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## Financial Management: Bonds and Financing Projects

Municipal Clerks and Treasurers Institute  
Lawrence Flynn

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April 19, 2023

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## Background

- Dillon's Rule v. Home Rule
- Role of Bond Counsel
- Restrictions under State law-relate to the validity of the borrowing
- Restrictions under Federal law- relate to "tax exemption" of interest
- General Fund v. Proprietary/Enterprise Fund
- Municipal Boundary v. Service Area – S.C. Code Section 5-7-60





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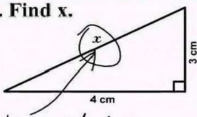
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3. Find x.




Here it is

**SIMPLICITY**

The simplest solutions are often the cleverest  
They are also usually wrong

## Background

- Municipalities generally cannot "sign a note" and "mortgage" at a local bank



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Before bonding  
Hydrogen atom Hydrogen atom

Covalent bond formed  
Hydrogen molecule, H<sub>2</sub>

BONDS

BAIL BONDS

### Basic Municipal Borrowing Tools

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### Basic Municipal Borrowing Tools

- General Obligation Bonds
- Revenue Bonds
- Lease-Purchase Agreements
- Installment Purchase Revenue Bonds
- Tax Increment Bonds (TIF)
- Interim Financing (BANS, TANS, GANs)
- Special Tax-Based Financing
- Municipal Improvement Districts (MID)
- Special Source Revenue Bonds (SSRBs)

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### General Obligation Issues

- Full faith and credit
- The borrowing is secured by the taxing power of the municipality
- If taxes are insufficient to pay debt service, the municipality must raise taxes
- Typically used for “capital items” - brick & mortar, equipment or real estate projects
- Generally the project will be a “general benefit” for the residents of the municipality (public purposes – an ever evolving concept)
- Exempt from Act No. 388 (Section 6-1-320(D))
- An understanding of how taxes are levied in South Carolina is essential

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## General Obligation Issues

**Bond Counsel Involvement**

- General obligation issues require the assistance of bond counsel
  - Eight percent of the assessed (not appraised) value of property in the municipality
  - Referendum exception
- Ordinance (two readings) at public meetings
- Debt filing (applies to all debt)
- Debt limit certificate

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## General Obligation Issues

**Understanding Your Tax Levy**

- \$100,000 Market Value / Capped Value of a Home
  - Constitutionally assessed at either 4% or 6%
  - Assessed Value is either \$4,000 or \$6,000
  - Millage Rate – “amount per thousand dollars used to calculate taxes on property”
  - 1 mil in this example equals either \$4 or \$6
  - 50 mils equals either \$200 or \$300
  - 400 mils equals either \$1,600 or \$2,400



\$ 100,000	Appraised value of home
X 4%	Assessment ratio for residential property
\$ 4,000	Assessed value of home
× .090	Tax rate in mills (90 mills)
\$ 360	Tax Due

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## General Obligation Issues

**Millage Levied Within the Town**

The following shows the tax millages levied in the Town of Lexington by the direct and overlapping governments for the last ten fiscal years.

Fiscal Year	Tax Year	Town of Lexington (Direct Rate)	Lexington County	Lexington School District 1	Lexington School District 2	Midlands Technical College	Recreation Commission	Riverbanks Zoo	Mental Health	Total Mills Levied District 1	Total Mills Levied District 2
2013	2012	35.14	83.35	338.11	183.12	4.37	15.74	1.79	0.50	479.00	324.01
2014	2013	35.14	86.89	349.67	183.12	4.37	15.74	1.89	0.50	494.20	327.65
2015	2014	35.14	94.25	349.51	176.21	4.37	16.74	2.39	0.50	502.90	329.60
2016	2015 <sup>(1)</sup>	35.14	94.44	369.37	225.96	4.35	16.00	2.09	0.00	521.39	377.98
2017	2016	34.29	94.97	384.29	225.96	4.35	16.22	2.09	0.00	536.22	377.89
2018	2017	34.29	94.69	403.25	225.96	4.35	16.10	2.09	0.00	554.77	377.48
2019	2018	34.29	97.16	407.70	225.96	4.35	15.90	2.09	0.00	561.49	379.75
2020	2019	34.29	98.35	412.40	230.22	4.35	15.80	1.00	0.00	566.19	384.01
2021	2020 <sup>(1)</sup>	26.06	96.66	398.86	230.22	4.17	14.93	1.00	0.00	541.68	373.04
2022	2021	26.06	96.21	398.86	234.40	4.17	15.06	0.80	0.00	541.16	376.70

<sup>(1)</sup> Reassessment of real property required of the Town and the other governments.  
Source: Lexington County Finance Office.

