

**City Council Agenda Items
 and
 Contracts, Leases or Agreements**

12/18/2012

City Council Meeting Date
 Agenda Items Only

Paul A Becker
 Submitted By

Finance and Internal Services
 Division

Finance and Internal Services
 Department

Action Required:

The City's Bond Counsel has recommended that Fayetteville formally adopt a set of Post-Issuance Compliance Policies and Procedures relating to bond issues. It is requested the City Council adopt the attached policies and procedures for the reasons specified by Kutak Rock LLP in the attached correspondence.

<u>N/A</u> Cost of this request	<u>\$ -</u> Category / Project Budget	<u></u> Program Category / Project Name
<u></u> Account Number	<u>\$ -</u> Funds Used to Date	<u></u> Program / Project Category Name
<u></u> Project Number	<u>\$ -</u> Remaining Balance	<u></u> Fund Name

Budgeted Item

Budget Adjustment Attached

Paul A. Becker 11-30-2012 Previous Ordinance or Resolution #
 Department Director Date

[Signature] Original Contract Date:
 City Attorney 12-3-2012 Original Contract Number:
 Date

Paul A. Becker 12-4-2012
 Finance and Internal Services Director Date

Received in City Clerk's Office
 ENTERED
 Ses 12/3/12

[Signature] 12-5-12
 Chief of Staff Date

Received in Mayor's Office
 ENTERED
 12/3/12

[Signature] 12/6/12
 Mayor Date

Comments:

CITY COUNCIL AGENDA MEMO

To: Mayor Lioneld Jordan, and Members of the City Council

Thru: Don Marr, Chief of Staff

From: Paul A Becker, Finance and Internal Services Director

Date: 11/30/2012

Subject: Adoption of Post-Issuance Compliance Policies and Procedures

PROPOSAL: Our Bond Counsel has recommended that the City Council adopt Post-Issuance Compliance Policies and Procedures relating to previously issued bonds. They have, in fact, sent recommended policies and procedures to us for consideration. My accounting staff and I have carefully reviewed those recommendations and feel that it would be appropriate to adopt them. Essentially we are performing the required tasks, but this would formalize that practice.

A key element in the policy would be that I would be named as the responsible officer to insure the policy and procedures were followed. I feel that is currently my responsibility anyway. The adoption of formal policies and procedures will help demonstrate a positive internal control environment over issued bonds in the event of an IRS bond audit.

RECOMMENDATION: It is recommended that the Council adopt the attached Post-Issuance Compliance Policies and Procedures

BUDGET IMPACT: None

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GORDON M. WILBOURN
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(501) 975-3101

September 10, 2012

City of Fayetteville, Arkansas
113 West Mountain
Fayetteville, AR 72701

Re: Adoption of Post-Issuance Compliance Policies and Procedures

Ladies and Gentlemen:

The Internal Revenue Service has recently been focusing on the need for issuers of tax-exempt and tax credit obligations to adopt written policies and procedures dealing with post-issuance diligence and compliance. The need for written policies and procedures applies to issuers of all types, from the issuers of the smallest or most straightforward of governmental deals, to large State issuers, to issuers of conduit loan programs and sophisticated structured financings.

As stated in its most recent internet publication on post-issuance compliance for the tax-exempt bond community (<http://www.irs.gov/taxexemptbond/article/0,,id=243503,00.html>), the IRS indicates that these written procedures must

“... go beyond reliance on tax certificates included in bond documents provided at closing. Sole reliance on the closing bond documents may result in procedures insufficiently detailed or not incorporated into an issuer’s operations. Written procedures should contain certain key characteristics, including making provision for:

- Due diligence review at regular intervals;
- Identifying the official or employee responsible for review;
- Training of the responsible official or employee;
- Retention of adequate records to substantiate compliance (e.g., records relating to expenditure of proceeds);

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- Procedures reasonably expected to timely identify noncompliance; and
- Procedures ensuring that the issuer will take steps to timely correct noncompliance.

