CITY OF GRAND RAPIDS

Meeting Agenda Full Detail

City Council Work Session

Monday, November 17, 2014	4:00 PM	Conference Room 2A

Amended 11-13-14

CALL TO ORDER: Pursuant to due notice and call thereof a Special Meeting/Worksession of the Grand Rapids City Council will be held on Monday, November 17, 2014 at 4:00 p.m. in Council Chambers, 420 North Pokegama Avenue, Grand Rapids, Minnesota.

CALL OF ROLL: On a call of roll, the following members were present:

Discussion Items

14-0927 A contract with Loren Solberg

Attachments: 11-17-14 2015 Legislative Priorities.pdf
11-17-14 Solberg Contract.pdf

14-0926 A discussion on the topic of Indigenous People's Day

Attachments: 11-17-14 Indigenous Resolution.pdf
11-17-14 Proposal from Grand Rapids Human Rights Commission.pdf
11-17-14 Chandler Information.pdf
Chandler Correspondence.pdf

14-0922 Discuss proposed ordinance for the disposal of unclaimed or abandoned property.

Attachments: ORDINANCE re abandoned property

14-0929 US Securities and Exchange Commission Bond Reporting

ADJOURN

Attest: Kimberly Gibeau, City Clerk

CITY OF GRAND RAPIDS

Legislation Details (With Text)

File #:	14-0927	**Version:** 1	**Name:**	Loren Solberg Contract	
Type:	Agenda Item		**Status:**	CC Worksession	
File created:	11/10/2014		**In control:**	City Council Work Session	
On agenda:	11/17/2014		**Final action:**		
Title:	A contract with Loren Solberg				
Sponsors:					
Indexes:					
Code sections:					
Attachments:	11-17-14 2015 Legislative Priorities.pdf 11-17-14 Solberg Contract.pdf				

Date	Ver.	Action By	Action	Result

A contract with Loren Solberg

Background Information:
The City, at a minimum has nine legislative priorities that will require State Legislative approval. A list is attached. To improve the possibility of gaining State approval on these priorities, and to be determined priorities, a proposal from Loren Solberg is attached. Loren has indicated that Itasca County has also contracted with him for assistance.

Staff Recommendation:
Staff is recommending reviewing the priorities and have a discussion with Loren regarding his proposed contract.

Legislative Priorities for the City of Grand Rapids

1. Funding for Mississippi River Pedestrian Bridge
2. Funding for IRA Civic Center
3. Funding for Itasca Regional Railroad Expansion
4. Funding for Industrial Development at Airport
5. Local Sales Tax Legislation
6. Golf Course Irrigation Rules
7. Fiscal Disparities Formula Amendments
8. LGA Increases
9. Library/Recreation Funding Alternatives

Loren Solberg Consulting, LLC

2114 SW 3rd Ave.
Grand Rapids, MN 55744

This agreement is made and entered into between the City of Grand Rapids hereafter referred to as the "City" and Loren Solberg Consulting, LLC, hereafter referred to as "Consultant".

Whereas, the City desires purchased, professional, services to assist with State Government Relations and lobbying activities with the legislature and other administrative related matters;

And Whereas, Loren Solberg is a registered lobbyist with the State of Minnesota;

Therefore, the parties agree to contract for professional lobbying services which include representing the City's interests as designated by the City during a period of November 11, 2014 to October 30, 2015 as follows:

GENERAL SERVICES

1) Provide professional lobbying services for the City at the legislature for the period of time identified in this contract.
2) Assist the City and City staff in development of legislative priorities and strategies as authorized by the City Council.
3) Coordinate, monitor, attend and/or testify as needed before relevant legislative committees or arrange for appropriate elected, appointed, city staff, or community people to testify as deemed necessary on legislation that may impact the City.
4) The Consultant shall work cooperatively with staff and other professional lobbyists of City affiliated associations when not in conflict with the Consultant's other clients or the legislative goals or parameters established by the City.
5) To coordinate informational tours or meetings which will promote the policies or interests of the City.
6) Facilitate requested meetings with local legislators.

7) Report periodically as requested by the City on activities either in person, by phone, or in writing to the City Council or their designated representative.
8) Meet as requested with the City Council, the city administrator, or appropriate City personnel.
9) Notify the City regarding any potential conflict of interest while representing other clients. Notification shall be to the City Contact Agent. For the purpose of this contract the Agent is the City Administrator.

The Consultant shall furnish qualified personnel to perform the services as required. It is agreed that Loren A. Solberg shall assume primary responsibility for delivering professional services as required by this contract.

Consultant shall at all times be free to exercise initiative, judgment and discretion as to how to best perform or provide services identified herein

The parties mutually recognize the need to coordinate activities and information associated with legislative initiatives and administrative policies. Therefore, Consultant shall abide by policy, direction and specific assignments as directed by the City through the City Administrator or designated representatives, as long as directive is not in conflict with state law or rule. Failure to do so may be grounds for immediately termination of this Agreement.

INDEPENDENT CONTRACTOR

At all times and for all purposes hereunder, Consultant shall be an independent contractor and is not an employee of the City for any purpose. No statement contained in this Agreement shall be construed so as to find Consultant to be an employee of the City, and Consultant shall not be entitled to any rights, privileges, or benefits of employees of the City, including, but not limited to, workers' compensation, health/death benefits, and indemnification for third-party personal injury/property damage claims.

Consultant acknowledges and agrees that no withholding or deduction for State and Federal income taxes, FICA, FUTA, or otherwise, will be made from the payments due Consultant and that it is Consultant's sole obligation to comply with the applicable provisions of all Federal and State tax laws.

SUBCONTRACTING, ASSIGNMENT AND INDEMINIFICATION

Consultant shall not assign any interest in this Agreement and shall not transfer any interest in same, whether by subcontracting, assignment or notation, without the prior written consent of the City.

This provision is not intended to create any cause of action in favor of any third party against Consultant or the City or to enlarge in any way Consultant's liability, but is solely to provide for indemnification of the City from liability for damages or injuries to third persons or property arising from Consultant or Consultants' agents' performance hereunder.

COMPLIANCE WITH NON-DISCRIMINATION LAWS AND DISCLOSURE OF DATA

Consultant agrees to maintain and protect data on individuals received, or which Consultant has access, according to the statutory provisions applicable to the data. No private or confidential data developed, maintained or received by Consultant under this Agreement may be released to the public by Consultant or its employees or representative. City shall prominently mark all data shared with Consultant with the data's classification under the Minnesota Government Data Practices Act.

The Consultant agrees to comply with all federal, state and local laws, resolutions, ordinances, rules, regulations and executive orders pertaining to unlawful discrimination on account of race, color, creed, religion, national origin, sex, marital status, status with regard to public assistance, disability or age. When required by law and requested by the City, Consultant shall furnish a written affirmation plan.

The Consultant further agrees to comply with all federal, state and local laws or ordinances and all applicable rules, regulations and standards established by any agency of such governmental units, which are now or hereafter promulgated insofar as they relate to the Consultant's performance of the provisions of this Agreement. It shall be the obligation of the Consultant to apply for, pay for and obtain all permits and/or licenses required by any governmental agency for the provision of those services contemplated herein.

PROFESSIONAL LIABILITY INSURANCE

Consultant shall obtain a valid policy of insurance covering professional liability, arising from the acts of omission of Consultant, its agent and employees. One-half of annual payment of insurance, due January 1, 2015, shall be paid by City not to exceed $2,000 from City. If Consultant obtains more than two governmental clients, each governmental client shall share equally in the cost of the annual liability insurance premium. Any over-payment by any governmental unit shall be refunded by consultant to respective governmental units.

