereby; and be it further

RESOLVED, that such Schedule A will be placed in its entirety in the official records, files and minutes of the City and adhered to going forward; and be it further

RESOLVED, that this resolution shall take effect immediately upon its adoption.

Schedule A**CITY OF DUNKIRK,
CHAUTAUQUA COUNTY, NEW YORK****Post-Issuance Tax Compliance Procedures
for Tax-Exempt Bonds and Notes****Statement of Purpose**

These Post-Issuance Tax Compliance Procedures (the "Procedures") set forth specific procedures of the **City of Dunkirk, Chautauqua County, New York** (the "Issuer") designed to monitor, and ensure compliance with, certain requirements of the Internal Revenue Code of 1986, as amended (the "Code") and the related Treasury regulations, promulgated thereunder, post-issuance tax compliance with the Internal Revenue Service ("IRS") in connection with the Issuer's issuance of tax-exempt bonds and notes ("Obligations").

These Procedures describe various systems designed to identify on a timely basis facts relevant to demonstrating compliance with the requirements that must be satisfied subsequent to the issuance of Obligations to ensure that the interest on such Obligations is eligible for exclusion from gross income for federal income tax purposes. The federal tax law requirements applicable to the Obligations will be described in the tax questionnaire and/or tax certificate prepared by bond counsel and signed by officials of the Issuer. These Procedures establish a permanent, ongoing structure of practices that will facilitate compliance with the requirements for individual borrowings.

To ensure compliance with applicable federal tax requirements, the Issuer must monitor the various direct and indirect uses of proceeds of the obligation and the investment of such proceeds, including but not limited to:

- (1) Monitoring the use of financed property over the life of the obligation.
- (2) Determining the sources of debt service payments and security for the obligation.
- (3) Calculating the percentage of any nonqualified use of the financed property.
- (4) Calculating the yield on investments of proceeds.
- (5) Determining appropriate restrictions on investments.
- (6) Determining the amount of any arbitrage on the investments.
- (7) Calculating any arbitrage rebate payments that must be paid to the U.S. Treasury.

The Issuer recognizes that compliance with the pertinent law is an on-going process, necessary during the entire term of the Obligations. Accordingly, the implementation of the Procedures will require on-going monitoring and consultation with bond counsel and the Issuer's accountants and advisors.

General Procedures

The following procedures relate to monitoring post-issuance tax compliance generally.

- A. The **City Treasurer (currently, Mark Woods) (the "Compliance Officer")** shall be responsible for monitoring post-issuance tax compliance issues.
- B. The Compliance Officer will coordinate procedures for record retention and review of such records.
- C. All documents and other records relating to Obligations must be maintained by or at the direction of the Compliance Officer. In maintaining such documents and records, the Compliance Officer will comply with applicable IRS requirements, such as those contained in Revenue Procedure 97-22 (see attached).
- D. The Compliance Officer shall be aware of remedial actions under Section 1.141-12 of the Treasury Regulations (see attached) and the Treasury's Tax-Exempt Bonds Voluntary Closing Agreement Program (VCAP) and take such corrective action when necessary and appropriate.
- E. The Compliance Officer will review post-issuance tax compliance procedures and systems on a periodic basis, but not less than annually.
- F. The Compliance Officer will be responsible for training any designated officer or employee who is delegated any responsibility for monitoring compliance pursuant to this procedure. To the extent the Compliance Officer needs training or has any questions with respect to any item in this procedure, he or she should contact bond counsel and/or Issuer's accountants and advisors. The IRS recognizes that the Compliance Officer and any delegated individual are not expected to act as lawyers who know the proper response to all compliance situations that may arise, but they should be familiar enough with federal tax issues that they know when to ask for legal or other compliance advice.

Issuance of Obligations: Documents and Records

With respect to each issue of Obligations, the Compliance Officer will:

- A. Obtain and store a closing binder and/or CD or other electronic copy of the relevant and customary transaction documents (the "Transcript").

- B. Confirm that the applicable information reports (e.g., Form 8038 series) for such issue are filed timely with the IRS. Issuer should consult with their accountants and/or bond counsel with questions regarding the filing of such forms.
- C. Coordinate receipt and retention of relevant books and records with respect to the investment and expenditure of the proceeds of such Obligations.

Arbitrage

The following procedures relate to the monitoring and calculating of arbitrage and compliance with specific arbitrage rules and regulations.

The Compliance Officer will:

- A. Confirm that a certification of the initial offering prices of the Obligations with such supporting data, if any, required by bond counsel, is included in the Transcript.
- B. Confirm that a computation of the yield on such issue from the Issuer's financial advisor or bond counsel (or an outside arbitrage rebate specialist) is contained in the Transcript.
- C. Maintain a system for tracking investment earnings on the proceeds of the Obligations.
- D. Coordinate the tracking of expenditures, including the expenditure of any investment earnings. If the project(s) to be financed with the proceeds of the Obligations will be funded with multiple sources of funds, confirm that the Issuer has adopted an accounting methodology that maintains each source of financing separately and monitors the actual expenditure of proceeds of the Obligations.
- E. Maintain a procedure for the allocation of proceeds of the issue and investment earnings to expenditures, including the reimbursement of pre-issuance expenditures. This procedure shall include an examination of the expenditures made with proceeds of the Obligations within 18 months after each project financed by the Obligations is placed in service and, if necessary, a reallocation of expenditures in accordance with Section 1.148-6(d) of the Treasury Regulations (see attached).
- F. Monitor compliance with the applicable "temporary period" (as defined in the Code and Treasury Regulations) exceptions for the expenditure of proceeds of the issue, and provide for yield restriction on the investment of such proceeds if such exceptions are not satisfied.

- G. Ensure that investments acquired with proceeds of such issue are purchased at fair market value. In determining whether an investment is purchased at fair market value, any applicable Treasury Regulation safe harbor may be used.
- H. Avoid formal or informal creation of funds reasonably expected to be used to pay debt service on such issue without determining in advance whether such funds must be invested at a restricted yield.
- I. Consult with bond counsel prior to engaging in any post-issuance credit enhancement transactions or investments in guaranteed investment contracts.
- J. Identify situations in which compliance with applicable yield restrictions depends upon later investments and monitor implementation of any such restrictions.
- K. Monitor compliance with six-month, 18-month or 2-year spending exceptions to the rebate requirement, as applicable.
- L. Procure a timely computation of any rebate liability and, if rebate is due, to file a Form 8038-T and to arrange for payment of such rebate liability.
- M. Arrange for timely computation and payment of "yield reduction payments" (as such term is defined in the Code and Treasury Regulations), if applicable.

Private Activity: Use of Proceeds

The following procedures relate to the monitoring and tracking of private uses and private payments with respect to facilities financed with the Obligations.

The Compliance Officer will:

- A. Maintain records for determining and tracking facilities financed with specific Obligations and the amount of proceeds spent on each facility.
- B. Maintain records, which should be consistent with those used for arbitrage purposes, to allocate the proceeds of an issue and investment earnings to expenditures, including the reimbursement of pre-issuance expenditures.
- C. Maintain records allocating to a project financed with Obligations any funds from other sources that will be used for otherwise non-qualifying costs.
- D. Monitor the expenditure of proceeds of an issue and investment earnings for qualifying costs.

- E. Monitor private use of financed facilities to ensure compliance with applicable limitations on such use. Examples of potential private use include:
1. Sale of the facilities, including sale of capacity rights;
 2. Lease or sub-lease of the facilities (including leases, easements or use arrangements for areas outside the four walls, e.g., hosting of cell phone towers) or leasehold improvement contracts;
 3. Management contracts (in which the Issuer authorizes a third party to operate a facility, e.g., cafeteria) and research contracts;
 4. Preference arrangements (in which the Issuer permits a third party preference, such as parking in a public parking lot);
 5. Joint-ventures, limited liability companies or partnership arrangements;
 6. Output contracts or other contracts for use of utility facilities (including contracts with large utility users);
 7. Development agreements which provide for guaranteed payments or property values from a developer;
 8. Grants or loans made to private entities, including special assessment agreements; and
 9. Naming rights arrangements.

