

**Post-Issuance Compliance Policy  
for  
Tax-Exempt Governmental  
Bonds**

**Section I - Introduction**

**Definitions**

"Code" means Sections 103 and 141 through 150 of the Internal Revenue Code of 1986, as amended.

"Rules" means Sections 103 and 141 through 150 of the Internal Revenue Code of 1986, as amended, and the U.S. Treasury Regulations promulgated thereunder.

"Advisors" means the Issuer's bond counsel, disclosure counsel, financial advisor, paying agent, and rebate analyst.

"Issuer" means the City of Iowa City, State of Iowa.

"Output Facility" means electric and gas generation, transmission, distribution, and related facilities, and water collection, storage, and distribution facilities.

**Purpose**

Issuers of tax-exempt governmental bonds must comply with federal tax rules pertaining to: 1) expenditure of proceeds for qualified costs and rate of expenditure, 2) investment of proceeds in compliance with arbitrage rules, 3) use of bond financed property, and 4) retention of records. As an issuer of such bonds, the City Council of the Issuer is required by the terms of Sections 103 and 141 through 150 of the Internal Revenue Code of 1986, as amended, and the U.S. Treasury Regulations promulgated thereunder, to take certain actions subsequent to the issuance of the bonds to ensure the continuing tax-exempt status of such bonds. Further, Section 6001 of the Code and Section 1.6001-1(a) of the Treasury Regulations impose record retention requirements on the Issuer with respect to its tax-exempt governmental bonds. This policy is designed to ensure that the Issuer complies with its tax compliance obligations under applicable provisions of the Rules.

**Effective Date and Term**

The effective date of this policy shall be the date of approval by the City Council, and shall remain in effect until superseded or terminated by action of the City Council. The Issuer shall comply with this policy upon issuance of bonds and as long as the bonds remain outstanding. This policy may be revised to comply with amendments to the Rules during the period the bonds are outstanding.

## **Responsible Parties**

The Director of Finance (the "Compliance Officer") shall be the party primarily responsible for ensuring that the Issuer successfully carries out its tax compliance requirements under applicable provisions of the Rules with regard to all obligations of the Issuer. The Compliance Officer shall be assisted by other staff and officials when appropriate and at the Compliance Officer's discretion. The Compliance Officer shall also be authorized to retain and consult with the Advisors during the time the bonds are outstanding for assistance in carrying out post-issuance tax compliance requirements.

The Compliance Officer shall be responsible for assigning post-issuance tax compliance responsibilities to other staff and to the Advisors. The Compliance Officer shall utilize such other professional service organizations as are necessary to ensure compliance with the post-issuance tax compliance requirements of the Issuer. The Compliance Officer shall provide training and educational resources to staff responsible for ensuring compliance with any portion of the tax compliance requirements of this policy.

## **Filings with Internal Revenue Service**

The Compliance Officer, with assistance from bond counsel, shall ensure that each issuance of bonds is properly reported with the Internal Revenue Service (IRS) as required by Section 149(e) of the Code. On the issue date of each series of bonds, the Compliance Officer shall consult with the Advisors to identify the deadline to file the requisite IRS form for such issue.

## **Reporting the Issuance of Tax-Exempt Bonds**

The original issuance of a tax-exempt bond issue with an issue price of one hundred thousand dollars (\$100,000) or greater shall be reported on Form 8038-G. The original issuance of a tax-exempt bond issue with an issue price less than one hundred thousand dollars (\$100,000) shall be reported on Form 8038-GC.

- Forms 8038-G and 8038-GC shall be filed by the Compliance Officer or bond counsel no later than the 15th day of the 2nd calendar month following the quarter in which the bonds were issued.
- The Compliance Officer shall consult with the Advisors to ensure the Form 8038-G is accurately filled out.

## **Section II – Expenditure of Bond Proceeds**

### **Expenditure Review Process**

The Compliance Officer shall review the resolution authorizing issuance for each tax-exempt obligation, and shall:

- a) obtain a computation of the yield on such issue from the City's financial advisor;
- b) create a separate Project Fund (with as many sub-funds as shall be necessary to allocate proceeds among the projects being funded by the issue) into which the proceeds of issue shall be deposited;
- c) review all requisitions, draw schedules, draw requests, invoices and bills

- requesting payment from the Project Fund;
- d) determine whether payment from the Project Fund is appropriate, and if so, make payment from the Project Fund (and appropriate sub-fund if applicable);
  - e) maintain records of the payment requests and corresponding cancelled checks showing payment;
  - f) consult with the Advisors to ensure that such expenditures are within the sixty (60) day period prior to the date in which the Issuer made a "declaration of intent" to reimburse such costs or are preliminary expenditures under the Code, in the event the Issuer seeks to utilize bond proceeds for costs that were incurred prior to the issuance of the bonds;
  - g) maintain records showing the earnings on, and investment of, the Project Fund;
  - h) ensure that investments acquired with proceeds are purchased at fair market value; and
  - i) identify bond proceeds or applicable debt service allocations that must be invested with a yield-restriction and monitor the investments of any yield-restricted funds to ensure that the yield on such investments does not exceed the yield to which such investments are restricted.