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### General Obligation Issues



Debt limit – How to Calculate

Fiscal Year	Tax Year	Real Property	Personal Property	Total AV*
2021-2022	2021	\$50,000,000	\$13,000,000	\$63,000,000

\$63,000,000 x 0.08 = \$5,040,000 of Debt Limit

If \$1,000,000 in GO Bonds are outstanding, \$4,040,000 of capacity remains

\*Does not include merchant's inventory, motor carrier reimbursement, manufacturer's depreciation or property in a multi-county park

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### General Obligation Issues



- Unless the debt is (a) less than \$1,500,000 and (b) repayable over ten years or less, it must be sold at a public competitive sale
- Notice of public sale must be published at least seven days prior to the sale date
- For private sales, notice must be published at least seven days prior to the closing date

\*\*\* Important \*\*\*

- Be sure payments are structured to come due in Spring-time (March, April, May) so that taxes can be levied & collected!

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### Revenue Issues for Infrastructure



#### Types of Revenue Streams

- Typically utility services, including water/sewer systems, solid waste, gas, and electrical
- Recreation fees
- Parking fees
- Other dedicated sources of non-tax revenues
- Revenues from a multi-county business park



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### Revenue Issues for Infrastructure

- Secured by Revenue Stream
  - ✦ A limited pledge
  - ✦ Bond documents will establish a "waterfall" to control the flow of revenues
  - ✦ Generally debt service on the bonds will come before O&M expenses (gross pledge) or after (net pledge)

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### Revenue Issues for Infrastructure

Coverage Ratios

- Rate Covenant – requires that rates be maintained at a certain level (a multiple of O&M and debt service)
- Additional Bonds Test – requires certain coverage before the issuance of new debt

Additional Debt

- "Parity" bonds enjoy the same lien status as the prior bonds, and must meet the additional bonds test
- Junior lien bonds may be issued at any time
- Special projects, lease/purchase exceptions in bond documents

Other Considerations

- A feasibility study will be important
- Among other things, the municipality should compare revenues to expenses (including debt service) and thoroughly plan the improvements

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### Revenue Issues for Infrastructure

Transfers

- *Cumberland v. Columbia* – how are you using the net profits of the enterprise? What does this tell us about reliance on enterprise fund transfers?
- Utility fees are user fees under Section 6-1-330
- City issues bonds under Revenue Bond Act for Utilities – Section 6-21-440 expressly allows for distribution of surplus revenues
- Surplus should be distributed only after all costs of utility are funded
- Do you provide for calculation of surplus in your budget ordinance?
- Do you have or have you established financial policies to deal with transfers?
  - ✦ Is there methodology for calculation?

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### Lease Purchase Agreements

- Not a "True" Lease because ownership transfers
- Financing institution provides funds and "leases" the assets to the municipality
- Lease payments have principal and interest components
- Assets will pass to municipality free and clear upon conclusion of lease term
- Remember new lease reporting rules under GASB No. 87



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### Lease Purchase Agreements

Debt Limit Considerations

- Previously all lease-purchase transactions were exempt from the debt limit
- Statute passed in 1995 disallows debt-limit exemption for real property and fixtures
- Now lease-purchase agreements are used almost exclusively for vehicles, equipment, and rolling stock
- Paid out of Operations; Not considered debt – Now limited by Act 388

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### Lease Purchase Agreements

- Importance of Appropriate Documentation
  - Approving resolution
  - Lease Purchase Agreement (non-appropriation, no non-substitution)
  - IRS filing, closing certificates
  - Retention of bond counsel?

