RESOLUTION TO ADOPT PROCEDURES FOR COMPLIANCE WITH
FEDERAL TAX LAW AND BOND COVENANTS

WHEREAS the District seeks to ensure adequate procedures are in place for compliance with federal tax law and bond covenants;

NOW THEREFORE BE IT RESOLVED that the Board of Trustees of San Felipe Del Rio Consolidated Independent School District adopts the following procedures for compliance with federal tax law and bond covenants.

BE IT FURTHER RESOLVED that these procedures are intended to assist the District in complying with federal tax laws and related District agreements after the District has issued tax-exempt debt, including bonds, maintenance tax notes, or tax-exempt leases (each an “obligation,” and collectively, “obligations”). Failure to comply with federal tax law could have serious consequences for investors, the District, its officials and employees.

Adopted this _______ *(date)* day of _______________ *(month)*, _______ *(year)*, by the Board of Trustees.

____
Presiding Officer

____
Secretary

Arbitrage Compliance

Arbitrage refers to the difference between the interest paid on tax-exempt obligations and the interest earned by investing the proceeds of tax-exempt obligations in higher-yielding investments. Such higher-yielding investments could take the form of loans, securities, real property, personal property, or other investments that could yield a profit to the District. Federal income tax laws generally restrict the ability to earn arbitrage utilizing the proceeds of tax-exempt obligations. Generally, any profit from investing obligation proceeds at a yield above the yield paid on the obligations belongs to the federal government and must be rebated to the federal government. If the District fails to comply with federal tax guidelines, obligations could be deemed to be “arbitrage bonds” by the Internal Revenue Service (IRS), which would expose the District to monetary liability from the District’s investors.

The arbitrage yield on the obligations is set forth on the IRS Form 8038-G for tax-exempt obligations and the permitted sinking fund yield is set forth on the IRS Form 8038-TC for tax-credit obligations.

With respect to the investment and expenditure of the proceeds of tax-exempt obligations, the District's _________________ (*title of responsible person*) will undertake the following in order to monitor and ensure that the obligations do not become "arbitrage bonds":

1. Instruct the person who is primarily responsible for the construction, renovation, or acquisition of the facilities financed by the obligations (the "project") that the project must proceed with due diligence and that binding contracts for the expenditure of at least five percent of the proceeds of the obligations will be entered into within six months of the date of closing of the obligations (the "issue date");
2. Monitor that at least 85 percent of the proceeds of the obligations to be used for the construction, renovation, or acquisition of the project are expended within three years of the issue date;
3. Monitor investment of proceeds of the obligations and restrict the yield of the investments to the yield on the obligations after three years of the issue date;
4. Monitor all amounts deposited into an interest and sinking fund, also known as a debt service fund or bond fund ("I&S fund"), to ensure that the maximum amount invested within the I&S fund at a yield higher than the yield on the obligations does not exceed an amount equal to the debt service on the obligations in the succeeding 12-month period plus a carryover amount equal to one-twelfth of the principal and interest payable on the obligations for the immediately preceding 12-month period;

Note: The purpose of the I&S fund is to achieve a proper matching of revenues with principal and interest payments within each fiscal year. The I&S fund should be used as a mechanism for payment of current debt service and not as a long-term investment fund for debt service many years in the future.

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5. Ensure that no more than 50 percent of the proceeds of the obligations are invested in an investment with a guaranteed yield for four years or more;
6. If the District plans to spend funds on hand for a project, with the intent to later repay such funds from a debt issue, contact bond counsel to obtain advice regarding a reimbursement resolution;
7. Ensure that the applicable information return (e.g., IRS Form 8038-G, 8038-GC, or any successor forms) is timely filed with the IRS; and
8. If proceeds of the obligations are to be invested in interest-earning investments, ensure that, unless excepted from rebate and yield restriction under section 148(f) of the Code, investment earnings are computed and any rebate amount is paid to the U.S. government at such time and in such manner as directed by the IRS:

    a. At least every five years after the issue date; and

    b. Within 30 days after the date the obligations are retired.

    If proceeds of the obligations are to be invested in interest-earning investments, it should be discussed whether hiring an arbitrage consultant is prudent.