The goal of establishing and following written procedures is to identify and resolve noncompliance, on a timely basis, to preserve the preferential status of tax-advantaged bonds. Generally, an issuer that has established and followed comprehensive written procedures to promote post-issuance compliance is less likely than an issuer that does not have such procedures, to violate the federal tax requirements related to its bonds.”

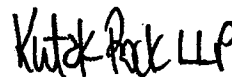
The IRS has further stated that any issuer who identifies a violation in accordance with the implementation of its written post-issuance compliance procedures can generally expect to receive more favorable treatment in resolving its tax violation under IRS’s voluntary compliance program (VCAP) than if the issuer has not implemented such procedures.

Kutak Rock is of the view that this last statement, more than any other set forth on the IRS’s website, together with revisions to Forms 8038 and 8038-G in 2011 that specifically require an issuer to report whether it has adopted post-issuance compliance procedures, represent a significant change in tone in the IRS’s approach to post-issuance compliance and can be read to be imposing an affirmative duty on issuers and conduit borrowers to adopt such procedures as soon as possible.

To explain further the concept of and requirement for written policies and procedures concerning post-issuance compliance for federal tax purposes, we have attached a memorandum entitled “A Bond Issuer’s and Conduit Borrower’s Procedures for Post-Issuance Compliance” as Exhibit I that answers some frequently asked questions.

Kutak Rock recommends that all issuers of governmental bonds adopt and implement written post-issuance compliance policies and procedures as soon as practicable and, if at all possible, prior to issuance of your next issue of tax-advantaged bonds. To facilitate adoption and implementation, also attached are forms of a resolution and procedures documentation that may be used or tailored by issuers to establish and implement written policies and procedures.

Yours truly,



Kutak Rock LLP

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Kutak Rock LLP ("Kutak Rock") is delivering the form of proposed post-issuance compliance resolution and written policies and procedures attached to this letter as a service to its issuer and conduit borrower clients or pursuant to a separate written engagement to deliver these materials. Unless otherwise specified in writing transmitted by Kutak Rock, any responsibilities with respect to these materials terminates on the date of receipt of these procedures by the recipient. Unless separately engaged in writing to do so, delivery of these materials does not constitute an engagement of Kutak Rock with respect to any of the recipient's post-issuance compliance duties, and the delivery of these materials in and of itself has not involved and does not involve (i) any affirmation, confirmation, adjustment, or other actions taken with respect to any legal opinions delivered with respect to any obligations of the recipient by Kutak Rock, (ii) acceptance by Kutak Rock of any obligation to monitor the recipient's compliance with post-issuance compliance duties, or (iii) any obligation of a continuing nature by Kutak Rock.

RESOLUTION NO. _____

A RESOLUTION TO AUTHORIZE AND ADOPT POST-ISSUANCE TAX COMPLIANCE PROCEDURES TO BE FOLLOWED IN CONNECTION WITH EACH ISSUE OF TAX-EXEMPT BONDS BY THE CITY

WHEREAS, the City of Fayetteville has previously issued and will in the future issue series of bonds (the "Tax-Exempt Bonds") the interest on which is excluded from gross income of the owners thereof pursuant to Section 103 of the Internal Revenue Code of 1986, as amended (the "Code"), and the regulations promulgated thereunder (the "Regulations"); and

WHEREAS, in connection with the issuance of each series of Tax-Exempt Bonds, the City has executed or will execute covenants and certificates wherein the City represents that it expects and intends to be able to comply with and will, to the extent permitted by law, comply with the provisions and procedures set forth in such covenants and certificates and will do and perform all acts and things necessary or desirable in order to assure that the interest on the series of Tax-Exempt Bonds to which such covenants and certificates relate will be excluded from gross income of the owners thereof for federal income tax purposes; and

WHEREAS, upon the advice of the City's Bond Counsel Gordon Wilbourn of Kutak Rock, the City has determined that it is advantageous and in the best interests of the City and the owners of the Tax-Exempt Bonds to adopt certain post-issuance compliance procedures substantially in the form attached hereto as Exhibit A and made a part hereof (the "Post-Issuance Tax Compliance Procedures");

NOW, THEREFORE BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF FAYETTEVILLE, ARKANSAS:

Section 1: That the City Council of the City of Fayetteville, Arkansas hereby approves and adopts the Post-Issuance Tax Compliance Procedures in the form attached hereto as Exhibit A, and said Post-Issuance Tax Compliance Procedures shall be applicable to all Tax-Exempt Bonds now or hereafter issued by the City.