Monitoring of private use should include the following:

1. Procedures to review the amount of existing private use on a periodic basis but not less than annually; and
2. Procedures for identifying in advance any new sale, lease or license, management contract, sponsored research arrangement, output or utility contract, development agreement or other arrangement involving private use of financed facilities and for obtaining copies of any sale agreement, lease, license, management contract, research arrangement or other arrangement for review by bond counsel.

If the Compliance Officer identifies private use of facilities financed with tax-exempt debt, the Compliance Officer will consult with bond counsel to determine whether private use will adversely affect the tax status of the issue and if so, what remedial action is appropriate. The Compliance Officer should retain all documents related to any of the above potential private uses.

Reissuance

The following procedures relate to compliance with rules and regulations regarding the reissuance of Obligations for federal law purposes.

The Compliance Officer will identify and consult with bond counsel regarding any post-issuance change to any terms of an issue of Obligations which could potentially be treated as a reissuance for federal tax purposes.

Record Retention

The following procedures relate to retention of records relating to the Obligations issued.

The Compliance Officer will:

- A. Coordinate with staff regarding the records to be maintained by the Issuer to establish and ensure that an issue remains in compliance with applicable federal tax requirements for the life of such issue.
- B. Coordinate with staff to comply with provisions imposing specific recordkeeping requirements and cause compliance with such provisions, where applicable.
- C. Coordinate with staff to generally maintain the following:
 - 1. The Transcript relating to the transaction (including any arbitrage or other tax questionnaire, tax regulatory agreement, and the bond counsel opinion);
 - 2. Documentation evidencing expenditure of proceeds of the issue;
 - 3. Documentation regarding the types of facilities financed with the proceeds of an issue, including, but not limited to, whether such facilities are land, buildings or equipment, economic life calculations and information regarding depreciation;
 - 4. Documentation evidencing use of financed property by public and private entities (e.g., copies of leases, management contracts, utility user agreements, developer agreements and research agreements);
 - 5. Documentation evidencing all sources of payment or security for the issue; and
 - 6. Documentation pertaining to any investment of proceeds of the issue (including the purchase and sale of securities, yield calculations for each class of investments, actual investment

income received by the investment of proceeds, guaranteed investment contracts, and rebate calculations).

- D. Coordinate the retention of all records in a manner that ensures their complete access to the IRS.
- E. Keep all material records for so long as the issue is outstanding (including any refunding), plus seven years.

CERTIFICATE OF THE CITY CLERK

The undersigned hereby certifies that:

1. The undersigned is the duly qualified and acting City Clerk of the City of Dunkirk, Chautauqua County, New York (the "City") and the custodian of the records of the City, including the minutes of the proceedings of the Common Council of the City (the "Common Council"), and is duly authorized to execute this certificate.

2. A meeting of the Common Council was duly convened and held on September 5, 2017, and minutes of the meeting have been duly recorded in the minute book kept by me in accordance with law for the purpose of recording the minutes of meetings of the Common Council.

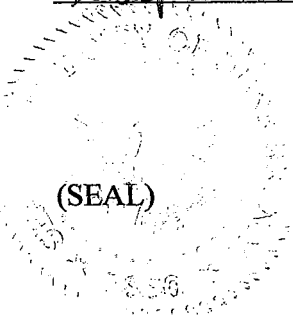
3. I have compared the attached extract with the recorded minutes and the extract is a true, correct and exact copy of the minutes and of the whole thereof insofar as the minutes relate to the subject matters referred to in the extract.

4. The extract of minutes correctly states the members of the Common Council who attended and voted at the meeting.

5. Such resolution was duly adopted in all respects in accordance with law and the regulations of the City and has not since been rescinded, revoked, annulled or modified and is in full force and effect. A legally sufficient number of members voted in the proper manner for the adoption of the resolution. All other requirements and proceedings under law, such regulations, or otherwise, incident to such meeting and the adoption of the resolution, including any publication, if required by law, have been duly fulfilled, carried out and otherwise observed.

6. The seal appearing below constitutes the official seal of the City and was duly affixed by the undersigned at the time this certificate was signed.

IN WITNESS WHEREOF, the undersigned has executed this certificate as of September 12, 2017.



Edwain C. Ramos

City Clerk

REFERENCE MATERIALS

Revenue Procedures

Rev. Proc. 97-22, 1997-1 CB 652, 3/13/1997, IRC Sec(s). 6001

SECTION 1 . PURPOSE

This revenue procedure provides guidance to taxpayers that maintain books and records by using an electronic storage system that either images their hardcopy (paper) books and records, or transfers their computerized books and records, to an electronic storage media, such as an optical disk. Records maintained in an electronic storage system that complies with the requirements of this revenue procedure will constitute records within the meaning of § 6001 of the Internal Revenue Code.

SECTION 2 . BACKGROUND

.01 Section 6001 provides that every person liable for any tax imposed by the Code, or for the collection thereof, must keep such records, render such statements, make such returns, and comply with such rules and regulations as the Secretary may from time to time prescribe. Whenever necessary, the Secretary may require any person, by notice served upon that person or by regulations, to make such returns, render such statements, or keep such records, as the Secretary deems sufficient to show whether or not that person is liable for tax.

.02 Section 1.6001-1(a) of the Income Tax Regulations provides that, except for farmers and wage-earners, any person subject to income tax, or any person required to file a return of information with respect to income, must keep such books and records, including inventories, as are sufficient to establish the amount of gross income, deductions, credits, or other matters required to be shown by that person in any return of such tax or information.

.03 Section 1.6001-1(e) provides that the books or records required by § 6001 must be kept available at all times for inspection by authorized internal revenue officers or employees, and must be retained so long as the contents thereof may become material in the administration of any internal revenue law.

SECTION 3. SCOPE

.01 This revenue procedure applies to taxpayers who maintain books and records using an "electronic storage system." An electronic storage system is a system to prepare, record, transfer, index, store, preserve, retrieve, and reproduce books and records by either:

- (1) electronically imaging hardcopy documents to an electronic storage media; or

(2) transferring computerized books and records to an electronic storage media using a technique such as "COLD" (computer output to laser disk), which allows books and records to be viewed or reproduced without the use of the original program.

.02 The requirements of this revenue procedure pertain to all matters under the jurisdiction of the Commissioner of Internal Revenue including, but not limited to, income, excise, employment, and estate and gift taxes, as well as employee plans and exempt organizations.

.03 A taxpayer's use of a third party (such as a service bureau or timesharing service) to provide the taxpayer with an electronic storage system for its books and records does not relieve the taxpayer of the responsibilities described in this revenue procedure.

.04 Except as otherwise provided in this revenue procedure, all requirements of § 6001 that apply to hardcopy books and records apply as well to books and records that are stored electronically pursuant to this revenue procedure.

SECTION 4. ELECTRONIC STORAGE SYSTEM REQUIREMENTS

.01 General Requirements.

(1) An electronic storage system must ensure an accurate and complete transfer of the hardcopy or computerized books and records to an electronic storage media. The electronic storage system must also index, store, preserve, retrieve, and reproduce the electronically stored books and records.