COMPENSATION

In consideration of Consultant's services to be performed pursuant to this Agreement, the City agrees to make payment to Consultant of $4,000 per the months of November, 2014 through June, 2015 and $1,000 per the months of July, 2015 through October, 2015 plus approved expenses. Approved expenses include but are not limited to mileage when traveling outside of Itasca County at the approved federal rate, parking, approved meals and approved lodging when outside the county while providing consulting and lobbying services. Consultant is responsible for all expenses related to necessary supplies, equipment, communication costs, incidental office expenses, taxes and FICA.

Consultant shall provide an invoice to the City on a monthly basis, which includes a written statement of services provided. City agrees to pay pursuant to said invoice within thirty (30) days of receipt and approval. The City reserves the right to deny payment if sufficient information is not provided.

TERMINATION

This contract may be terminated by either party at any time, with or without cause, upon thirty (30) days written notice delivered by mail or in person to the other party, unless termination is by the City for failure to follow policy or direction, in which case termination may be immediate and may be verbal.

MODIFICATIONS/ADDENDA

This Agreement may be modified by mutual consent and be valid when modifications are in writing and signed by authorized representatives of City and Consultant.

NOTICE/COMMUNICTIONS

All notices and demands pursuant to this Agreement shall be directed in writing to:

Consultant
Loren A. Solberg
2114 SW 3rd Ave.
Grand Rapids, MN 55744

City of Grand Rapids
City of Grand Rapids
Attn; Tom Pagel, Administrator
420 Pokegama Ave.
Grand Rapids, MN 55744

CITY OF GRAND RAPIDS

Legislation Details (With Text)

File #:	14-0926	**Version:** 1	**Name:**	Indigenous People's Day	
Type:	Agenda Item		**Status:**	CC Worksession	
File created:	11/10/2014		**In control:**	City Council Work Session	
On agenda:	11/17/2014		**Final action:**		
Title:	A discussion on the topic of Indigenous People's Day				
Sponsors:					
Indexes:					
Code sections:					
Attachments:	11-17-14 Indigenous Resolution.pdf 11-17-14 Proposal from Grand Rapids Human Rights Commission.pdf 11-17-14 Chandler Information.pdf Chandler Correspondence.pdf				

Date	Ver.	Action By	Action	Result

A discussion on the topic of Indigenous People's Day

Background Information:
The Human Rights Commission, represented by Council Member Sanderson, have asked that the City Council consider the attached resolution declaring the second Monday in October as Indigenous People's Day. The Human Rights Commission has also provided some supporting documentation.

Also attached is correspondence from Council Member Chandler regarding his support for Indigenous People's Day, but on any day other than the second Monday in October.

Staff Recommendation:
City staff is recommending a discussion on the attached resolution.

The City of Grand Rapids

A Resolution of the Mayor and City Council

Recognizing the Second Monday of October as Indigenous Peoples Day

Whereas, the City of Grand Rapids recognizes that indigenous peoples populated the American continents for thousands of years before the arrival of Europeans,

Whereas, the City of Grand Rapids understands that prior to the influx of European traders and settlers the Ojibwe and Dakota peoples inhabited the prairies and forests that are now Minnesota, gathering their sustenance, maintaining culture and history, and engaging in trade and diplomacy as independent sovereign nations,

Whereas, continuing to give credit to a European for the "discovery" of an America that was already the homeland of multiple nations and cultures perpetuates misconception and a Eurocentric narrative of our American history,

Whereas, in 1977, a delegation of indigenous American nations to the United Nations-sponsored International Conference on Discrimination Against Indigenous Populations proposed the idea of Indigenous Peoples Day.

Whereas, in 1990, representatives from 120 Indigenous nations at the First Continental Conference on 500 Years of Indian Resistance unanimously passed a resolution to transform Columbus Day into an occasion to strengthen the process of continental unity and to reveal a more accurate historical record,

Whereas, the City of Grand Rapids embraces the indigenous history and culture that imbues this place and seeks to foster the accurate depiction of history, ~~address ongoing struggles~~ celebrate the strengths and recognize the challenges of American Indian peoples of the area, and honor their perspectives and presence in the shared community life of the Grand Rapids area today,

Now, therefore, Be It Resolved by The City Council that the City of Grand Rapids shall recognize Indigenous Peoples Day on the second Monday in October, as a day to reflect on our history and to celebrate the thriving culture and value that Ojibwe, Dakota, and other Indigenous nations add to our city.

Be It Further Resolved that the City of Grand Rapids encourages businesses, organizations, schools, and other public entities to recognize the second Monday in October as Indigenous Peoples Day.

Columbus Day Background:

Columbus Day is a U.S. holiday that commemorates the landing of Columbus in the New World on October 12, 1492. It was unofficially celebrated in a number of cities as early as the 18th century but did not become a federal holiday until 1937. Throughout its history, Columbus Day and the man who inspired this holiday have generated controversy, and a growing number of cities in Minnesota and elsewhere are making changes to the celebration of this holiday.

Today we know that Columbus did not land in the United States in 1492, but in the Bahamas. Indigenous populations were living in the Americas long before Columbus and other explorers crossed the Atlantic. Viking explorers had established colonies in the Americas as early as the 10th century, long before Columbus set sail to chart a western route to China, India and the fabled gold and Spice Islands of Asia. Columbus returned to Spain in 1493 with gold and spices he had stolen from the natives and many captives he called "Indians." The image of Columbus as an intrepid hero has also been called into question. Upon arriving in the Bahamas, the explorer and his men forced the native peoples they found there into slavery, and later while serving as the governor of Hispaniola, he imposed barbaric forms of punishment, including torture on the native populations.

The first Columbus Day celebration took place in 1792, when New York's Columbian Order, better known as Tammany Hall, held an event to commemorate the historic landing's 300th anniversary. Taking pride in Columbus' birthplace and faith, Italian and Catholic communities in various parts of the country began organizing annual religious ceremonies and parades in his honor. In 1892, President Benjamin Harrison issued a proclamation encouraging Americans to make the 400th anniversary of Columbus' voyage with various festivities. In 1937, President Franklin Roosevelt proclaimed Columbus Day a national holiday largely as a result of lobbying by the Knights of Columbus, an influential fraternal organization. Originally observed every October 12, it was fixed to the second Monday in October in 1971.

Opposition to Columbus Day dates back to the 19th century. In recent decades, Native Americans and other groups have protested the celebration of an event that indirectly resulted in the colonization of the Americas and the death of millions. European settlers brought a host of infectious diseases, including smallpox and influenza that decimated indigenous populations. European arrival precipitated the decimation of much of the New World's earlier inhabitants.

Several U.S. cities and states have replaced Columbus Day with alternative days of remembrance; examples include Indigenous Peoples Day in some cities, South Dakota's Native American Day and Hawaii's Discoverer's Day, which commemorates the arrival of Polynesian settlers. In cities and towns that use the day to honor indigenous peoples, activities include pow-wows, traditional dance and lessons about Native American culture. Minnesota communities such as Red Wing and Minneapolis have made changes to the name of this holiday and have marked this step with educational events and celebrations.

The "discovery" of the New World by Christopher Columbus changed the history of the world completely. This is not to say that Columbus himself was that important -- he was just the first European to reach the New World in circumstances that allowed for major colonization to happen. So it was not the "discovery" that mattered so much as the colonization.

Columbus's "discovery" allowed the period of colonization to begin. This had a number of important effects. From our perspective as Americans, the eventual creation of the US is probably the most important of these effects. By "finding" the New World, Columbus started its European colonization. This eventually ended up allowing the US to be created. The creation of the US helped, among other things, to move much of the world towards democracy. It also led to the development of what is now the world's only superpower.

A world without the United States is impossible to imagine today. The existence of the US was made possible by the "discovery" of America and that is, therefore, one of the ways in which Columbus's discovery changed history.

year, again on horseback, he travelled state-to-state seeking gubernatorial support for U.S. citizenship to be extended to American Indians. On December 14, 1915, he presented to the White House the endorsements of 24 governors. In 1919, he petitioned the state of Washington to designate the fourth Saturday in September as an "Indian holiday."