Private Business Use

Generally, the proceeds of tax-exempt obligations may not be used to make loans to entities other than state or local governments or be used in the trade or business of such entities, including nonprofit corporations and the federal government (private business use). In simple terms, a series of obligations may lose their tax-exempt status if:

- More than ten percent of the proceeds of the obligations are to be used for any private business use and the payment of the principal of, or the interest on, more than ten percent of the proceeds of the obligations is secured by or payable from property used for a private business use; or
- The amount of proceeds of the obligations used to make loans to borrowers other than state and local governments exceeds the lesser of five percent of the proceeds or $5 million.

With respect to the use of the facilities financed or refinanced with the proceeds of a series of tax-exempt obligations, the __________ *(title of responsible person identified at Arbitrage Compliance, above)* will:

1. Develop procedures, or a “tracking system,” to identify all property financed with tax-exempt debt;
2. Monitor and record the date on which the project is substantially complete and available to be used for the purpose intended;
3. Monitor and record whether, at any time the obligations are outstanding, any person, other than the District, the employees of the District, the agents of the District, or members of the general public have any contractual right (such as a lease, purchase contract, management agreement, or other service agreement) with respect to any portion of the project;
4. Monitor and record whether, at any time the obligations are outstanding, any person, other than the District, the employees of the District, the agents of the District, or members of the general public has a right to use the output of the project (e.g., water, gas, electricity, capacity);
5. Monitor and record whether, at any time the obligations are outstanding, any person, other than the District, has a naming right for the project or any other contractual right granting an intangible benefit;
6. Monitor and record whether, at any time the obligations are outstanding, the project or any portion of the project is sold or otherwise disposed of;
7. Before entering into any private business use arrangement that involves the use of the project, the ______________ *(title of responsible person identified at Arbitrage Compliance, above)* must obtain a description of the proposed private business use arrangement and determine whether such arrangement, if put into effect, will be consistent with the restrictions on private business use of the project;

In connection with the evaluation of any proposed private business use arrangement, the ___________________ (*title of responsible person identified at Arbitrage Compliance, above*) should consult with bond counsel to discuss whether such arrangement, if put into effect, will be consistent with the restrictions on private business use of the project, and, if not, whether any remedial action permitted under federal guidelines may be taken as a means of enabling such private business use without adversely affecting the tax-exempt status of the obligations;

8. Prior to any sale of property owned by the District (real or personal), the __________ (*title of responsible person identified at Arbitrage Compliance, above*) must confirm whether such property was financed with tax-exempt debt, and if so, determine whether the proposed disposition of the property could impact the tax-exempt status of the series of obligations that financed the acquisition of such property; and
9. Take such action as is necessary to remediate any failure to maintain compliance with the covenants contained in the order, resolution, or indenture adopted by the Board authorizing the issuance of the applicable series of obligations.

Record Retention

The _____________ *(title of responsible person identified at Arbitrage Compliance, above)* will maintain or cause to be maintained all records relating to the investment and expenditure of the proceeds of the tax-exempt obligations and the use of the project for a period ending four years after the final payment of the obligations. To comply with the forgoing, the ________________ *(title of responsible person identified at Arbitrage Compliance, above)* should:

1. Maintain any official action of the District, such as a reimbursement resolution, stating its intent to reimburse with the proceeds of tax-exempt obligations any amount expended prior to the issue date for the acquisition, renovation, or construction of the project;
2. Maintain records showing that proceeds of the obligations are spent on qualified purposes for which the obligations were issued by recording all expenditures;
3. Maintain detailed records of all expenditures and investments related to all funds created by the obligations (e.g., constructions fund, I&S fund, escrow fund); and
4. Maintain a copy of the transcript of proceedings for the obligations.

If any portion of a series of tax-exempt obligations is refunded with the proceeds of another series of tax-exempt obligations, the records described above relating to the refunded obligations will be maintained until four years after the final payment of the refunding obligations. Such records can be maintained in paper or electronic format.

Responsible Person and Continuity

The _____________ *(title of responsible person identified at Arbitrage Compliance, above)* will receive appropriate training regarding the District's accounting system, contract intake system, facilities management, and other systems necessary to track the investment and expenditure of the proceeds and the use of the facilities financed with the proceeds of the obligations. The foregoing notwithstanding, the _____________ *(title of responsible person identified at Arbitrage Compliance, above)* will be authorized and instructed to retain such experienced advisors and agents as may be necessary to carry out the purposes of these instructions.

Prior to cessation of employment with the District, the _____________ *(title of responsible person identified at Arbitrage Compliance, above)* should identify his or her successor to maintain compliance with these procedures.