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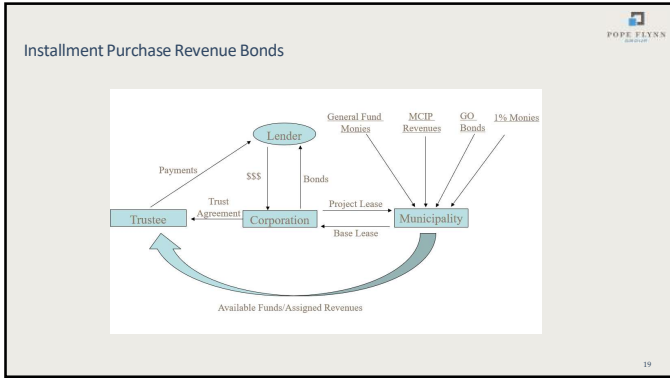
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### Installment Purchase Revenue Bond Examples

Date	Municipality	Public Facilities Corporation	Transaction	Installment Purchase	Purpose
May 21, 2021	City of Cummin	Clatsop Public Facilities Corporation	\$13,392,000 Revenue Bonds (City of Clatsop Project) Series 2021		City Hall, municipal fire stations, recreation facilities
August 5, 2020	City of Haverhill	Haverhill Public Facilities Corporation	\$2,960,000 Installment Purchase Revenue Bonds (Facilities Refinancing) Taxable Series 2020		Restructuring outstanding indebtedness
October 1, 2020	City of Goose Creek	Goose Creek Public Facilities Corporation	\$4,889,000 Goose Creek Installment Purchase Revenue Refunding Bond (Public Works Fire Station Project) Series 2020		Refinancing of municipal fire stations
November 15, 2018	City of Adam	Adam Public Facilities Corporation	\$8,020,000 Adam Public Facilities Corporation Installment Purchase Revenue Bond (City of Adam Public Safety Facility Project) Series 2018		Public safety facilities
August 1, 2018	Town of Sullivan's Island	Sullivan's Island Public Facilities Corporation	\$10,490,000 Town of Sullivan's Island Public Facilities Corporation Installment Purchase Revenue Bond Series 2018		Water and sewer system upgrades
May 16, 2017	City of North Augusta	North Augusta Public Facilities Corporation	\$6,450,000 Installment Purchase Revenue Bonds (City of North Augusta Project) Taxable Series 2017B		Municipal stadium, parking garage, conference center
November 9, 2016	City of Greenville	City of Greenville Public Facilities Corporation	\$14,045,000 Installment Purchase Revenue Bonds (City of Greenville, South Carolina Project), Series 2016		municipal fire station, public works facilities, solid waste facilities
December 22, 2015	City of Greenville	City of Greenville Public Facilities Corporation	\$18,810,000 Taxable Installment Purchase Revenue Bonds (City of		parking facilities

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### Tax Increment Bonds

- **Municipal Redevelopment Tool**
  - ❖ Allows a municipality to foster growth in a "blighted" or "conservation" area
  - ❖ Upon creation of a TIF District, all taxes from growth in tax base will be available to the municipality for improvements
  - ❖ Used to redevelop downtown or other depressed areas
  - ❖ Limited by amendments (other taxing entities and Act 388)

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### Tax Increment Bonds

**Other Considerations**

- May use utility revenues as secondary revenue pledge to support debt
- Recent statute allows counties to form tax increment districts and prohibits municipalities from including tax increment of entities that do not consent
- Use of Intergovernmental Agreement – 2012 MASC legislative action



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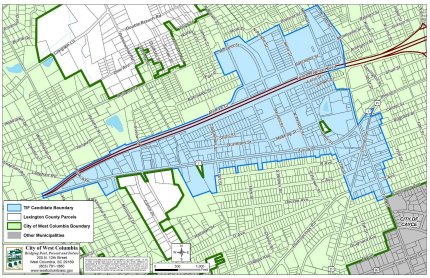
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### Tax Increment Bonds



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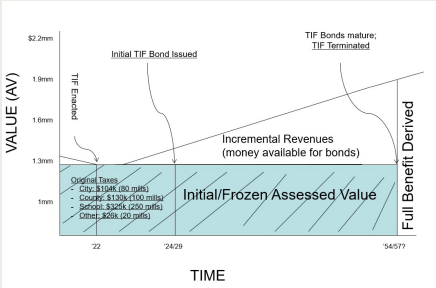
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### Tax Increment Bonds



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### Tax Increment Bonds

Determining the Increment – what is available?