### **Rate of Expenditure**

The Compliance Officer shall ensure that the expenditure of bond proceeds will be monitored against the expenditure expectations represented in the tax compliance certificate for such bond issue to ensure that:

- Five percent (5%) of the net sale proceeds were spent or committed within six (6) months of the issue date;
- Eighty-five percent (85%) of the net sale proceeds were spent within three (3) years of the issue date; and
- The Issuer proceeded with due diligence to complete the project and fully spend the net sale proceeds.

Failure to meet the expected expenditure expectations represented in the tax compliance certificate for such bond issue shall be documented and retained by the Compliance Officer in the records for the bond issue.

## **Section III - Arbitrage**

### **Arbitrage Rules and Rebate Requirements**

The Compliance Officer shall review the tax compliance certificate for each tax-exempt obligation, and the expenditure records, and shall:

- a) monitor and ensure that proceeds of each such issue are spent within the

- temporary period set forth in such certificate;
- b) if the "small issuer" exception does not apply, monitor and ensure that the proceeds are spent in accordance with one or more of the applicable exceptions to rebate as set forth in such certificate;
  - c) not less than sixty (60) days prior to a required expenditure date confer with bond counsel if it appears expenditures will fail to meet the applicable temporary period or rebate exception expenditure requirements of the Tax-Exemption Certificate;
  - d) in the event of failure to meet a temporary period or rebate exception:
    - i. procure a timely computation of any rebate liability and, if rebate is due, file a Form 8038-T and arrange for payment of such rebate liability;
    - ii. arrange for timely computation and payment of "yield reduction payments" (as such term is defined in the Code and Treasury Regulations), if applicable;
  - e) ensure that the investment of bond proceeds is made only in permitted investments of the Issuer as outlined in Iowa Code chapters 12B and 12C, and any official policy;
  - f) consult with the Advisors to ensure that the investment of bond proceeds is performed in compliance with the arbitrage rules and rebate requirements;
  - g) consult with the Advisors to identify bond proceeds that must be yield-restricted and shall monitor the investments of any yield-restricted funds to ensure that the yield on such investments does not exceed the yield to which such investments are restricted;
  - h) contact the Rebate Analyst (and, if appropriate, bond counsel) prior to the fifth anniversary of the date of issuance of each issue of bonds of the Issuer and each fifth anniversary thereafter to arrange for calculations and reports of the rebate requirements with respect to such bonds; and
  - i) if a rebate payment is required to be paid by the Issuer, the compliance officer shall prepare or cause to be prepared the appropriate form to be filed with the IRS (Form 8038-T).

### **Rebate Reporting Requirements**

The Compliance Officer shall contact the rebate analyst prior to the 5th anniversary of the issue date on each series of bonds and each 5th anniversary thereafter to arrange for

calculations of the rebate requirements with respect to such bonds. If a rebate payment is required to be paid, the Compliance Officer shall prepare or cause to be prepared a Form 8038-T, and submit such Form 8038-T to the IRS with the required rebate payment.

If the Issuer is authorized to recover a rebate payment previously paid, the Compliance Officer shall prepare or cause to be prepared a Form 8038-R, with respect to such rebate recovery, and submit such Form 8038-R to the IRS.

## **Section IV – Bond Financed Property**

### **Use of Bond-Financed Property**

The Compliance Officer shall monitor the use of all bond-financed facilities in order to determine whether private business uses of bond-financed facilities have exceeded the limits set forth in Section 141(b) of the Code (generally 10% of bond proceeds) as a result of leases and subleases, licenses, management contracts, research contracts, naming rights agreements or other arrangements that provide special legal entitlements to nongovernmental persons.