Also in 1915, the Congress of the American Indian Association, meeting in Lawrence, Kansas, directed its president, the Reverend Sherman Coolidge (1862-1932), an Arapaho minister and one of the founders of the SAI, to call upon the nation to observe a day for American Indians. On September 18, 1915, he issued a proclamation declaring the second Saturday of each May as "American Indian Day" and appealing for U.S. citizenship for American Indians.

In 1924, Congress enacted the Indian Citizenship Act extending citizenship to all U.S.-born American Indians not already covered by treaty or other federal agreements that granted such status. The act was later amended to include Alaska Natives.

State Observances

The first time an American Indian Day was formally designated in the U.S. may have been in 1916, when the governor of New York fixed the second Saturday in May for his state's observance. Several states celebrated the fourth Friday in September as American Indian Day. In 1919, the Illinois state legislature enacted a bill doing so. In Massachusetts, the governor issued a proclamation, in accordance with a 1935 law, naming the day that would become American Indian Day in any given year.

In 1968, California Governor Ronald Reagan signed a resolution designating the fourth Friday in September as American Indian Day. In 1998, the California State Assembly enacted legislation creating Native American Day as an official state holiday.

In 1989, the South Dakota state legislature passed a bill proclaiming 1990 as the "Year of Reconciliation" between the state's American Indian and White citizens. Pursuant to that act, South Dakota Governor George S. Mickelson designated Columbus Day as the state's American Indian Day, thereby making it a state-sanctioned holiday.

For more information about state designations for American Indian, Alaska Native, or Native American heritage observations or celebrations, contact directly the state(s) you are interested in.

1992 – The Year of the American Indian

The 500th anniversary of the arrival of Christopher Columbus in the western hemisphere in 1492 was the occasion for national and local celebrations. However, for Native people it was an occasion they could neither fully embrace nor participate in.

Congress acknowledged their concerns regarding the Columbus Quincentennial by enacting Senate Joint Resolution 217 (Pub. L. 102-188) which designated 1992 as the "Year of the American Indian." It was signed by President George H.W. Bush on December 4, 1991. Pursuant to that act, President Bush issued on March 2, 1992, Proclamation 6407 announcing 1992 as the "Year of the American Indian."

The American Indian response to the anniversary was marked by public protests. Yet, it also was seen by many in that community as a special, year-long opportunity to hold public education events, commemorations of ancestral sacrifices and contributions to America, and celebrations for the survival of Native peoples over five centuries.

Federal Observances

In 1976, the United States' bicentennial year, Congress passed a resolution authorizing President Ford to proclaim a week in October as "Native American Awareness Week." On October 8, 1976, he issued his presidential proclamation doing so. Since then, Congress and the President have observed a day, a week or a month in honor of the American Indian and Alaska Native people. And while the proclamations do not set a national theme for the observance, they do allow each federal department and agency to develop their own ways of celebrating and honoring the nation's Native American heritage. For example, listed below are some themes used by the Office of the Assistant Secretary-Indian Affairs in the Department of the Interior:

2014 - "Native Pride and Spirit: Yesterday, Today and Forever."
2013 - "Guiding Our Destiny with Heritage and Tradition"
2012 - "Serving Our People, Serving Our Nations; Honoring Those That Served Our Country"
2011 - "Celebrating Our Ancestors and Leaders of Tomorrow"
2010 – "Life is Sacred – Celebrate Healthy Native Communities"
2009 – "Pride in Our Heritage With Gratitude to Our Elders"
2008 – "Tribes Facing Challenges: In Unity, Transforming Hope into Strengths"
2007 – "Keeping in Step to the Heartbeat of the Drum as We Unite as One"
2006 – "Tribal Diversity: Weaving Together Our Traditions"
2005 – "Knowledge of the Past/Wisdom for the Future"
2004 – "Native Nations: Continuing in the New Millennium"
2003 – "A Celebration of the American Indian Spirit"
2002 - "Celebrating Our Past, Creating Our Future"
1989 - National American Indian Heritage Week Program

Contact the federal department or agency you are interested in for information about their National Native American Heritage Month activities.

Congressional Resolutions and Presidential Proclamations

1976: Senate Joint Resolution 209 authorizes President Gerald R. Ford to proclaim October 10-16, 1976 as "Native American Awareness Week."
1983: President Ronald Reagan designates May 13, 1983 as "American Indian Day."
1986: President Reagan signs on October 14 Senate Joint Resolution 390 (Pub. L. 99-471) which designates November 23-30, 1986 as "American Indian Week." He issues Proclamation 5577 on November 24, 1986.
1987: Pursuant to Senate Joint Resolution 53 (Pub. L. 100-171), President Reagan proclaims November 22-28, 1987 as "American Indian Week."
1988: President Reagan signs on September 23 a Senate Joint Resolution (Pub. L. 100-450) designating September 23-30, 1988 as "National American Indian Heritage Week."
1989: Pursuant to Senate Joint Resolution 218 (Pub. L. 101-188), President George Herbert Walker Bush issues a proclamation on December 5 designating December 3-9, 1989 as "National American Indian Heritage Week."
1990: President George H.W. Bush approves on August 3 House Joint Resolution 577 (Pub. L. 101-343) designating November 1990 as "National American Indian Heritage Month." He issues Proclamation 6230 on November 14, 1990.
1991: Congress passes Senate Joint Resolution 172 (Pub. L. 102-123) which "authorize[s] and request[s] the President to proclaim the month of November 1991, and the month of each November thereafter, as 'American Indian Heritage Month.'" President Bush issues Proclamation 6368 on October 30, 1991
1992 President George H.W. Bush issues on March 2 a proclamation designating 1992, which is also the Columbus Quincentennial, the "Year of the American Indian." He does so pursuant to Senate Joint Resolution 217 (Pub. L. 102-188), which he signed on December 4, 1991.
1992: President George H.W. Bush issues on November 25 Proclamation 6511 designating November 1992 as "National American Indian Heritage Month."
1993: Congress passes Pub. L. 103-462 authorizing the President to proclaim November 1993 as "National American Indian Heritage Month."
1994: President William Jefferson Clinton issues on November 5 Proclamation 6756 designating November 1994 as "National American Indian Heritage Month," pursuant to Pub. L. 103-462.
1995: President Clinton issues on November 2 Proclamation 6847 designating November 1995 as "National American Indian Heritage Month."
1996: President Clinton issues on October 29 Proclamation 6949 designating November 1996 as "National American Indian Heritage Month."
1997: President Clinton issues on November 1 Proclamation 7047 designating November 1997 as "National American Indian Heritage Month."
1998: President Clinton issues on October 29 Proclamation 7144 designating November 1998 as "National American Indian Heritage Month."
1999: President Clinton issues on November 1 Proclamation 7247 designating November 1999 as "National American Indian Heritage Month."
2000: President Clinton issues on November 8 Proclamation 7372 designating November 2000 as "National American Indian Heritage Month."
2001: President George W. Bush issues on November 12 Proclamation 7500 designating November 2001 as "National American Indian Heritage Month."
2002: President Bush issues on November 1 Proclamation 7620 designating November 2002 as "National American Indian Heritage Month."
2003: President Bush issues on November 14 Proclamation 7735 designating November 2003 as "National American Indian Heritage Month."
2004: President Bush issues on November 4 Proclamation 7840 designating November 2004 as "National American Indian Heritage Month."
2005: President Bush issues on November 2 Proclamation 7956 designating November 2005 as "National American Indian Heritage Month."
2006: President Bush issues on October 30 Proclamation 8076 designating November 2006 as "National American Indian Heritage Month."
2007: President Bush issues on October 31 Proclamation 8196 designating November 2007 as "National American Indian Heritage Month."
2008: President Bush issues on October 30 Proclamation 8313 designating November 2008 as "National American Indian Heritage Month."
Congress passes House Joint Resolution 62 designating the day after Thanksgiving Day, Friday, November 28, as "Native American Heritage Day".
2009: Congress passes House Joint Resolution 40 (Pub. L. 111-33), the "Native American Heritage Day Act of 2009", which designates the Friday immediately following Thanksgiving Day of each year as "Native American Heritage Day." President Barack Obama signs the legislation on June 26. On October 30 he issues a proclamation designating November 2009 as "National Native American Heritage Month" and November 27, 2009 as Native American Heritage Day."
2010: President Obama issues on October 29 Proclamation 8595 designating November 2010 as "National Native American Heritage Month."
2011: President Obama issues on November 1 Proclamation 8749 designating November 2011 as "National Native American Heritage Month."
2012: President Obama issues on November 1 a proclamation designating November 2012 as "National Native American Heritage Month" and November 23, 2012, as "Native American Heritage Day."
2013: President Obama issues on October 31 a proclamation designating November 2013 as "National Native American Heritage Month."