(2) An electronic storage system must include:

(a) reasonable controls to ensure the integrity, accuracy, and reliability of the electronic storage system;

(b) reasonable controls to prevent and detect the unauthorized creation of, addition to, alteration of, deletion of, or deterioration of electronically stored books and records;

(c) an inspection and quality assurance program evidenced by regular evaluations of the electronic storage system including periodic checks of electronically stored books and records;

(d) a retrieval system that includes an indexing system (within the meaning of section 4.02 of this revenue procedure); and

(e) the ability to reproduce legible and readable hardcopies (within the meaning of section 4.01(3) of this revenue procedure) of electronically stored books and records.

(3) All books and records reproduced by the electronic storage system must exhibit a high degree of legibility and readability when displayed on a video display terminal and when reproduced in hardcopy. The term "legibility" means the observer must be able to identify all letters and numerals positively and quickly to the exclusion of all other letters or numerals. The term "readability" means that the observer must be able to recognize a group of letters or

numerals as words or complete numbers. The taxpayer must ensure that the reproduction process maintains the legibility and readability of the electronically stored document.

(4) The information maintained in an electronic storage system must provide support for the taxpayer's books and records (including books and records in an automated data processing system). For example, the information maintained in an electronic storage system and the taxpayer's books and records must be cross-referenced in a manner that provides an audit trail between the general ledger and the source document(s).

(5) For each electronic storage system used, the taxpayer must maintain, and make available to the Service upon request, complete descriptions of:

- (a) the electronic storage system, including all procedures relating to its use; and
- (b) the indexing system (see section 4.02 of this revenue procedure).

(6) At the time of an examination, or for the tests described in section 5 of this revenue procedure, the taxpayer must:

- (a) retrieve and reproduce (including hardcopies if requested) electronically stored books and records; and
- (b) provide the Service with the resources (e.g., appropriate hardware and software, personnel, documentation, etc.) necessary to locate, retrieve, read, and reproduce (including hardcopies) any electronically stored books and records.

(7) An electronic storage system must not be subject, in whole or in part, to any agreement (such as a contract or license) that would limit or restrict the Service's access to and use of the electronic storage system on the taxpayer's premises (or any other place where the electronic storage system is maintained), including personnel, hardware, software, files, indexes, and software documentation.

(8) The taxpayer must retain electronically stored books and records so long as their contents may become material in the administration of the Internal Revenue laws under § 1.6001-1(e).

(9) The taxpayer may use more than one electronic storage system. In that event, each electronic storage system must meet the requirements of this revenue procedure. Electronically stored books and records that are contained in an electronic storage system with respect to which the taxpayer ceases to maintain the hardware and the software necessary to satisfy the conditions of this revenue procedure will be deemed destroyed by the taxpayer, unless the electronically stored books and records remain available to the Service in conformity with this revenue procedure.

(10) Taxpayers may use reasonable data compression or formatting technologies as part of their electronic storage system so long as the requirements of this revenue procedure are satisfied.

.02 Requirements of an Indexing System.

(1) For purposes of this revenue procedure, an "indexing system" is a system that permits the identification and retrieval for viewing or reproducing of relevant books and records maintained in an electronic storage system. For example, an indexing system might consist of assigning each electronically stored document a unique identification number and maintaining a separate database that contains descriptions of all electronically stored books and records along with their identification numbers. In addition, any system used to maintain, organize, or coordinate multiple electronic storage systems is treated as an indexing system under this revenue procedure. The requirement to maintain an indexing system will be satisfied if the indexing system is functionally comparable to a reasonable hardcopy filing system. The requirement to maintain an indexing system does not require that a separate electronically stored books and records description database be maintained if comparable results can be achieved without a separate description database.

(2) Reasonable controls must be undertaken to protect the indexing system against the unauthorized creation of, addition to, alteration of, deletion of, or deterioration of any entries.

.03 Recommended Practices. The implementation of records management practices is a business decision that is solely within the discretion of the taxpayer. Records management practices may include the labeling of electronically stored books and records, providing a secure storage environment, creating back-up copies, selecting an off-site storage location, retaining hardcopies of books or records that are illegible or that cannot be accurately or completely transferred to an electronic storage system, and testing to confirm records integrity.

SECTION 5. DISTRICT DIRECTOR TESTING

.01 The District Director may periodically initiate tests of a taxpayer's electronic storage system. These tests may include an evaluation (by actual use) of a taxpayer's equipment and software, as well as the procedures used by a taxpayer to prepare, record, transfer, index, store, preserve, retrieve, and reproduce electronically stored documents. In some instances, the District Director may choose to review the internal controls, security procedures, and documentation associated with the taxpayer's electronic storage system.

.02 The tests described in section 5.01 of this revenue procedure are not an "examination," "investigation," or "inspection" of the books and records within the meaning of § 7605(b), or a prior audit for purposes of § 530 of the Revenue Act of 1978, 1978-3 (Vol. I) C.B. 119, as amended by § 1122 of the Small Business Job Protection Act of 1996, because these tests are not directly related to the determination of the tax liability of a taxpayer for a particular taxable period.

.03 The District Director must inform the taxpayer of the results of any tests under this section.

SECTION 6. COMPLIANCE

.01 A taxpayer's electronic storage system that meets the requirements of this revenue procedure will be treated as being in compliance with the recordkeeping requirements of § 6001 and the regulations thereunder.

.02 A taxpayer's electronic storage system that fails to meet the requirements of this revenue procedure may be treated as not being in compliance with the recordkeeping requirements of § 6001 and the regulations thereunder. See section 9 of this revenue procedure for applicable penalties. However, even though a taxpayer's electronic storage system fails to meet the requirements of this revenue procedure, the penalties described in section 9 of this revenue procedure may not apply if the taxpayer maintains its original books and records, or maintains its books and records in micrographic form in conformity with Rev. Proc. 81-46, 1981-2 C.B. 621.

SECTION 7. DESTRUCTION AND DELETION OF ORIGINAL BOOKS AND RECORDS

This revenue procedure permits the destruction of the original hardcopy books and records and the deletion of the original computerized records (other than "machine-sensible" records required to be retained by Rev. Proc. 91-59, 1991-2 C.B. 841), after the taxpayer:

(1) has completed its own testing of the electronic storage system that establishes that hardcopy or computerized books and records are being reproduced in compliance with all the provisions of this revenue procedure; and

(2) has instituted procedures that ensure its continued compliance with all the provisions of this revenue procedure.

SECTION 8. IMPACT ON MACHINE-SENSIBLE RECORDS

The provisions of this revenue procedure regarding electronically stored books and records do not relieve taxpayers of the responsibility of retaining any other books and records required to be retained under § 6001. Such other books and records may include "machine-sensible" records required to be retained by Rev. Proc. 91-59 in connection with the taxpayer's use of an automatic data processing (ADP) system.

SECTION 9. PENALTIES

The District Director may issue a Notice of Inadequate Records pursuant to § 1.6001-1(d) if the taxpayer's books and records are available only as electronically stored books and records and the taxpayer's electronic storage system fails to meet the requirements of this revenue procedure. Taxpayers whose electronic storage system fails to meet the requirements of this revenue procedure may also be subject to applicable penalties under subtitle F of the Code, including the § 6662(a) accuracy-related civil penalty and the § 7203 willful failure criminal penalty.

SECTION 10. INTERNAL REVENUE SERVICE OFFICE CONTACT

.01 Questions regarding this revenue procedure should be directed to the Office of the Assistant Commissioner (Examination). The telephone number for this office is (202) 622-5480 (not a toll-free number). Written questions should be addressed to: Assistant Commissioner (Examination)

Attention: CP:EX
Internal Revenue Service
1111 Constitution Ave., NW
Washington, DC 20224

.02 Questions regarding the application of this revenue procedure to a specific factual situation should be directed to the appropriate District Director.

SECTION 11. PAPERWORK REDUCTION ACT

The collections of information contained in this revenue procedure have been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act (44 U.S.C. 3507) under control number 1545-1533.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid control number.