To this end, the Compliance Officer shall:

- a) maintain appropriate records and a list of all bond financed assets. Such records shall include the actual amount of proceeds (including investment earnings) spent on each of the bond financed assets;
- b) with respect to each bond financed asset, the Compliance Officer will monitor and confer with bond counsel with respect to all proposed:
  - i. management contracts,
  - ii. service agreements,
  - iii. research contracts,
  - iv. naming rights contracts,
  - v. leases or sub-leases,
  - vi. joint venture, limited liability or partnership arrangements,
  - vii. sale of property;
  - viii. any other change in use of such asset; or
  - ix. output contracts (including retail and wholesale requirements contracts);
- c) maintain a copy of the proposed agreement, contract, lease or arrangement, together with the response by bond counsel with respect to the proposal for at least three (3) years after retirement of all tax-exempt obligations issued to fund all or any portion of bond financed assets, or obligations issued to refund those obligations;
- d) provide training and educational resources to any staff member that has the primary responsibility for the operation, maintenance, or inspection of bond-financed facilities with regard to the limitations on the private business use and on

- the private security or payments with respect to bond-financed facilities;
- e) ensure that no item of bond-financed property will be sold or transferred to a nonexempt party without advance arrangement of a "remedial action" under the applicable Treasury Regulations and the Compliance Officer shall consult with bond counsel prior to the sale or transfer of any bond-financed property; and
  - f) In the event of an action with respect to a bond financed asset, which may cause the private business tests or private loan financing test to be met, the Compliance Officer shall contact bond counsel for advice and ensure timely remedial action under IRS Regulation Sections 1.141-12.

### **Special Rules for Output Facilities**

#### **Financing an Output Facility**

The Compliance Officer shall make the following determinations with respect to Output Facilities:

- a) whether the Issuer will use all or a portion of the proceeds of the bond issue to finance an Output Facility;
- b) whether any portion of the proceeds of the bond issue will be used to acquire non- governmental output property (other than a facility for the furnishing of water) as described in Code Section 141(d)(2);
  - i. if a portion of the proceeds will be used to acquire non-governmental output property, determine whether that portion of the proceeds exceeds the lesser of five (5) percent of such proceeds, or \$5,000,000;
  - ii. if the portion of the proceeds used to acquire non-governmental output property exceeds the lesser of five (5) percent of such proceeds or \$5,000,000, the Compliance Officer shall contact bond counsel for advice.

#### **Output Contracts- Purchase of Available Output by Non-governmental Persons**

The purchase pursuant to a contract by a nongovernmental person of available output of an Output Facility financed with proceeds of an issue is taken into account under the private business tests if the purchase has the effect of transferring the benefits of owning the facility and the burdens of paying the debt services on bonds used (directly or indirectly) to finance the facility. To this end, the Compliance Officer shall monitor arrangements for the sale of output and confer with Advisors in order to determine whether such output contracts cause an issue to meet the private business tests, or meet exceptions provided in Section 1.141-7 of the Rules.

The Compliance Officer shall examine and monitor all proposed sales of available output, including sales at wholesale or retail for compliance with Section 1.141-7 of the Rules and confer with Advisors, as necessary.

## **Section V – Record Retention**

### **Record Retention**

Management and retention of records related to bond issues shall be supervised by the Compliance Officer. Records and documents pertaining to cancellation, transfer, redemption or replacement of Issuer bonds shall be preserved by the Issuer or its agent for a period of not less than eleven (11) years, as set forth in Iowa Code Section 76.10. Other records shall be retained during the period in which the bonds remain outstanding (plus any refunding bonds) plus three (3) years. Records may be in the form of documents and electronic copies of documents, appropriately indexed to specific bond issues and compliance functions.

The Compliance Officer shall collect and retain the following records with respect to each issue of bonds of the Issuer and with respect to the facilities financed with the proceeds of such bonds:

- audited financial statements of the Issuer;
- appraisals, demand surveys, or feasibility studies, if any, with respect to the facilities to be financed with the proceeds of such bonds;
- publications, brochures, and newspaper articles, if any, related to the bond financing;
- trustee or paying agent statements;
- records of all investments and the gains (or losses) from such investments;
- paying agent or trustee statements regarding investments and investment earnings;
- reimbursement resolutions, if any, and expenditures reimbursed with the proceeds of such bonds;
- allocations of proceeds to expenditures (including costs of issuance) and the dates and amounts of such expenditures (including any requisitions, expenditure/draw schedules, expenditure/draw requests, invoices, bills, and cancelled checks with respect to such expenditures;
- contracts entered into for the construction, renovation, or purchase of bond-financed facilities;
- an asset list or schedule of all bond financed depreciable property and any depreciation schedules with respect to such assets or property;
- records of the purchases and sales of bond-financed assets;
- private business uses of bond-financed facilities that arise subsequent to the date of issue through leases and subleases, licenses, management contracts, research contracts, naming rights agreements, or other arrangements that provide special legal entitlements to nongovernmental persons and copies of any such agreements or instruments;
- arbitrage rebate reports and records of rebate and yield reduction payments, if any;
- resolutions or other actions, if any, taken by the City Council subsequent to the date of issue with respect to such bonds;
- formal elections authorized by the Code or Treasury Regulations that are taken with respect to such bonds;
- relevant correspondence relating to such bonds;
- documents related to guaranteed investment contracts or certificates of deposit, credit

enhancement transactions, and financial derivatives entered into subsequent to the date of issue;

- copies of any and all forms filed with the IRS for each series of bonds including, as applicable, Form 8038-G or Form 8038-GC; and
- the official transcript prepared by bond counsel with respect to each series of bonds of the Issuer.