Choose A Category

- - Click To Change Category - -

Regions

Click the map to view our regions and their office contact information and the tribes served by that region

Mailing Address:
Office of Public Affairs
Indian Affairs
MS-3658 MIB
1849 C Street, N.W.
Washington, D.C. 20240

Telephone: (202) 208-3710
Telefax: (202) 501-1516

Proclamation 5049 -- American Indian Day, 1983

April 14, 1983

By the President of the United States of America

A Proclamation

The story of the Indian in America is a record of endurance, of survival, of adaptation and creativity in the face of overwhelming obstacles. It is a record of enormous contributions to this country -- to its art and culture, its strength and spirit, its sense of history, and its sense of purpose.

When European settlers began to develop colonies in North America, they entered into treaties with sovereign Indian nations. Our new Nation continued to enter into treaties with Indian tribes on a government-to-government basis. Throughout our history, despite periods of conflict and shifting national policies in Indian affairs, the government-to-government relationship between the United States and Indian tribes has endured. The Constitution, treaties, laws, and court decisions have consistently recognized a unique political relationship between Indian tribes and the United States.

In 1970, President Nixon announced a national policy of self-determination for Indian tribes. At the heart of the new policy was a commitment by the Federal government to foster and encourage tribal self-government.

As set forth in the message on Indian policy of January 24, 1983, this Administration honors the commitment made in 1970 to strengthen tribal governments and lessen Federal control over tribal government affairs. To further the principle of self-government, we will encourage the political and economic development of the tribes by eliminating excessive Federal regulation and government intervention, which in the past have stifled local decision-making, thwarted Indian control of Indian resources, and promoted dependence rather than self-sufficiency.

In promoting effective self-government and a more favorable environment for the development of healthy reservation economies, we will take a flexible approach which recognizes the diversity among tribes and the right of each tribe to set its own priorities and goals. The tribes, not the Federal government, will chart the path of their own development. In support of this policy, the Federal government will faithfully fulfill its responsibility for the physical and financial resources it holds in trust for the tribes and their members.

In recognition of the unique status and contribution of the American Indian peoples to our Nation, the Congress of the United States, by House Joint Resolution 459 (P.L. 97 - 445), has authorized and requested the President to issue a proclamation designating May 13, 1983 as ``American Indian Day."

Now, Therefore, I, Ronald Reagan, President of the United States of America, do hereby proclaim May 13, 1983 as American Indian Day. I invite the people of the United States to observe this day with appropriate ceremonies and deeds and to reaffirm their dedication to the ideals which our first Americans subscribe.

In Witness Whereof, I have hereunto set my hand this 14th day of April, in the year of our Lord nineteen hundred and eighty-three, and of the Independence of the United States of America the two hundred and seventh.

Ronald Reagan

[Filed with the Office of the Federal Register, 11:53 a.m., April 14, 1983]

Hello all,

I have reviewed the proffered resolution regarding this holiday and I cannot support it as written. I do not understand the need to conflagrate the issues of Columbus Day and Indigenous People's Day. They are not directly linked. I would happily support creating an Indigenous People's day on any of the days that past political figures such as Governor Reagan, President Reagan, President Bush or President Obama have used. I think honoring the Native population of the area we live in is a positive thing and should be done. Adding local revisions/removal of history for the reason of issue advocacy should not be done.

I have attached information to this email which shows that this issue has been discussed at length in many appropriate forums and like other popular political causes, I do not feel it is appropriate for the Grand Rapids City Council to try to interject it opinion of how the history of our country should be remembered. Christopher Columbus is a symbol of the way that our country was founded and has led us to this place and time where people can express their opinions and have a representative government. As I researched this information I ran across the attached description of the "discovery" which I think gives a balanced view of the reason Columbus Day exists. Please read the attachments and give them the appropriate consideration.

Please consider unlinking the two issues and I would be happy to support a new declared Grand Rapids Holiday without affecting HR policies or contracts.

Joe

Tom Pagel

From: Dale Christy
Sent: Monday, November 17, 2014 10:37 AM
To: Tom Pagel
Subject: columbus day

Tom,

As you know I will not be at the work session today. I wanted to weigh in on Barb's request. The longer I mull this over, the more worked up I get about what I perceive as the lack of consistency in requests by councilors for council action. I know you were not in the position when I brought items forward that were turned down for discussion but I feel very strongly that the items I brought forward (and others from the public) affected city residents and were more widely accepted than this particular proposition. I did not push the issues at the time because we agreed as a council that we would not deal with social issues that did not directly affect Grand Rapids residents (even though mine did). The argument was that these issues would divide the council and take our focus off of our main purpose making it more difficult to work together. I backed off based on this rationale. As I stated, Barb's request has less impact on city residents, in my opinion, than others that have been brought forward and will be more divisive in the community. While I lean towards her opinion, I am concerned about the lack of consistency in bringing forward councilor's requests the longer I think about it. Again, I know you were not around during previous requests. I will vote no based on these arguments alone (not the merits of the resolution) until we have a discussion at a policy meeting that I am able to attend. I put this in writing rather than call you in case you wanted to pass this out to the council tonight.

Dale

CITY OF GRAND RAPIDS

Legislation Details (With Text)

File #:	14-0922	**Version:** 1	**Name:**	Property disposal ordinance	
Type:	Agenda Item		**Status:**	CC Worksession	
File created:	11/6/2014		**In control:**	City Council Work Session	
On agenda:	11/17/2014		**Final action:**		
Title:	Discuss proposed ordinance for the disposal of unclaimed or abandoned property.				
Sponsors:					
Indexes:					
Code sections:					
Attachments:	ORDINANCE re abandoned property				

Date	Ver.	Action By	Action	Result

Discuss proposed ordinance for the disposal of unclaimed or abandoned property.

Background Information:

Abandoned and unclaimed property, ownership unknown, is often turned in to the Police Department. Examples of these items are bicycles, jewelry, tools, and unclaimed items connected to criminal investigations.

Attached is a draft ordinance, reviewed by City Attorney Chad Sterle, clarifying abandoned and unclaimed property and the procedure for disposal.

Staff Recommendation:

Adopt ordinance.

Requested City Council Action

Discuss proposed ordinance regarding the disposal of unclaimed and abandoned property.

Councilmember _____ introduced the following ordinance and moved for its adoption:

CITY OF GRAND RAPIDS

ORDINANCE NO._____

AN ORDINANCE ADDING A NEW SECTION _____ TO THE GRAND RAPIDS CITY CODE, ____, AS AMENDED, REGARDING THE DISPOSAL OF UNCLAIMED OR ABANDONED PROPERTY

THE CITY COUNCIL OF THE CITY OF GRAND RAPIDS, MINNESOTA, DOES ORDAIN:

That the following Section ___, Abandoned and Unclaimed Property, is adopted and added to Grand Rapids Code, Chapter ___:

Section _____. ABANDONED AND UNCLAIMED PROPERTY

___.01. Definitions.

Subdivision 1. As used in this chapter, the following words and phrases shall have the following meanings, unless the context clearly indicates that a different meaning is intended:

Subdivision 2. "Abandoned Property" shall mean personal property of any type the owner of which has failed to make satisfactory claim and proof of ownership within sixty days after notice has been provided as described in section ____.02.