The collections of information are in sections 4 and 5 of this revenue procedure. This information is required to ensure that records maintained in an electronic storage system will constitute records within the meaning of § 6001. The collections of information are mandatory for a taxpayer who chooses to electronically store its books and records. The likely respondents are individuals, state or local governments, farms, business or other for-profit institutions, federal agencies or employees, nonprofit institutions, and small businesses or organizations.

The estimated total annual recordkeeping burden is 1,000,400 hours.

The estimated annual burden per record keeper will vary from 20 hours to 22 hours, depending on individual circumstances, with an estimated average of 20 hours. The estimated number of record keepers is 50,000.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Federal Regulations

Reg §1.141-12. Remedial actions.

(a) Conditions to taking remedial action. An action that causes an issue to meet the private business tests or the private loan financing test is not treated as a deliberate action if the issuer takes a remedial action described in paragraph (d), (e), or (f) of this section with respect to the nonqualified bonds and if all of the requirements in paragraphs (a) (1) through (5) of this section are met.

(1) Reasonable expectations test met. The issuer reasonably expected on the issue date that the issue would meet neither the private business tests nor the private loan financing test for the entire term of the bonds. For this purpose, if the issuer reasonably expected on the issue date to take a deliberate action prior to the final maturity date of the issue that would cause either the private business tests or the private loan financing test to be met, the term of the bonds for this purpose may be determined by taking into account a redemption provision if the provisions of §1.141-2(d)(2)(ii) (A) through (C) are met.

(2) Maturity not unreasonably long. The term of the issue must not be longer than is reasonably necessary for the governmental purposes of the issue (within the meaning of §1.148-1(c)(4)). Thus, this requirement is met if the weighted average maturity of the bonds of the issue is not greater than 120 percent of the average reasonably expected economic life of the property financed with the proceeds of the issue as of the issue date.

(3) Fair market value consideration. Except as provided in paragraph (f) of this section, the terms of any arrangement that results in satisfaction of either the private business tests or the private loan financing test are bona fide and arm's-length, and the new user pays fair market value for the use of the financed property. Thus, for example, fair market value may be determined in a manner that takes into account restrictions on the use of the financed property that serve a bona fide governmental purpose.

(4) Disposition proceeds treated as gross proceeds for arbitrage purposes. The issuer must treat any disposition proceeds as gross proceeds for purposes of section 148. For purposes of eligibility for temporary periods under section 148(c) and exemptions from the requirement of section 148(f) the issuer may treat the date of receipt of the disposition proceeds as the issue date of the bonds and disregard the receipt of disposition proceeds for exemptions based on expenditure of proceeds under §1.148-7 that were met before the receipt of the disposition proceeds.

(5) Proceeds expended on a governmental purpose. Except for a remedial action under paragraph (d) of this section, the proceeds of the issue that are affected by the deliberate action must have been expended on a governmental purpose before the date of the deliberate action.

(b) Effect of a remedial action—(1) In general. The effect of a remedial action is to cure use of proceeds that causes the private business use test or the private loan financing test to be met. A remedial action does not affect application of the private security or payment test.

(2) Effect on bonds that have been advance refunded. If proceeds of an issue were used to advance refund another bond, a remedial action taken with respect to the refunding bond proportionately reduces the amount of proceeds of the advance refunded bond that is taken into account under the private business use test or the private loan financing test.

(c) Disposition proceeds—(1) Definition. Disposition proceeds are any amounts (including property, such as an agreement to provide services) derived from the sale, exchange, or other disposition (disposition) of property (other than investments) financed with the proceeds of an issue.

(2) Allocating disposition proceeds to an issue. In general, if the requirements of paragraph (a) of this section are met, after the date of the disposition, the proceeds of the issue allocable to the transferred property are treated as financing the disposition proceeds rather than the transferred property. If a disposition is made pursuant to an installment sale, the proceeds of the issue continue to be allocated to the transferred property. If an issue does not meet the requirements for remedial action in paragraph (a) of this section or the issuer does not take an appropriate remedial action, the proceeds of the issue are allocable to either the transferred property or the disposition proceeds, whichever allocation produces the greater amount of private business use and private security or payments.

(3) Allocating disposition proceeds to different sources of funding. If property has been financed by different sources of funding, for purposes of this section, the disposition proceeds from that property are first allocated to the outstanding bonds that financed that property in proportion to the principal amounts of those outstanding bonds. In no event may disposition proceeds be allocated to bonds that are no longer outstanding or to a source of funding not derived from a borrowing (such as revenues of the issuer) if the disposition proceeds are not greater than the total principal amounts of the outstanding bonds that are allocable to that property. For purposes of this paragraph (c)(3), principal amount has the same meaning as in §1.148-9(b)(2) and outstanding bonds do not include advance refunded bonds.

(d) Redemption or defeasance of non-qualified bonds—(1) In general. The requirements of this paragraph (d) are met if all of the nonqualified bonds of the issue are redeemed. Proceeds of tax-exempt bonds must not be used for this purpose, unless the tax-exempt bonds are qualified bonds, taking into account the purchaser's use of the facility. Except as provided in paragraph (d)(3) of this section, if the bonds are not redeemed within 90 days of the date of the deliberate action, a defeasance escrow must be established for those bonds within 90 days of the deliberate action.

(2) Special rule for dispositions for cash. If the consideration for the disposition of financed property is exclusively cash, the requirements of this paragraph (d) are met if the disposition proceeds are used to redeem a pro rata portion of the nonqualified bonds at the earliest call date after the deliberate action. If the bonds are not redeemed within 90 days of the date of the deliberate action, the disposition proceeds must be used to establish a defeasance escrow for those bonds within 90 days of the deliberate action.

(3) Anticipatory remedial action. The requirements of paragraphs (d)(1) and (2) of this section for redemption or defeasance of the nonqualified bonds within 90 days of the deliberate action are met if the issuer declares its official intent to redeem or defease all of the bonds that would become nonqualified bonds in the event of a subsequent deliberate action that would cause the private business tests or the private loan financing test to be met and redeems or defeases such bonds prior to that deliberate action. The issuer must declare its official intent on or before the date on which it redeems or defeases such bonds, and the declaration of intent must identify the financed property or loan with respect to which the anticipatory remedial action is being taken and describe the deliberate action that potentially may result in the private business tests being met (for example, sale of financed property that the buyer may then lease to a nongovernmental person). Rules similar to those in § 1.150-2(e) (regarding official intent for reimbursement bonds) apply to declarations of intent under this paragraph (d)(3), including deviations in the descriptions of the project or loan and deliberate action and the reasonableness of the official intent.

(4) Notice of defeasance. The issuer must provide written notice to the Commissioner of the establishment of the defeasance escrow within 90 days of the date the defeasance escrow is established.

(5) Special limitation. The establishment of a defeasance escrow does not satisfy the requirements of this paragraph (d) if the period between the issue date and the first call date of the bonds is more than 10 1/2 years.

(6) Defeasance escrow defined. A defeasance escrow is an irrevocable escrow established to redeem bonds on their earliest call date in an amount that, together with investment earnings, is sufficient to pay all the principal of, and interest and call premium on, bonds from the date the escrow is established to the earliest call date. The escrow may not be invested in higher yielding investments or in any investment under which the obligor is a user of the proceeds of the bonds.