### **Advance Refundings**

The Compliance Officer shall be responsible for the following current, post issuance and record retention procedures with respect to advance refunding bonds:

- a) Identify and select bonds to be advance refunded with advice from internal financial personnel, the City's financial advisor and bond counsel.
- b) The Compliance Officer shall identify, with advice from the City's financial advisor and bond counsel, any possible federal tax compliance issues prior to structuring any advance refunding.
- c) The Compliance Officer shall review the structure with the input of the City's financial advisor and bond counsel, of advance refunding issues prior to the issuance to ensure (i) that the proposed refunding is permitted pursuant to applicable federal tax requirements if there has been a prior refunding of the original bond issue; (ii) that the proposed issuance complies with federal income tax requirements which might impose restrictions on the redemption date of the refunded bonds; (iii) that the proposed issuance complies with federal income tax requirements which allow for the proceeds and replacement proceeds of an issue to be invested temporarily in higher yielding investments without causing the advance refunding bonds to become "arbitrage bonds"; and (iv) that the proposed issuance will not result in the issuer's exploitation of the difference between tax exempt and taxable interest rates to obtain a financial advantage nor overburden the tax exempt market in a way that might be considered an abusive transaction for federal tax purposes.
- d) The Compliance Officer shall collect and review data related to arbitrage yield restriction and rebate requirements for advance refunding bonds. To ensure such compliance, the Compliance Officer shall engage the City's rebate consultant to prepare a verification report in connection with the advance refunding issuance. Said report shall ensure said requirements are satisfied.
- e) The Compliance Officer shall, whenever possible, purchase SLGS to size each advance refunding escrow. The City's financial advisor and rebate consultant shall be included in the process of subscribing SLGS. To the extent SLGS are not available for purchase, the Compliance Officer shall, in consultation with bond counsel, comply with IRS regulations.
- f) To the extent the issuer elects to purchase a guaranteed investment contract, the Compliance Officer shall ensure, after input from bond counsel, compliance with any bidding requirements set forth by the IRS regulations.
- g) In determining the issue price for any advance refunding issuance, the

Compliance Officer shall rely on the issue price certification by the purchasing underwriter at closing.

- h) After the issuance of an advance refunding issue, the Compliance Officer shall ensure timely identification of violations of any federal tax requirements and engage bond counsel in attempt to remediate same in accordance with IRS regulations.

## **Section VI - Other**

### **Continuing Disclosure**

The City shall maintain a separate Bond Disclosure Policy to assure 1) compliance with each continuing disclosure certificate and annually, per continuing disclosure agreements, file audited annual financial statements and other information required by each continuing disclosure agreement, and 2) compliance with material event disclosure requirements.

### **Identification of Violations and Corrections**

If, during the period the bonds remain outstanding, it is determined that a violation of federal tax requirements may have occurred, the Compliance Officer shall immediately consult with the Advisors to ensure that corrective or remedial action is taken. In consultation with bond counsel, the Compliance Officer shall become acquainted with the remedial actions under Treasury Regulations, Section 1.141-12, to be utilized in the event that private business use of bond-financed facilities exceeds the limits under Section 141(b)(1) of the Code. In consultation with bond counsel, the Compliance Officer shall become acquainted with the Tax Exempt Bonds Voluntary Closing Agreement Program, described in Notice 2008-31, 2008-11 I.R.B. 592, to be utilized as a means for an issuer to correct any post-issuance infractions of the Rules with respect to its outstanding bonds.

### **Other Post-Issuance Actions**

If, in consultation with the Advisors, the Compliance Officer determines that any additional action not identified in this policy must be taken by the Compliance Officer to ensure the continuing tax-exempt status or "qualified" status of any issue of the Issuer's bonds, the Compliance Officer shall take such action if the Compliance Officer has the authority to do so. If, after consultation with the Advisors, the Compliance Officer determines that this policy shall be amended or supplemented to ensure the continuing tax-exempt status or "qualified" status of any issue of the Issuer's bonds, the Compliance Officer shall follow the appropriate Issuer policy or procedure that this document be so amended or supplemented.