Subdivision 3. "Finder" is a person who locates unclaimed personal property belonging to someone else and gives the property to an officer.

Subdivision 4. "Officer" shall mean any officer, agent or employee of the City acting within the scope of his or her employment.

Subdivision 5. "Unclaimed Property" shall mean personal property of any type where the owner or his or her whereabouts is unknown, or which is unclaimed for more than seven days.

_____.02. Notice of Official Possession.

Subdivision 1. Any officer having in his or her official possession unclaimed property and wishing to dispose of such property at a public auction or sale shall from time to

time have the City Clerk prepare and publish written notice containing the information required in subdivision 2.

Subdivision 2. The written notice shall contain the following information:

(a) The name, designation and office address of the officer giving the notice;
(b) The description of the unclaimed property, individually or by lot, that has come into the possession of the officer since the issuance of the last notice;
(c) A demand that all owners of the property described in the notice make claim and proof of ownership satisfactory to the officer named in the notice within sixty days from the date of the notice;
(d) A statement that any of the unclaimed property not so claimed within the sixty day period shall be deemed to be abandoned, and that the same may be disposed by the City; and
(e) The date of the notice.

Subdivision 3. The notice shall be published in a newspaper of general circulation in the City at least once, a copy of the notice shall be posted at the City hall, and a copy of the notice shall be mailed to the owner, if the owner's name and address is known.

Subdivision 4. Nothing in this section shall prevent an officer from disposing of unclaimed property by a private sale through a nonprofit organization that has a significant mission of community service after the property has been in the possession of the municipality for a period of at least 60 days.

____.03. Claim and Proof of Ownership.

Subdivision 1. Except as provided in subdivision 2, below, if unclaimed property remains in the possession of the officer without any person making satisfactory claim and proof of ownership for a period of sixty days from the date of the notice describing it, the personal property shall be deemed to be abandoned, and title to the property shall be deemed to be in the City by reason of abandonment by the owner and possession by the City.

_____.04. Disposal.

Subdivision 1. The City shall have the right to sell or otherwise dispose of abandoned property to the highest bidder at public auction or sale. Alternatively, the City may deliver abandoned property at no charge to any community, non-profit organization.

Subdivision 2. In no event shall abandoned property be sold for less than the cost of advertising and selling. The City reserves the right to reject any and all bids. If abandoned property cannot be disposed of at an amount greater than the cost of advertising and selling, the City may destroy the property or otherwise dispose of it as it sees fit.

ADOPTED AND PASSED by the City Council of the City of Grand Rapids on the ____ day of _____, 2014.

_____
Dale Adams, Mayor

ATTEST:

_____
Tom Pagel, City Administrator

CITY OF GRAND RAPIDS

Legislation Details (With Text)

File #:	14-0929	**Version:**	1	**Name:**	
Type:	Agenda Item			**Status:**	CC Worksession
File created:	11/13/2014			**In control:**	City Council Work Session
On agenda:	11/17/2014			**Final action:**	
Title:	US Securities and Exchange Commission Bond Reporting				
Sponsors:					
Indexes:					
Code sections:					
Attachments:					

Date	Ver.	Action By	Action	Result

US Securities and Exchange Commission Bond Reporting

ATTORNEY-CLIENT PRIVILEGED INFORMATION

Tom and Barb –

As we discussed, the City has two basic available courses of action in connection with the SEC's MCDC Initiative: self-reporting by filling in the SEC questionnaire, or declining to self-report. It is impossible to predict the exact consequences of either, given the fact that this initiative is new, so we have no record of prior SEC responses to issuers that have chosen to participate in the initiative or to decline participation. It is also difficult to summarize the various scenarios in any concise way, given the number of variables that come into play. That said, following is a discussion of possible scenarios for each of the City's options.

City self-reports by filling in SEC questionnaire. We know that the enforcement division of the SEC is strongly encouraging issuers to self-report, and that it has stated that it will recommend standardized settlement terms if it finds that any of the self-reported inaccurate certifications are material. We also know that the proposed settlement terms include the City agreeing to institution of a cease and desist proceeding for a violation of the Securities Act, and a settlement in which the City neither admits or denies the findings of the SEC. Finally, we know that as part of the settlement, the City will be required to undertake to establish written policies and procedures for continuing disclosure obligations within 180 days of the commencement of the cease and desist proceeding; to comply with its existing continuing disclosure obligations; to cooperate with any subsequent investigations; to disclose in a clear and conspicuous fashion the settlement terms in all official statements for bond issues for a period of five years; and to provide the SEC with a compliance certification regarding all of the above, on the one-year anniversary of the commencement of the cease and desist proceedings. The enforcement division will also recommend that the SEC accept a settlement with no payment of civil penalties.

It is important to note that the enforcement division will not offer any assurances that individual employees of the City will not be separately investigated, or that such individuals would be offered similar settlement terms if they were found to have violated the Securities Act.

Given all of this, the worst-case scenario associated with self-reporting is that the SEC does find that a material misstatement indeed occurred in violation of the Securities Act. If this happens, the settlement terms above will likely be proposed. If the SEC also finds that any individual employees of the City engaged in securities fraud related to the material misstatement, it could very well initiate an enforcement action against such individuals, with no assurances as to what penalties may be imposed.

The best-case scenario associated with self-reporting is that the SEC reviews the list of potential material misstatements, makes a finding that none of the misstatements rises to the level of materiality, and informs the City that no enforcement actions will be recommended.

City declines to answer questionnaire. We do not know how the SEC will respond to issuers that decide not to participate in the Initiative. I believe there are several factors that make it difficult to predict the SEC's response, including how many underwriters have self-reported possible violations by issuers, how many issuers DO answer the questionnaire, and how material the other self-reported misstatements are. The worst-case scenario is that the enforcement division reviews the underwriters' self-reporting and determines to make an example of the issuers that fail to self-report, by investigating the underwriters' reported misstatements and omissions and commencing actions against the relevant issuers. The enforcement division has expressly stated that it offers no assurances that issuers declining

to self-report would be offered the settlement terms available to those who do self-report, and has also stated that it will likely recommend financial sanctions against non-participating issuers if enforcement actions are initiated.

However, it is important to balance the potential severity of SEC sanctions against the likelihood that the misstatement/omission will be found to be material, and the fact that the SEC would bear the burden of showing that not only was the misstatement/omission material, but that the issuer was reckless or acted with fraudulent intent.

I would be happy to discuss this information with you in greater detail. As we discussed, I will expect a phone call at 4:30 this afternoon.

--Martha

Continuing Disclosure Analysis - Summary of Findings

City of Grand Rapids MN – CUSIP 386334 (City & PUC GO)

√	Finding	Notes
	CAFRS	
	CAFRs filed on time	
	CAFR/CAFRs missing	
	FY 2004-2009 CAFR/CAFRs late 0-5 days	FYE 2004: Posted on Bloomberg on 1/5/2006 (5 days late)
	FY 2004-2009 CAFR/CAFRs late 6-30 days	
	FY 2004-2009 CAFR/CAFRs late more than 30 days	
	FY 2010-2013/4 CAFR/CAFRs late 0-5 days	
	OP and FIN INFO	
	OP and FIN INFORMATION filed on time	
	OP and FIN INFORMATION missing	
	FY 2004-2009 OP and FIN INFORMATION late 0-5 days	FYE 2004: Posted on Bloomberg on 1/5/2006 (5 days late)
	FY 2004-2009 OP and FIN INFORMATION late 6-30 days	
	FY 2004-2009 OP and FIN INFORMATION late more than 30 days	
	FY 2010-2013/4 OP and FIN INFORMATION late more than 5 days	
	OTHER ITEMS	
	RECALIBRATION NOT FILED	
	INSURANCE RATING CHANGE NOT FILED	
	OTHER RATING UPGRADE/DOWNGRADE NOT FILED When did change occur? Was there an OS that year? When?	The City received a downgrade from Moody's from A2 to A3 on 11/18/2009. The material event was not filed with EMMA until 5/18/2010. This was reported by both Baird & UMB Bank.
	REDEMPTION NOTICE NOT FILED Were advance refunding documents filed?	
	OTHER	Series 2013ABC OSs stated that the City has not failed in the past five years in all material respects.
		2009-2012 OSs stated that the City has never failed to comply in all material respects with previous undertakings.