Entity	Millage	\$1,300,000 x Millage	\$3,000,000 x Millage	TIF Dollars
City	80 mills	\$104,000	\$240,000	\$136,000
Schools	250 mills	325,000	750,000	425,000
County	100 mills	130,000	300,000	170,000
Other	20 mills	26,000	60,000	34,000
<b>Total</b>	<b>450 mills</b>	<b>\$585,000</b>	<b>\$1,350,000</b>	<b>\$765,000</b>

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### Interim Financing

- Tax Anticipation Notes (TANS)
- Bond Anticipation Notes (BANS)
- Grant Anticipation Notes
- Interim Financing for Federal Programs

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### Municipal Improvement Districts

- Creation process for a MID takes several months
- Assessments on real property which allow development to pay for development
- Assessments can take several different forms which gives flexibility to the municipality in structuring its needs for a particular area
- City is issuer



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### Special Tax-Based Financing

- Capital Project Sales Tax
- Hospitality and/or Accommodations Taxes
- Special Source Revenues
- Limited Obligation Revenues

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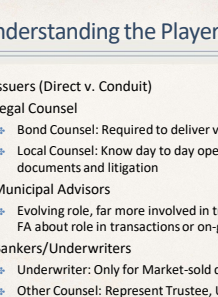
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### Understanding the Players

- Issuers (Direct v. Conduit)
- Legal Counsel
  - ❖ Bond Counsel: Required to deliver validity opinion for borrowing
  - ❖ Local Counsel: Know day to day operations; required to deliver an opinion as to underlying documents and litigation
- Municipal Advisors
  - ❖ Evolving role, far more involved in transactions; Should have discussions with Counsel or existing FA about role in transactions or on-going operations
- Bankers/Underwriters
  - ❖ Underwriter: Only for Market-sold deals
  - ❖ Other Counsel: Represent Trustee, Underwriter, Issuers (i.e. Disclosure or Special Tax matters)

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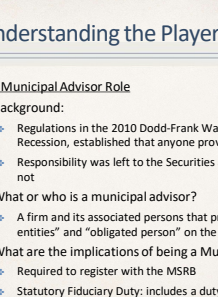
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### Understanding the Players

**The Municipal Advisor Role**

- Background:
  - ❖ Regulations in the 2010 Dodd-Frank Wall Street Reform and Consumer Protection Act, passed after the Great Recession, established that anyone providing financial advice to issuers of bonds would be regulated
  - ❖ Responsibility was left to the Securities and Exchange Commission to define what a municipal advisor is and is not
- What or who is a municipal advisor?
  - ❖ A firm and its associated persons that provide "advice," with or without compensation, to "municipal entities" and "obligated person" on the issuance of "municipal securities" or "municipal financial products"
- What are the implications of being a Municipal Advisor?
  - ❖ Required to register with the MSRB
  - ❖ Statutory Fiduciary Duty: includes a duty of loyalty and duty of care
  - ❖ Subject to the MSRB rules

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### Transactional Building Blocks



- Taxable v. Non-Taxable
- "Bank Qualified" v. "Non-Bank Qualified"
- Private Placement v. Publicly Sold Transaction: Term, Size, Flexibility, Issuance Costs, Disclosure practices, rate differentials, credit-worthiness; insurance or other liquidity providers

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### Issue Size and Type



- Issue size often drives the decision for a shorter or longer term (coverage ratios, etc.)
- Type of issue may also impact the decision:
  - ✦ Security interest/Pledged revenue stream
  - ✦ Historical performance

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### Transaction Flexibility



- Ability to prepay transactions
  - ✦ Bank Loans provide a high level of flexibility
  - ✦ Useful especially for dynamic, changing entities
- Investor Call protection