(e) Alternative use of disposition proceeds—(1) In general. The requirements of this paragraph (e) are met if—

(i) The deliberate action is a disposition for which the consideration is exclusively cash;

(ii) The issuer reasonably expects to expend the disposition proceeds within two years of the date of the deliberate action;

(iii) The disposition proceeds are treated as proceeds for purposes of section 141 and are used in a manner that does not cause the issue to meet either the private business tests or the private loan financing test, and the issuer does not take any action subsequent to the date of the deliberate action to cause either of these tests to be met; and

(iv) If the issuer does not use all of the disposition proceeds for an alternative use described in paragraph (e)(1)(iii) of this section, the issuer uses those remaining disposition proceeds for a remedial action that meets paragraph (d) of this section.

(2) Special rule for use by 501(c)(3) organizations. If the disposition proceeds are to be used by a 501(c)(3) organization, the nonqualified bonds must in addition be treated as reissued for purposes of sections 141, 145, 147, 149, and 150 and, under this treatment, satisfy all of the applicable requirements for qualified 501(c)(3) bonds. Thus, beginning on the date of the deliberate action, nonqualified bonds that satisfy these requirements must be treated as qualified 501(c)(3) bonds for all purposes, including sections 145(b) and 150(b).

(f) Alternative use of facility. The requirements of this paragraph (f) are met if—

(1) The facility with respect to which the deliberate action occurs is used in an alternative manner (for example, used for a qualifying purpose by a non-governmental person or used by a 501(c)(3) organization rather than a governmental person);

(2) The nonqualified bonds are treated as reissued, as of the date of the deliberate action, for purposes of sections 55 through 59 and 141, 142, 144, 145, 146, 147, 149 and 150, and under this treatment, the nonqualified bonds satisfy all the applicable requirements for qualified bonds throughout the remaining term of the nonqualified bonds;

(3) The deliberate action does not involve a disposition to a purchaser that finances the acquisition with proceeds of another issue of tax-exempt bonds; and

(4) Any disposition proceeds other than those arising from an agreement to provide services (including disposition proceeds from an installment sale) resulting from the deliberate action are used to pay the debt service on the bonds on the next available payment date or, within 90 days of receipt, are deposited into an escrow that is restricted to the yield on the bonds to pay the debt service on the bonds on the next available payment date.

(g) Rules for deemed reissuance. For purposes of determining whether bonds that are treated as reissued under paragraphs (e) and (f) of this section are qualified bonds—

(1) The provisions of the Code and regulations thereunder in effect as of the date of the deliberate action apply; and

(2) For purposes of paragraph (f) of this section, section 147(d) (relating to the acquisition of existing property) does not apply.

(h) Authority of Commissioner to provide for additional remedial actions. The Commissioner may, by publication in the FEDERAL REGISTER or the Internal Revenue Bulletin, provide additional remedial actions, including making a remedial payment to the United States, under which a subsequent action will not be treated as a deliberate action for purposes of §1.141-2.

(i) Effect of remedial action on continuing compliance. Solely for purposes of determining whether deliberate actions that are taken after a remedial action cause an issue to meet the private business tests or the private loan financing test—

(1) If a remedial action is taken under paragraph (d) of this section, the amount of private business use or private loans resulting from the deliberate action that is taken into account for purposes of determining whether the bonds are private activity bonds is that portion of the remaining bonds that is used for private business use or private loans (as calculated under paragraph (j) of this section);

(2) If a remedial action is taken under paragraph (e) or (f) of this section, the amount of private business use or private loans resulting from the deliberate action is not taken into account for purposes of determining whether the bonds are private activity bonds; and

(3) After a remedial action is taken, the amount of disposition proceeds is treated as equal to the proceeds of the issue that had been allocable to the transferred property immediately prior to the disposition. See paragraph (k) of this section, Example 5.

(j) Nonqualified bonds—(1) Amount of nonqualified bonds. The nonqualified bonds are a portion of the outstanding bonds in an amount that, if the remaining bonds were issued on the date on which the deliberate action occurs, the remaining bonds would not meet the private business use test or private loan financing test, as applicable. For this purpose, the amount of private business use is the greatest percentage of private business use in any one-year period commencing with the one-year period in which the deliberate action occurs.

(2) Allocation of nonqualified bonds. Allocations of nonqualified bonds must be made on a pro rata basis, except that, for purposes of paragraph (d) of this section (relating to redemption or defeasance), an issuer may treat any bonds of an issue as the nonqualified bonds so long as—

(i) The remaining weighted average maturity of the issue, determined as of the date on which the nonqualified bonds are redeemed or defeased (determination date), and excluding from the determination the nonqualified bonds redeemed or defeased by the issuer in accordance with this section, is not greater than (ii) The remaining weighted average maturity of the issue, determined as of the determination date, but without regard to the redemption or defeasance of any bonds (including the nonqualified bonds) occurring on the determination date.

(k) Examples. The following examples illustrate the application of this section:

Example 1. Disposition proceeds less than outstanding bonds used to retire bonds. On June 1, 1997, City C issues 30-year bonds with an issue price of \$10 million to finance the construction of a hospital building. The bonds have a weighted average maturity that does not exceed 120 percent of the reasonably expected economic life of the building. On the issue date, C reasonably expects that it will be the only user of the building for the entire term of the bonds. Six years after the issue date, C sells the building to Corporation P for \$5 million. The sale price is the fair market value of the building, as verified by an independent appraiser. C uses all of the \$5 million disposition proceeds to immediately retire a pro rata portion of the bonds. The sale does not cause the bonds to be private activity bonds because C has taken a remedial action described in paragraph (d) of this section so that P is not treated as a private business user of bond proceeds.

Example 2. Lease to nongovernmental person. The facts are the same as in Example 1, except that instead of selling the building, C, 6 years after the issue date, leases the building to P for 7 years and use other funds to redeem all of the \$10 million outstanding bonds within 90 days of the deliberate act. The bonds are not treated as private activity bonds because C has taken the remedial action described in paragraph (d) of this section.

Example 3. Sale for less than fair market value. The facts are the same as in Example 1, except that the fair market value of the building at the time of the sale to P is \$6 million. Because the transfer was for less than fair market value, the bonds are ineligible for the remedial actions under this section. The bonds are private activity bonds because P is treated as a user of all of the proceeds and P makes a payment (\$6 million) for this use that is greater than 10 percent of the debt service on the bonds, on a present value basis.

Example 4. Fair market value determined taking into account governmental restrictions. The facts are the same as in Example 1, except that the building was used by C only for hospital purposes and C determines to sell the building subject to a restriction that it be used only for hospital purposes. After conducting a public bidding procedure as required by state law, the best price that C is able to obtain for the building subject to this restriction is \$4.5 million from P. C uses all of the \$4.5 million disposition proceeds to immediately retire a pro rata portion of the bonds. The sale does not cause the bonds to be private activity bonds because C has taken a remedial action described in paragraph (d) of this section so that P is not treated as a private business user of bond proceeds.

Example 5. Alternative use of disposition proceeds. The facts are the same as in Example 1, except that C reasonably expects on the date of the deliberate action to use the \$5 million disposition proceeds for another governmental purpose (construction of governmentally owned roads) within two years of receipt, rather than using the \$5 million to redeem outstanding bonds. C treats these disposition proceeds as gross proceeds for purposes of section 148. The bonds are not private activity bonds because C has taken a remedial action described in paragraph (e) of this section. After the date of the deliberate action, the proceeds of all of the outstanding bonds are treated as used for the

construction of the roads, even though only \$5 million of disposition proceeds was actually used for the roads.

Example 6. Alternative use of financed property. The facts are the same as in Example 1, except that C determines to lease the hospital building to Q, an organization described in section 501(c)(3), for a term of 10 years rather than to sell the building to P. In order to induce Q to provide hospital services, C agrees to lease payments that are less than fair market value. Before entering into the lease, an applicable elected representative of C approves the lease after a noticed public hearing. As of the date of the deliberate action, the issue meets all the requirements for qualified 501(c)(3) bonds, treating the bonds as reissued on that date. For example, the issue meets the two percent restriction on use of proceeds of finance issuance costs of section 147(g) because the issue pays no costs of issuance from disposition proceeds in connection with the deemed reissuance. C and Q treat the bonds as qualified 501(c)(3) bonds for all purposes commencing with the date of the deliberate action. The bonds are treated as qualified 501(c)(3) bonds commencing with the date of the deliberate action.