Continuing Disclosure Analysis - Summary of Findings

City of Grand Rapids MN – CUSIP 386338 (EDA)

√	Finding	Notes
	CAFRS	
	CAFRs filed on time	
	CAFR/CAFRs missing	FYE 2004, 2006, 2007: CAFRs not filed. However, the City's CAFR was filed on the City's GO CUSIP 386334.
	FY 2004-2009 CAFR/CAFRs late 0-5 days	
	FY 2004-2009 CAFR/CAFRs late 6-30 days	
	FY 2004-2009 CAFR/CAFRs late more than 30 days	FYE 2005: CAFR filed on 5/26/2009 (876 days late)
	FY 2010-2013/4 CAFR/CAFRs late 0-5 days	
	OP and FIN INFO	
	OP and FIN INFORMATION filed on time	
	OP and FIN INFORMATION missing	FYE 2004, 2006, 2007: Operating data not filed. However, the required operating data is included in the City's CAFRs, which was filed on the City's GO CUSIP 386334.
	FY 2004-2009 OP and FIN INFORMATION late 0-5 days	
	FY 2004-2009 OP and FIN INFORMATION late 6-30 days	
	FY 2004-2009 OP and FIN INFORMATION late more than 30 days	FYE 2005: CAFR filed on 5/26/2009, which contains the required operating data. (876 days late)
	FY 2010-2013/4 OP and FIN INFORMATION late more than 5 days	
	OTHER ITEMS	
	RECALIBRATION NOT FILED	
	INSURANCE RATING CHANGE NOT FILED	
	OTHER RATING UPGRADE/DOWNGRADE NOT FILED When did change occur? Was there an OS that year? When?	
	REDEMPTION NOTICE NOT FILED Were advance refunding documents filed?	
	OTHER	

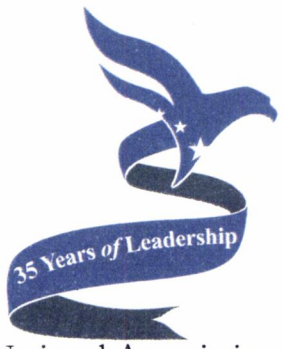
Continuing Disclosure Analysis - Summary of Findings

City of Grand Rapids MN – CUSIP 386362 (PUC Revenue)

√	Finding	Notes
	CAFRS	
	CAFRs filed on time	
	CAFR/CAFRs missing	
	FY 2004-2009 CAFR/CAFRs late 0-5 days	FYE 2004: Posted on Bloomberg on 1/5/2006 (5 days late)
	FY 2004-2009 CAFR/CAFRs late 6-30 days	
	FY 2004-2009 CAFR/CAFRs late more than 30 days	
	FY 2010-2013/4 CAFR/CAFRs late 0-5 days	
	OP and FIN INFO	
	OP and FIN INFORMATION filed on time	
	OP and FIN INFORMATION missing	
	FY 2004-2009 OP and FIN INFORMATION late 0-5 days	FYE 2004: Posted on Bloomberg on 1/5/2006 (5 days late)
	FY 2004-2009 OP and FIN INFORMATION late 6-30 days	
	FY 2004-2009 OP and FIN INFORMATION late more than 30 days	
	FY 2010-2013/4 OP and FIN INFORMATION late more than 5 days	
	OTHER ITEMS	
	RECALIBRATION NOT FILED	
	INSURANCE RATING CHANGE NOT FILED	
	OTHER RATING UPGRADE/DOWNGRADE NOT FILED When did change occur? Was there an OS that year? When?	
	REDEMPTION NOTICE NOT FILED Were advance refunding documents filed?	
	OTHER	

MCDC INITIATIVE

CONSIDERATIONS FOR ANALYSIS BY ISSUERS OF MATERIALITY AND SELF-REPORTING



National Association
of Bond Lawyers

August 5, 2014

National Association
of Bond Lawyers

PHONE 202-503-3300 601 Thirteenth Street, NW
FAX 202-637-0217 Suite 800 South
www.nabl.org Washington, D.C. 20005

August 5, 2014

Fellow NABL Members:

The paper that follows describes considerations for analysis by issuers and obligated persons involved in the offer or sale of municipal securities (collectively, "issuers") of materiality and self-reporting under the "Municipalities Continuing Disclosure Cooperation Initiative" (the "Initiative") announced on March 10, 2014, by the Division of Enforcement (the "Division") of the Securities and Exchange Commission. The Board of Directors of the National Association of Bond Lawyers ("NABL") has authorized the distribution of this paper to our members and other interested municipal market participants.

The Initiative has a raised a number of interpretative issues. A key interpretative issue is the meaning of "material" in the context of the Initiative. As this paper explains, issuers considering whether to self-report under the Initiative must analyze "materiality" in addressing two different questions: first, whether a prior official statement contains a misstatement (which turns on whether the issuer failed to comply in all material respects with its previous continuing disclosure agreements) and second, if so, whether such misstatement is material within the meaning of the general antifraud provisions of the federal securities law. As this paper also explains, this analysis is different than the decisions made on a daily basis about disclosure in official statements, in which issuers and their counsel almost always avoid reaching conclusions about materiality and err on the side of disclosure.

NABL exists to promote the integrity of the municipal market by advancing the understanding of and compliance with the law affecting public finance. This paper has been prepared by a special committee in furtherance of that mission. NABL Past President John McNally spearheaded the work of the committee and led the drafting effort, with substantial contributions from Ken Artin, Robert Feyer, Robert Fippinger, Teri Guarnaccia, Stanley Keller, Andrew Kintzinger, Alexandra (Sandy) MacLennan, Paul Maco, Faith Pettis, Dean Pope, Walter St. Onge and Frederic (Rick) Weber.

Because materiality is determined on the basis of the particular facts and circumstances in each instance, it is not possible for NABL to articulate definitive rules for determining materiality in the context of the Initiative; however, by suggesting a framework to analyze the issue, we hope that this paper will assist issuers and our members in responding appropriately to the Initiative.

Sincerely,

Allen K. Robertson

Allen K. Robertson
President

National Association of Bond Lawyers

MCDC Initiative - Considerations for Analysis by Issuers of Materiality and Self-Reporting

General Overview

The Division of Enforcement (the "Division") of the Securities and Exchange Commission (the "Commission" or "SEC") released its "Municipalities Continuing Disclosure Cooperation Initiative" (the "Initiative") on March 10, 2014.[1] The Division stated that pursuant to the Initiative, it will recommend the following to the Commission:

> [F]avorable settlement terms to issuers and obligated persons involved in the offer or sale of municipal securities (collectively, "issuers") as well as underwriters of such offerings if they self-report to the Division possible violations involving materially inaccurate statements relating to prior compliance with the continuing disclosure obligations specified in Rule 15c2-12 under the Securities Exchange Act of 1934.

The Initiative has raised a number of interpretive issues, and the Division has declined to provide guidance beyond statements by staff at industry conferences. A key interpretive issue is the meaning of "material" in the context of the Initiative. This document is intended to serve the limited purpose of suggesting a framework to analyze this issue. This document does not address whether a municipal issuer or other obligated person[2] under a continuing disclosure agreement should self-report under the Initiative, as there are numerous factors that are involved in any such determination (some, but not all, of which are briefly described below). In addition, whether to self-report is a determination to be made by each issuer based on its own facts and circumstances and with the advice of its counsel.