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### Tax Exemption

- With tax-exemption comes agreement to abide by certain rules and regulations regarding use and payment sources
- Set forth in IRS rules and regulations
- Section 103 – Substantially overhauled in 1986
- Bank-qualification (Section 265) – Applicable to Qualified Small issuers



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### Recent Tax Reform

- Tax Exemption Preserved
- Elimination of Advance Refundings
- Elimination of Certain Tax Credit Bonds
- Retention of Private Activity Bonds
- Maintains authorizations for arenas and stadium
- Reduction of Corporate Tax Rate
  - ✦ 35% to 21%
  - ✦ Banks, Insurers
  - ✦ Effected Tax Gross-Up provisions in docs
- Repeal of corporate AMT



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### Bank Loans

- Potential Problems:
- Not a recognized structure
  - No council action typically taken
  - Ignores public notice requirements - generally no ordinance
  - No IRS reporting
  - No debt filing with State Treasurer
  - Banks that don't understand your limitations
  - More structuring capabilities; terms limited; capacity limited
  - Like "Bank-Qualified" paper



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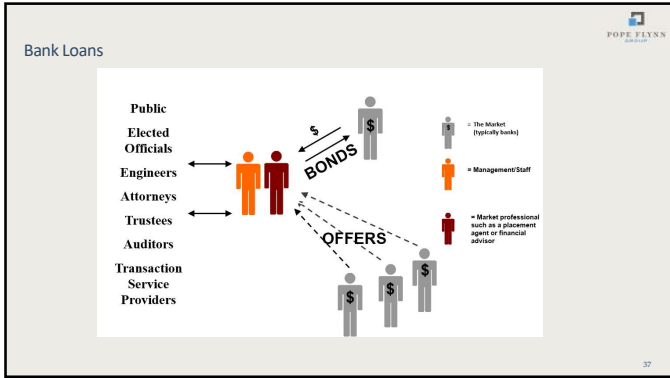
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- Government Loans
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| <p><b>State Revolving Loan (SRF)</b></p> <ul style="list-style-type: none"> <li>- Federal program with State match</li> <li>- Water and Sewer Only</li> <li>- 20 to 30 years</li> <li>- Interest rates trail market</li> <li>- Reduced cost for low-income systems or green energy projects</li> <li>- Becoming more streamlined</li> <li>- DSRF not funded for "A" rated credits</li> <li>- Straight quarterly amortization</li> <li>- Easy call features</li> </ul> | <p><b>USDA, Rural Development</b></p> <ul style="list-style-type: none"> <li>- Lender of last resort</li> <li>- Protect service area</li> <li>- Rates higher</li> <li>- 40 years</li> <li>- No tax work</li> <li>- Little structuring flexibility</li> <li>- May require interim financing</li> <li>- DSRF required (funded over time)</li> <li>- Require consent for other debt</li> </ul> |
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Public Market Deals

The illustration shows Uncle Sam in his traditional attire, holding a large bond certificate. Below him, the text reads "I WANT YOU TO BUY THIS BOND".

- Publicly underwritten transaction (size may dictate number of underwriters)
- Requires a rating
- Interest rate tied to rating and market
- Official Statement required
- Disclosure counsel (to be considered, different than Bond Counsel)
- Underwriter represented by counsel
- Continuing Disclosure is required and must be current
- May require insurance (credit support)
- Sold in denominations of \$5,000+
- Electronic dissemination through the Depository Trust Company
- Disclosure of purchase power arrangements

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Public Market Deals

Public  
Elected Officials  
Engineers  
Attorneys  
Trustees  
Auditors  
Rating Agencies  
Transaction Service Providers

BONDS

Management Staff  
Market professional (such as placement agent or financial adviser)  
Underwriter

The Market (typically banks)

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Disclosure

- 1933 Securities Act
  - Section 17(a): Antifraud
- 1934 Exchange Act
  - Tower Amendment
  - Section 10b-5: Antifraud
  - Rule 15c2-12
- Continuing Disclosure
  - Rule 15c2-12 (1975; 1994)
  - MSRB; EMMA
  - Municipalities Continuing Disclosure Cooperation initiative