Example 7. Deliberate actions before proceeds are expended on a governmental purpose. County J issues bonds with proceeds of \$10 million that can be used only to finance a correctional facility. On the issue date of the bonds, J reasonably expects that it will be the sole user of the bonds for the useful life of the facility. The bonds have a weighted average maturity that does not exceed 120 percent of the reasonably expected economic life of the facility. After the issue date of the bonds, but before the facility is placed in service, J enters into a contract with the federal government pursuant to which the federal government will make a fair market value, lump sum payment equal to 25 percent of the cost of the facility. In exchange for this payment, J provides the federal government with priority rights to use of 25 percent of the facility. J uses the payment received from the federal government to defease the nonqualified bonds. The agreement does not cause the bonds to be private activity bonds because J has taken a remedial action described in paragraph (d) of this section. See paragraph (a)(5) of this section.

Example 8. Compliance after remedial action. In 2007, City G issues bonds with proceeds of \$10 million to finance a courthouse. The bonds have a weighted average maturity that does not exceed 120 percent of the reasonably expected economic life of the courthouse. City G enters into contracts with nongovernmental persons that result in private business use of 10 percent of the courthouse per year. More than 10 percent of the debt service on the issue is secured by private security or payments. In 2019, in a bona fide and arm's length arrangement, City G enters into a management contract with a nongovernmental person that results in private business use of an additional 40 percent of the courthouse per year during the remaining term of the bonds. City G immediately redeems the nonqualified bonds, or 44.44 percent of the outstanding bonds. This is the portion of the outstanding bonds that, if the remaining bonds were issued on the date on which the deliberate action occurs, the remaining bonds would not meet the private business use test, treating the amount of private business use as the greatest percentage of private business use in any one-year period commencing with the one-year period in which the deliberate action occurs (50 percent). This percentage is computed by dividing

the percentage of the facility used for a government use (50 percent) by the minimum amount of government use required (90 percent), and subtracting the resulting percentage (55.56 percent) from 100 percent (44.44 percent). For purposes of subsequently applying section 141 to the issue, City G may continue to use all of the proceeds of the outstanding bonds in the same manner (that is, for the courthouse and the private business use) without causing the issue to meet the private business use test. The issue continues to meet the private security or payment test. The result would be the same if City G, instead of redeeming the bonds, established a defeasance escrow for those bonds, provided that the requirement of paragraph (d)(5) of this section is met. If City G takes a subsequent deliberate action that results in further private business use, it must take into account 10 percent of private business use in addition to that caused by the second deliberate act.

[T.D. 8712, 62 FR 2298, Jan. 16, 1997, as amended by T.D. 9741, 80 FR 65637, Oct. 27, 2015]

Reg §1.148-6. General allocation and accounting rules.

(a) *In general*—(1) *Reasonable accounting methods required.* An issuer may use any reasonable, consistently applied accounting method to account for gross proceeds, investments, and expenditures of an issue.

(2) *Bona fide deviations from accounting method.* An accounting method does not fail to be reasonable and consistently applied solely because a different accounting method is used for a bona fide governmental purpose to consistently account for a particular item. Bona fide governmental purposes may include special State law restrictions imposed on specific funds or actions to avoid grant forfeitures.

(3) *Absence of allocation and accounting methods.* If an issuer fails to maintain books and records sufficient to establish the accounting method for an issue and the allocation of the proceeds of that issue, the rules of this section are applied using the specific tracing method. This paragraph (a)(3) applies to bonds issued on or after May 16, 1997.

(b) *Allocation of gross proceeds to an issue*—(1) *One-issue rule and general ordering rules.* Except as otherwise provided, amounts are allocable to only one issue at a time as gross proceeds, and if amounts simultaneously are proceeds of one issue and replacement proceeds of another issue, those amounts are allocable to the issue of which they are proceeds. Amounts cease to be allocated to an issue as proceeds only when those amounts are allocated to an expenditure for a governmental purpose, are allocated to transferred proceeds of another issue, or cease to be allocated to that issue at retirement of the issue or under the universal cap of paragraph (b)(2) of this section. Amounts cease to be allocated to an issue as replacement proceeds only when those amounts are allocated to an expenditure for a governmental purpose, are no longer used in a manner that causes those amounts to be replacement proceeds of that issue, or cease to be allocated to that issue because of the retirement of the issue or the application of the universal cap under paragraph (b)(2) of this section. Amounts that cease to be allocated to an issue as gross proceeds are eligible for allocation to another issue. Under § 1.148-

10(a), however, the rules in this paragraph (b)(1) do not apply in certain cases involving abusive arbitrage devices.

(2) *Universal cap on value of nonpurpose investments allocated to an issue—(i) Application.* The rules in this paragraph (b)(2) provide an overall limitation on the amount of gross proceeds allocable to an issue. Although the universal cap generally may be applied at any time in the manner described in this paragraph (b)(2), it need not be applied on any otherwise required date of application if its application on that date would not result in a reduction or reallocation of gross proceeds of an issue. For this purpose, if an issuer reasonably expects as of the issue date that the universal cap will not reduce the amount of gross proceeds allocable to the issue during the term of the issue, the universal cap need not be applied on any date on which an issue actually has all of the following characteristics—

(A) No replacement proceeds are allocable to the issue, other than replacement proceeds in a bona fide debt service fund or a reasonably required reserve or replacement fund;

(B) The net sale proceeds of the issue—

(1) Qualified for one of the temporary periods available for capital projects, restricted working capital expenditures, or pooled financings under § 1.148-2(e)(2), (e)(3), or (e)(4), and those net sales proceeds were in fact allocated to expenditures prior to the expiration of the longest applicable temporary period; or

(2) were deposited in a refunding escrow and expended as originally expected;

(C) The issue does not refund a prior issue that, on any transfer date, has unspent proceeds allocable to it;

(D) None of the bonds are retired prior to the date on which those bonds are treated as retired in computing the yield on the issue; and

(E) No proceeds of the issue are invested in qualified student loans or qualified mortgage loans.

(ii) *General rule.* Except as otherwise provided below, amounts that would otherwise be gross proceeds allocable to an issue are allocated (and remain allocated) to the issue only to the extent that the value of the nonpurpose investments allocable to those gross proceeds does not exceed the value of all outstanding bonds of the issue. For this purpose, gross proceeds allocable to cash, tax-exempt bonds that would be nonpurpose investments (absent section 148(b)(3)(A)), qualified student loans, and qualified mortgage loans are treated as nonpurpose investments. The values of bonds and investments are determined under § 1.148-4(e) and § 1.48-5(d), respectively. The value of all outstanding bonds of the issue is referred to as the *universal cap*. Thus, for example, the universal cap for an issue of plain par bonds is equal to the outstanding stated principal amount of those bonds plus accrued interest.

(iii) *Determination and application of the universal cap.* Except as otherwise provided, beginning with the first bond year that commences after the second anniversary of the issue date, the amount of the universal cap and the value of the nonpurpose investments must be determined as of the first day of each bond year. For refunding and refunded issues, the cap and values must be determined as of each date that, but for this paragraph (b)(2), proceeds of the refunded issue would become transferred proceeds of the refunding issue, and need not otherwise be determined in the bond year in which that date occurs. All values are determined as of the close of business on each determination date, after giving effect to all payments on bonds and payments for and receipts on investments on that date.