In thinking about the Initiative, it is important to recognize that the Initiative is not about whether an issuer complied with its continuing disclosure undertakings entered into

[1] The Initiative was modified on July 31, 2014, to extend the deadline for municipal issuers and obligated persons to self-report from September 10, 2014, to December 1, 2014. The deadline for underwriters of September 10, 2014, was not changed.

[2] Use of the term "issuer" throughout this document is intended to refer to both municipal issuers and other obligated persons, which may include governmental agencies, or non-profit or for-profit entities, which have entered into a continuing disclosure agreement pursuant to Rule 15c2-12. Correspondingly, the term "issuer" does not refer to a conduit issuer unless it is a party to a continuing disclosure agreement.

pursuant to Rule 15c2-12.[3] Rather, the Initiative addresses only "possible violations involving materially inaccurate statements relating to prior compliance . . . ."

The analytical framework suggested by this document is comprised of three key elements:

1. Has there been a misstatement? This has two components:

   a. Was there a failure by the issuer to comply in all material respects with its previous continuing disclosure agreements (i.e., was there a material breach of contract), and

   b. What did the issuer disclose in its Official Statement regarding the status of its compliance with its previous continuing disclosure agreements.

2. If there had been a misstatement, was such misstatement material within the meaning of the general antifraud provisions of the federal securities law?

3. If there had been a material misstatement, what factors should an issuer and its counsel consider in determining whether to self-report pursuant to the Initiative?

Materiality

General. Materiality, while a legal concept, is determined on the basis of the particular facts and circumstances in each instance. Although no set of definitive rules for determining materiality in the context of the Initiative can be established, this document offers general considerations for determining (1) whether statements regarding continuing disclosure compliance might have been misstatements, and (2) if so, whether such misstatements were material. Furthermore, because a determination of materiality is dependent on the unique facts and circumstances in any particular instance, and involves the exercise of judgment informed by experience, different parties may reach different conclusions about what is material with respect to similar facts. Moreover, it can be anticipated that issuers and underwriters will have different perspectives, both regarding what may be material and what should be self-reported, particularly in light of the cap on liability applicable to underwriters and the direct application of Rule 15c2-12 only to underwriters.

Rule 15c2-12 requires, absent an exemption from the Rule, an underwriter to contract to receive a "final official statement," which is defined, for purposes of the Rule, to include, among other things, a description of "any instances in the previous five years in which each person [undertaking to provide annual financial information and notices of material events] failed to comply, ***in all material respects***, with any previous undertakings in a written [continuing disclosure] contract or agreement." Thus, an underwriter's compliance with the Rule in a non-exempt offering requires disclosure in an Official Statement of any material

[3] Accordingly, the Initiative is not relevant to any failures by an issuer to comply with its continuing disclosure undertakings that may have occurred subsequent to the date of its most recent Official Statement.

noncompliance by the issuer with previous continuing disclosure undertakings. Although the Rule is not directly applicable to issuers and does not require an affirmative statement regarding past continuing disclosure compliance, the Rule language has frequently led to the inclusion in the Official Statement of an affirmative statement of the issuer regarding compliance with previous continuing disclosure undertakings, e.g., a statement that over the last five years the issuer has complied in all material respects with any previous continuing disclosure undertakings.[4]

Consequently, two distinct elements of materiality must be analyzed in determining whether there has been a "material misstatement" that is a candidate for being "self-reported" by the issuer pursuant to the Initiative. The first element is whether an issuer's statement that it has in the previous five years complied in all material respects with any previous continuing disclosure agreements (or the failure by the issuer to fully disclose the extent of its noncompliance) is a "misstatement." The second element is whether any such misstatement is material to an investor[5] within the meaning of the general antifraud provisions of the federal securities law. This document suggests a framework for analyzing these two distinct elements and some considerations in applying such framework.

Is there a Misstatement? If an issuer discloses in an Official Statement that in the previous five years it has complied "in all material respects" with its previous continuing disclosure undertakings (or has not fully disclosed the extent of its noncompliance), is that a misstatement? It is generally accepted by experienced practitioners that certain failures to comply with the terms of any previous continuing disclosure undertakings would be considered material non-compliance. For example, if there had been a complete failure to comply with any provision of the previous continuing disclosure undertakings (no annual filings, no event filings), yet the affirmative statement regarding prior compliance described above had been made, such statement would have been a misstatement. It also is generally accepted by experienced practitioners that certain other failures to comply with the terms of the previous continuing disclosure undertakings would not be considered failures to comply in all material respects. An example would be a delay in filing a particular annual report by a few days. Many failures, however, are likely to fall into neither category, i.e., the affirmative statement regarding prior compliance is neither clearly a misstatement nor clearly not a misstatement.

Is any Misstatement a Material Misstatement? If an issuer stated in its Official Statement that in the previous five years it had complied in all material respects with its previous

---

[4] Note that there are numerous variations on this generic statement and the actual statement included in any particular Official Statement will necessarily inform the analysis in terms of both the accuracy of the statement and the materiality of any inaccurate statement.

[5] The SEC has stated, in the context of material omissions by municipal issuers, that an issuer's disclosure in its Official Statements is important to both the prospective investors in the securities being offered and to holders of the issuers' then-outstanding bonds:

> The fact that Miami needed to use bond proceeds to satisfy operational expenses demonstrated the gravity of the cash flow deficit, and, thus, the City's need to disclose this fact to public investors and the marketplace. Miami's financial disclosures would be no less important to investors, who held previously issued City bonds, and were entitled not to be mislead about Miami's current financial condition in deciding whether to hold or sell their bonds. *In re* City of Miami, SEC Rel. No. 33-8213 (Mar. 21, 2003).

continuing disclosure undertakings when in fact there had been instances of material noncompliance, or if the issuer did not fully disclose the extent of its noncompliance (i.e., there was a misstatement), such inaccurate disclosure must be material to investors for there to be a violation of the antifraud provisions of the federal securities law. The SEC considers the compliance history of an issuer under its continuing disclosure undertaking to be material to investors. As it stated in the recent *West Clark* proceeding[6]: "There is a substantial likelihood that a reasonable investor determining whether to purchase the municipal securities would attach importance to the School District's failure to comply with its prior continuing disclosure undertakings." In order to apply this reasoning to other fact situations, however, it is important to understand why the SEC considers the misstatement to be material to investors. According to the SEC in both the *West Clark* and *Kings Canyon*[7] proceedings, the statement is important to enable an evaluation of the continuing disclosure undertaking for the bonds being offered by the Official Statement and, in particular, the likelihood of future compliance. The following language is included in both the *West Clark* and *Kings Canyon* orders: [8]

> Moreover, critical to any evaluation of an undertaking to make disclosures, is the likelihood that the issuer or obligated person will abide by the undertaking. Therefore, the Rule requires disclosure in the final Official Statement of all instances in the previous five years in which any person providing an undertaking failed to comply in all material respects with any previous undertakings. This provides an incentive for issuers, or obligated persons, to comply with their undertakings, allowing underwriters, investors and others to assess the reliability of the disclosure representations.

Using this principle of assessing the reliability of the disclosure representations as a guide to evaluate future compliance, relevant factors in any analysis to determine whether any misstatement (or omission) is material could include the following:

- the importance of the information or notice to be provided (e.g., a delay in filing notice of an unscheduled draw on debt service reserves reflecting financial difficulties may merit different treatment than the substitution of a credit provider comparable in rating to the prior provider, particularly if notice of the substitution was provided separately to the affected bondholders under the terms of the governing bond document)

---

[6] *In re* West Clark Community Schools, SEC Rel. Nos. 33-9435, 34-70057 (July 29, 2013).

[7] *In re* Kings Canyon Joint Unified School District, SEC Rel. No. 33-9610 (July 8, 2014).