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Disclosure

- Continuing Disclosure Defined
  - "Continuing disclosure consists of important information about a municipal bond and its issuer that arises after the initial issuance of the bond. This information generally reflects the financial or operating condition of the issuer as it changes over time, as well as specific events occurring after issuance that can have an impact on the ability of issuer to make payments on the bond, the value of the bond if it is traded prior to its maturity, the timing of repayment of principal, and other key features of the bond"
  - Enforced through SEC regulation of Broker-Dealers; Required in Primary Offer as an Aid to Secondary Market
  - Exempt from Registration and Reporting Requirements of '33 Act and '34 Act (Tower Amendment – Pre-sale) – But see Rule 10b-5 and Rule 15c2-12 and SEC's 1994 Interpretative Release (not private placements)

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## Disclosure

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- ▶ What are my Continuing Disclosure Responsibilities?
  - ❖ Established in the Continuing Disclosure Agreement (CDA) executed at the closing of your Bonds.
  - ❖ Issuer may engage a Dissemination Agent to assist with disclosure responsibilities.
  - ❖ Generally Requires:
    - ❖ Disclosure of Financial and Operating Information
    - ❖ Material Event Notices

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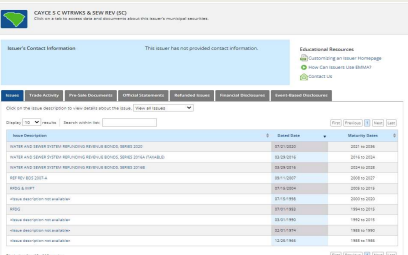
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## Disclosure

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## Disclosure

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**CONTINUING DISCLOSURE CERTIFICATE**

The Continuing Disclosure Certificate (the "Disclosure Certificate") is executed and delivered by the City of Cary, North Carolina (the "Issuer") in connection with the issuance of \$20,000,000 of Water and Sewer System Refunding Revenue Bonds, Series 2020, of the City of Cary, North Carolina (the "Bonds"). The Bonds are being issued pursuant to a Bond Ordinance enacted on February 2, 2020, and a Series Ordinance enacted on April 22, 2020 (together, the "Ordinances"). The Issuer covenants and agrees as follows:

**SECTION 1.1. Provision of Annual Reports.**

(a) The Issuer shall, within one (1) year after the end of each fiscal year, submit to the Dissemination Agent, a copy of the Issuer's annual financial statements for such fiscal year, including, but not limited to, the Issuer's annual financial statements, prepared in accordance with generally accepted accounting principles in the United States of America, applicable to governmental entities, from year to year, to the Dissemination Agent. The Issuer shall also submit to the Dissemination Agent, a copy of the Issuer's annual financial statements, prepared in accordance with generally accepted accounting principles in the United States of America, applicable to governmental entities, from year to year, to the Dissemination Agent. The Issuer shall also submit to the Dissemination Agent, a copy of the Issuer's annual financial statements, prepared in accordance with generally accepted accounting principles in the United States of America, applicable to governmental entities, from year to year, to the Dissemination Agent. The Issuer shall also submit to the Dissemination Agent, a copy of the Issuer's annual financial statements, prepared in accordance with generally accepted accounting principles in the United States of America, applicable to governmental entities, from year to year, to the Dissemination Agent. The Issuer shall also submit to the Dissemination Agent, a copy of the Issuer's annual financial statements, prepared in accordance with generally accepted accounting principles in the United States of America, applicable to governmental entities, from year to year, to the Dissemination Agent.

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### Tips for a Smoother Borrowing Experience



- Financial Statements (be timely)
- Define the project: sizing of issue
- Stability in financial administration
- Stability in professionals, including bank and bond counsel
- Pricing is important, but not sole determining factor
- Discussion on front end of expectations – don't agree to things you do not understand
- Policies and Procedures (debt administration, tax, disclosure, coverage, OPEB, Pension, cash management)

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### Additional Legal Considerations

- FOIA
- Arbitrage and rebate
- Spend down requirements
- Tax Covenants (Ownership)
- Continuing Disclosure
- Bank-Qualified
- Economic Development/Public Purpose



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### Contact Information

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