(iv) *General ordering rule for allocations of amounts in excess of the universal cap—*
(A) *In general.* If the value of all nonpurpose investments allocated to the gross proceeds of an issue exceeds the universal cap for that issue on a date as of which the cap is determined under paragraph (b)(2)(iii) of this section, nonpurpose investments allocable to gross proceeds necessary to eliminate that excess cease to be allocated to the issue, in the following order of priority—

- (1) First, nonpurpose investments allocable to replacement proceeds;
- (2) Second, nonpurpose investments allocable to transferred proceeds; and
- (3) Third, nonpurpose investments allocable to sale proceeds and investment proceeds.

(B) *Re-allocation of certain amounts.* Except as provided in § 1.148-9(b)(3), amounts that cease to be allocated to an issue as a result of the application of the universal cap may only be allocated to another issue as replacement proceeds.

(C) *Allocations of portions of investments.* Portions of investments to which this paragraph (b)(2)(iv) applies are allocated under either the ratable method or the representative method in the same manner as allocations of portions of investments to transferred proceeds under § 1.148-9(c).

(v) *Nonpurpose investments in a bona fide debt service fund not counted.* For purposes of this paragraph (b)(2), nonpurpose investments allocated to gross proceeds in a bona fide debt service fund for an issue are not taken into account in determining the value of the nonpurpose investments, and those nonpurpose investments remain allocated to the issue.

(c) *Fair market value limit on allocations to nonpurpose investments.* Upon a purchase or sale of a nonpurpose investment, gross proceeds of an issue are not allocated to a payment for that nonpurpose investment in an amount greater than, or to a receipt from that nonpurpose investment in an amount less than, the fair market value of the nonpurpose investment as of the purchase or sale date. For purposes of this paragraph (c) only, the fair market value of a nonpurpose investment is adjusted to take into account qualified administrative costs allocable to the investment.

(d) Allocation of gross proceeds to expenditures—(1) Expenditures in general—

(i) *General rule.* Reasonable accounting methods for allocating funds from different sources to expenditures for the same governmental purpose include any of the following methods if consistently applied: a specific tracing method; a gross proceeds spent first method; a first-in, first-out method; or a ratable allocation method.

(ii) *General limitation.* An allocation of gross proceeds of an issue to an expenditure must involve a current outlay of cash for a governmental purpose of the issue. A *current outlay of cash* means an outlay reasonably expected to occur not later than 5 banking days after the date as of which the allocation of gross proceeds to the expenditure is made.

(iii) *Timing.* An issuer must account for the allocation of proceeds to expenditures not later than 18 months after the later of the date the expenditure is paid or the date the project, if any, that is financed by the issue is placed in service. This allocation must be made in any event by the date 60 days after the fifth anniversary of the issue date or the date 60 days after the retirement of the issue, if earlier. This paragraph (d)(1)(iii) applies to bonds issued on or after May 16, 1997.

(2) *Treatment of gross proceeds invested in purpose investments—(i) In general.* Gross proceeds of an issue invested in a purpose investment are allocated to an expenditure on the date on which the conduit borrower under the purpose investment allocates the gross proceeds to expenditure in accordance with this paragraph (d).

(ii) *Exception for qualified mortgage loans and qualified student loans.* If gross proceeds of an issue are allocated to a purpose investment that is a qualified mortgage loan or a qualified student loan, those gross proceeds are allocated to expenditure for the governmental purpose of the issue on the date on which the issuer allocates gross proceeds to that purpose investment.

(iii) *Continuing allocation of gross proceeds to purpose investments.* Regardless of whether gross proceeds of a conduit financing issue invested in a purpose investment have been allocated to an expenditure under paragraph (d)(2) (i) or (ii) of this section, with respect to the actual issuer those gross proceeds continue to be allocated to the purpose investment until the sale, discharge, or other disposition of the purpose investment.

(3) *Expenditures for working capital purposes—(i) In general.* Except as otherwise provided in this paragraph (d)(3) or paragraph (d)(4) of this section, proceeds of an issue may only be allocated to working capital expenditures as of any date to the extent that those working capital expenditures exceed available amounts (as defined in paragraph (d)(3)(iii) of this section) as of that date (*i.e.*, a “proceeds-spent-last method”). For this purpose, proceeds include replacement proceeds described in § 1.148-1(c)(4).

(ii) *Exceptions—(A) General de minimis exception.* Paragraph (d)(3)(i) of this section does not apply to expenditures to pay—

(1) Any issuance costs of the issue or any qualified administrative costs within the meaning of §§ 1.148-5(e)(2) (i) or (ii), or § 1.148-5(e)(3)(ii)(A);

(2) Fees for qualified guarantees of the issue or payments for a qualified hedge for the issue;

(3) Interest on the issue for a period commencing on the issue date and ending on the date that is the later of three years from the issue date or one year after the date on which the project is placed in service;

(4) Amounts paid to the United States under §§ 1.148-3, 1.148-5(c), or 1.148-7 for the issue;

(5) Costs, other than those described in paragraphs (d)(3)(ii)(A) (1) through (4) of this section, that do not exceed 5 percent of the sale proceeds of an issue and that are directly related to capital expenditures financed by the issue (e.g., initial operating expenses for a new capital project);

(6) Principal or interest on an issue paid from unexpected excess sale or investment proceeds; and

(7) Principal or interest on an issue paid from investment earnings on a reserve or replacement fund that are deposited in a bona fide debt service fund.

(B) *Exception for extraordinary items.* Paragraph (d)(3)(i) of this section does not apply to expenditures for extraordinary, nonrecurring items that are not customarily payable from current revenues, such as casualty losses or extraordinary legal judgments in amounts in excess of reasonable insurance coverage. If, however, an issuer or a related party maintains a reserve for such items (e.g., a self-insurance fund) or has set aside other available amounts for such expenses, gross proceeds within that reserve must be allocated to expenditures only after all other available amounts in that reserve are expended.

(C) *Exception for payment of principal and interest on prior issues.* Paragraph (d)(3)(i) of this section does not apply to expenditures for payment of principal, interest, or redemption prices on a prior issue and, for a crossover refunding issue, interest on that issue.

(D) *No exceptions if replacement proceeds created.* The exceptions provided in this paragraph (d)(3)(ii) do not apply if the allocation merely substitutes gross proceeds for other amounts that would have been used to make those expenditures in a manner that gives rise to replacement proceeds. For example, if a purported reimbursement allocation of proceeds of a reimbursement bond does not result in an expenditure under § 1.150-2, those proceeds may not be allocated to pay interest on an issue that, absent this allocation, would have been paid from the issuer's current revenues.

(iii) *Definition of available amount—(A) In general.* For purposes of this paragraph (d)(3), *available amount* means any amount that is available to an issuer for working capital expenditure purposes of the type financed by an issue. Except as otherwise

provided, *available amount* excludes proceeds of the issue but includes cash, investments, and other amounts held in accounts or otherwise by the issuer or a related party if those amounts may be used by the issuer for working capital expenditures of the type being financed by an issue without legislative or judicial action and without a legislative, judicial, or contractual requirement that those amounts be reimbursed.

(B) *Reasonable working capital reserve treated as unavailable.* A reasonable working capital reserve is treated as unavailable. Any working capital reserve is reasonable if it does not exceed 5 percent of the actual working capital expenditures of the issuer in the fiscal year before the year in which the determination of available amounts is made. For this purpose only, in determining the working capital expenditures of an issuer for a prior fiscal year, any expenditures (whether capital or working capital expenditures) that are paid out of current revenues may be treated as working capital expenditures.