[8] The language cited mirrors language that the SEC used in adopting the continuing disclosure amendments to Rule 15c2-12, in which it stated:

> The requirement should provide an additional incentive for issuers and obligated persons to comply with their undertakings to provide secondary market disclosure, and will ensure that Participating Underwriters and others are able to assess the reliability of disclosure representations. SEC Rel. No. 34-34961 (Nov. 10, 1994)

- the extent to which the information or reported event was otherwise public, either on the issuer's investor information webpage or using commonly available internet search engines

- was the information otherwise available to institutional investors and rating agencies upon request, such that the information may have been taken into account in any pricing or rating of the bonds

- as an example of the immediately preceding two bullets, did any misstatement relate to an unreported failure to provide notice of one or more rating changes of monoline bond insurers or bank credit enhancers from the period 2008-2009 when the news of such rating changes was widely reported

- did the failures occur prior to the date of the initial operation of EMMA (July 1, 2009)[9]

- the length of any delay in filing a report or notice

- the reason for the failure

- the extent to which there is a significant pattern of noncompliance

- the issuer disclosed several events while failing to disclose a single similar event

- how long after the end of the fiscal year an annual report was undertaken to be filed (e.g., if investors buy municipal revenue bonds with nine-month reporting deadlines without pricing differences, a filing that is three months late after a six-month deadline is less likely to be material than one three months late after a nine-month deadline)

- were the primary failures early in the five-year reporting period and has the issuer been fully compliant with its obligations in more recent years

- whether municipal securities for comparable credits were sold disclosing comparable non-compliance and, if so, whether market acceptance or pricing was impacted

- whether subsequent to the reporting failures the issuer engaged an independent dissemination agent

- were the failures the result of a single employee who has either been replaced or properly trained subsequently to make such filings

[9] In the July 31, 2014, press release announcing the modification to the Initiative, the Enforcement Division noted that issuers and underwriters "may not be able to identify certain violations during the period of the initiative due to the limitations of the pre-EMMA NRMSIR system."

- whether the issuer has adopted continuing disclosure procedures and conducted associated training, such that past results are not indicative of future performance

The above list is not intended to be, and is not, comprehensive. It is indicative, however, of why any such analysis will be dependent upon the unique facts and circumstances in any particular instance.

Other Elements of a SEC Enforcement Action

An issuer should be counseled that, for a successful SEC enforcement action against the issuer, the SEC must establish scienter (fraudulent intent or recklessness) under Rule 10b-5 or negligence under Section 17(a)(2) or (3). Those same elements apply to an SEC enforcement action against an underwriter regarding the general antifraud provisions. However, an underwriter also must consider whether the SEC might allege against the underwriter a violation of Rule 15c2-12 without regard to any culpable conduct.[10]

Misstatement versus Omission

In the two enforcement proceedings cited above, *West Clark* and *Kings Canyon*, the relevant Official Statement contained a specific statement, found to be materially misleading, that the issuer had complied in all material respects with its previous continuing disclosure undertakings. In addition, the Initiative by its terms states that issuers who should consider self-reporting are those "[i]ssuers who may have made materially inaccurate statements in a final official statement regarding their prior compliance with their continuing disclosure obligations as described in Rule 15c2-12."

Would the analysis be any different if, with the same facts, the relevant Official Statement had made no statement as to the issuer's compliance with its previous continuing disclosure undertakings? Given the Commission's previous statements and goals, the Commission might assert that, in such case, the failure to state that the issuer had never made any required filings would be a material omission under applicable standards of the federal securities law, particularly in the context where the issuer is describing the new continuing disclosure undertaking. But the language prohibiting material omissions in Rule 10b-5 requires that the omission result in "the statements made" in the Official Statement being misleading, i.e., the omission must render some statement actually made misleading. So the unanswered question is what statements in an Official Statement are rendered misleading by total silence on the non-compliant continuing disclosure performance of the issuer when no statement is made as to such performance.

Regardless of the merit of the above analysis, an issuer and its counsel should take into consideration the public statements of SEC staff indicating their view that both the SEC's enforcement authority and the terms of the Initiative extend to cases where silence on the issuer's failure to comply with its continuing disclosure undertakings could constitute a material

[10] See *In re* City Securities Corporation and Randy G. Ruhl, SEC Rel. Nos. 33-9434 and 34-70056 (July 29, 2013), in which the SEC charged the underwriter with a violation of, among other things, Rule 15c2-12(c).

omission actionable under the securities laws. Furthermore, total silence in any Official Statement on prior failures over the previous five years may result in an allegation that the Official Statement failed to qualify as a "final official statement" under the Rule, and that therefore the underwriter violated the Rule in connection with the sale of the bonds. An issuer should take into account that this analysis may cause its underwriter to self-report with respect to the bond offering.

Distinction between Disclosure Decisions and Self Reporting Decisions

In making disclosure in Official Statements, issuers and their counsel have often disclosed past failures to make all required filings on the specified dates without concluding or admitting that such failures were material. This reflects the trending disclosure practice, ensuring that investors are informed, even in cases where the failures were almost certainly not material.

But making decisions in response to the Initiative is different. Making disclosure that may or may not be material in an Official Statement is generally without a pricing penalty and does not require a conclusion of materiality. A decision to self-report under the Initiative is significantly different and involves assuming risks inherent in accepting the potential results of Commission determinations involving both an issuer and its personnel. The fact that Official Statements for other issuers in the past have disclosed certain continuing disclosure failures is not proof that any other issuer's similar failures to make disclosure was material to investors.

There are numerous other factors that must be considered by an issuer and its counsel in determining whether to self-report, including, without limitation:

- is there a material misstatement
- is there a material omission
- has an underwriter self-reported on the same set of facts
- has the issuer disclosed any misstatements or omissions regarding continuing disclosure compliance in a recent Official Statement
- if the issuer has determined there is no material misstatement or omission, does the issuer wish to explain (pursuant to section 5 of the Questionnaire) the context of what it perceives to be certain immaterial misstatements or omissions
- is the issuer already the subject of an SEC enforcement proceeding (see *Kings Canyon*)
- is the issuer prepared to accept the undertakings mandated by any settlement, including cooperating with any subsequent investigations by the Division, disclosure of any settlement terms in final official statements for a five year period, and establishing appropriate policies, procedures, and training regarding continuing disclosure obligations

- is the issuer prepared to accept whatever publicity may be attendant to entering into a cease-and-desist settlement order with the SEC
- is the issuer official who is considering self-reporting prepared to bring that decision to the appropriate approving officials or elected body of the issuer, if necessary or appropriate, and to explain the recommendation
- is the issuer official making any such determination also the issuer official who would be named in the Questionnaire submitted to the SEC
- has the issuer reviewed and does the issuer understand the implications of SEC Form 1662[11]

Conclusion

The focus of the Initiative is material misstatements with respect to compliance by the issuer with any previous continuing disclosure undertakings. In determining whether there is a material misstatement for purposes of the Initiative, there are two distinct elements to be considered: (i) if an issuer disclosed in an Official Statement that it had complied in all material respects in the previous five years with its previous continuing disclosure undertakings, or had not fully disclosed the extent of its noncompliance, was there a misstatement, and (ii) if there was, was any such misstatement material within the meaning of the general antifraud provisions of the federal securities law. This document offers a framework to analyze each of these distinct elements of a potential securities law violation and suggests certain considerations in making any such analysis.

Separate from the analysis of whether there has been a potential material misstatement is the question of whether an issuer should self-report such misstatement pursuant to the Initiative. As indicated, any such determination should be based on the unique facts and circumstances in each instance after careful consideration by the issuer and its counsel of the many factors involved.

[11] SEC Form 1662 is entitled, "Supplemental Information for Persons Requested to Supply Information Voluntarily or Directed to Supply Information Pursuant to a Commission Subpoena." In that form, the SEC cautions that it "often makes its files available to other governmental agencies, particularly United States Attorneys and state prosecutors."