(C) *Qualified endowment funds treated as unavailable.* For a 501(c)(3) organization, a qualified endowment fund is treated as unavailable. A fund is a qualified endowment fund if—

(1) The fund is derived from gifts or bequests, or the income thereon, that were neither made nor reasonably expected to be used to pay working capital expenditures;

(2) Pursuant to reasonable, established practices of the organization, the governing body of the 501(c)(3) organization designates and consistently operates the fund as a permanent endowment fund or quasi-endowment fund restricted as to use; and

(3) There is an independent verification that the fund is reasonably necessary as part of the organization's permanent capital.

(D) *Application to statutory safe harbor for tax and revenue anticipation bonds.* For purposes of section 148(f)(4)(B)(iii)(II), *available amount* has the same meaning as in paragraph (d)(3)(iii) of this section, except that the otherwise-permitted reasonable working capital reserve is treated as part of the available amount.

(4) *Expenditures for grants—(i) In general.* Gross proceeds of an issue that are used to make a grant are allocated to an expenditure on the date on which the grant is made.

(ii) *Characterization of repayments of grants.* If any amount of a grant financed by gross proceeds of an issue is repaid to the grantor, the repaid amount is treated as unspent proceeds of the issue as of the repayment date unless expended within 60 days of repayment.

(iii) *Definition of grant.* *Grant* means a transfer for a governmental purpose of money or property to a transferee that is not a related party to or an agent of the transferor. The transfer must not impose any obligation or condition to directly or indirectly repay any amount to the transferor. Obligations or conditions intended solely to assure expenditure of the transferred moneys in accordance with the governmental purpose of the transfer do not prevent a transfer from being a grant.

(5) *Expenditures for reimbursement purposes.* In allocating gross proceeds of issues of reimbursement bonds (as defined in § 1.150-2)) to certain expenditures, § 1.150-2 applies. In allocating gross proceeds to an expenditure to reimburse a previously paid working capital expenditure, paragraph (d)(3) of this section applies. Thus, if the expenditure is described in paragraph (d)(3)(ii) of this section or there are no available amounts on the date a working capital expenditure is made and there are no other available amounts on the date of the reimbursement of that expenditure, gross proceeds are allocated to the working capital expenditure as of the date of the reimbursement.

(6) *Expenditures of certain commingled investment proceeds of governmental issues.* This paragraph (d)(6) applies to any issue of governmental bonds, any issue of private activity bonds issued to finance a facility that is required by section 142 to be owned by a governmental unit, and any portion of an issue that is not treated as consisting of private activity bonds under section 141(b)(9). Investment proceeds of the issue (other than investment proceeds held in a refunding escrow) are treated as allocated to expenditures for a governmental purpose when the amounts are deposited in a commingled fund with substantial tax or other revenues from governmental operations of the issuer and the amounts are reasonably expected to be spent for governmental purposes within 6 months from the date of the commingling. In establishing these reasonable expectations, an issuer may use any reasonable accounting assumption and is not bound by the *proceeds-spent-last* assumption generally required for working capital expenditures under paragraph (d)(3) of this section.

(7) *Payments to related parties.* Any payment of gross proceeds of the issue to a related party of the payor is not an expenditure of those gross proceeds.

(e) Special rules for commingled funds—(1) *In general.* An accounting method for gross proceeds of an issue in a commingled fund, other than a bona fide debt service fund, is reasonable only if it satisfies the requirements of paragraphs (e)(2) through (6) of this section in addition to the other requirements of this section.

(2) *Investments held by a commingled fund—*(i) *Required ratable allocations.* Not less frequently than as of the close of each fiscal period, all payments and receipts (including deemed payments and receipts) on investments held by a commingled fund must be allocated (but not necessarily distributed) among the different investors in the fund. This allocation must be based on a consistently applied, reasonable ratable allocation method.

(ii) *Safe harbors for ratable allocation methods.* Reasonable ratable allocation methods include, without limitation, methods that allocate these items in proportion to either—

(A) The average daily balances of the amounts in the commingled fund from different investors during a fiscal period (as described in paragraph (e)(4) of this section); or

(B) The average of the beginning and ending balances of the amounts in the commingled fund from different investors for a fiscal period that does not exceed one month.

(iii) *Definition of investor.* For purposes of this paragraph (e), the term *investor* means each different source of funds invested in a commingled fund. For example, if a city invests gross proceeds of an issue and tax revenues in a commingled fund, it is treated as two different investors.

(3) *Certain expenditures involving a commingled fund.* If a ratable allocation method is used under paragraph (d) of this section to allocate expenditures from the commingled fund, the same ratable allocation method must be used to allocate payments and receipts on investments in the commingled fund under paragraph (e)(2) of this section.

(4) *Fiscal periods.* The fiscal year of a commingled fund is the calendar year unless the fund adopts another fiscal year. A commingled fund may use any consistent fiscal period that does not exceed three months (e.g., a daily, weekly, monthly, or quarterly fiscal period).

(5) *Unrealized gains and losses on investments of a commingled fund—(i) Mark-to-market requirement for internal commingled funds with longer-term investment portfolios.* Except as otherwise provided in this paragraph (e), in the case of a commingled fund in which the issuer and any related party own more than 25 percent of the beneficial interests in the fund (an *internal commingled fund*), the fund must treat all its investments as if sold at fair market value either on the last day of the fiscal year or the last day of each fiscal period. The net gains or losses from these deemed sales of investments must be allocated to all investors of the commingled fund during the period since the last allocation.

(ii) *Exception for internal commingled funds with shorter-term investment portfolios.* If the remaining weighted average maturity of all investments held by a commingled fund during a particular fiscal year does not exceed 18 months, and the investments held by the commingled fund during that fiscal year consist exclusively of obligations, the mark-to-market requirement of paragraph (e)(5)(i) of this section does not apply.

(iii) *Exception for commingled reserve funds and sinking funds.* The mark-to-market requirement of paragraph (e)(5)(i) of this section does not apply to a commingled fund that operates exclusively as a reserve fund, sinking fund, or replacement fund for two or more issues of the same issuer.

(6) *Allocations of commingled funds serving as common reserve funds or sinking funds—(i) Permitted ratable allocation methods.* If a commingled fund serves as a common reserve fund, replacement fund, or sinking fund for two or more issues (a *commingled reserve*), after making reasonable adjustments to account for proceeds allocated under paragraph (b)(1) or (b)(2) of this section, investments held by that commingled fund must be allocated ratably among the issues served by the commingled fund in accordance with one of the following methods—

(A) The relative values of the bonds of those issues under § 1.148-4(e);

(B) The relative amounts of the remaining maximum annual debt service requirements on the outstanding principal amounts of those issues; or

(C) The relative original stated principal amounts of the outstanding issues.

(ii) *Frequency of allocations.* An issuer must make any allocations required by this paragraph (e)(6) as of a date at least every 3 years and as of each date that an issue first becomes secured by the commingled reserve. If relative original principal amounts are used to allocate, allocations must also be made on the retirement of any issue secured by the commingled reserve.

[T.D. 8476, 58 FR 33532, June 18, 1993; 58 FR 44452, Aug. 23, 1993, as amended by T.D. 8538, 59 FR 24045, May 10, 1994; T.D. 8712, 62 FR 2304, Jan. 16, 1997; T.D. 8718, 62 FR 25512, May 9, 1997]

Acting Councilwoman-at-Large requested City Treasurer Woods to explain for the public what this resolution is about.

City Treasurer Woods advised it formally states the regulations the City needs to follow according to NYS as far as any money that is bonded on behalf of the City. The procedures are exactly the same that we have followed over the years.

Vote on Resolution: Carried, all voting aye.

ADJOURNMENT:

Councilman Gonzalez moved to adjourn. Seconded by Councilman Williams.

Carried, all voting aye.

Adjourned at 5:58 PM

Edwin Ramos, City Clerk