Section 2: That the City Council hereby authorizes and directs the Compliance Officer listed in the Post-Issuance Tax Compliance Procedures (City Finance Director) to take such actions as such Compliance Officer, after appropriate consultation with Bond Counsel to the City, deems necessary, appropriate or desirable to effect the implementation of the Post-Issuance Tax Compliance Procedures.

PASSED and APPROVED this 15th day of January, 2013.

APPROVED:

ATTEST:

By: _____
LIONELD JORDAN, Mayor

By: _____
SONDRA E. SMITH, City Clerk/Treasurer

CITY OF FAYETTEVILLE ARKANSAS POST-ISSUANCE TAX COMPLIANCE PROCEDURES

The purpose of these Post-Issuance Tax Compliance Procedures (the "Procedures") is to establish procedures in connection with tax-exempt bonds issued by the City of Fayetteville, Arkansas (the "City") so as to ensure that all applicable post-issuance requirements of federal income tax law needed to preserve the tax-exempt status of such bonds are met.

General

In connection with the issuance of any issue of tax-exempt bonds by the City, the Mayor will execute a tax regulatory agreement or tax compliance certificate (either, a "Tax Certificate") that describes the requirements and provisions of the Internal Revenue Code that must be followed in order to maintain the tax exempt status of interest on such bonds. In addition, the Tax Certificate will contain the reasonable expectations of the City at the time of issuance of such bonds with respect to the use of the gross proceeds of such bonds and the assets to be financed or refinanced with their proceeds. These Procedures supplement and support the covenants and representations made by the City in each such Tax Certificate with respect to the corresponding issue of tax-exempt bonds. In order to comply with the covenants and representations set forth in the bond documents and in the Tax Certificate, the City, through its Finance and Internal Services Department, will track and monitor the actual use of the proceeds of the corresponding issue of bonds, the investment and expenditure of the bond proceeds and the assets financed or refinanced with the proceeds of such bonds over the life of such bonds. In the event the City acts as a conduit issuer to issue tax-exempt bonds for the benefit of a third-party borrower or other third-party beneficiary (each a "Beneficiary"), certain of the tasks set forth herein may be performed by the Beneficiary pursuant to a written agreement with the City.

Designation of Responsible Person

Mr. Paul Becker, Senior Director of the City's Finance and Internal Services Department, or his successor (the "Compliance Officer"), shall maintain an inventory of bonds and assets financed which contains the pertinent data to satisfy the City's monitoring responsibilities with respect to its tax-exempt bonds. Other individuals may be responsible for implementing certain portions of these Procedures under the auspices of the Compliance Officer as described herein. Any transfer, sale or other disposition of bond-financed assets must be reviewed and approved by the Compliance Officer.

Post-Issuance Compliance Requirements

External Advisors/Documentation

The Compliance Officer shall consult with bond counsel and other legal counsel and advisors, as needed, throughout the bond issuance process to identify requirements and to establish procedures necessary or appropriate so that the bonds will continue to qualify for tax-exempt status. Those requirements and procedures shall be documented in the Tax Certificate and/or other documents finalized at or before issuance of the bonds. Those requirements and procedures shall include future compliance with applicable arbitrage rebate

requirements and all other applicable post-issuance requirements of federal tax law throughout (and in some cases beyond) the term of the bonds.

The Compliance Officer also shall consult with bond counsel and other legal counsel and advisors, as needed, following issuance of the bonds to ensure that all applicable post-issuance requirements in fact are met. This shall include, without limitation, consultation in connection with future contracts with respect to the use of bond-financed or refinanced assets.

The City shall engage an expert advisor (a "Rebate Service Provider") to assist in the calculation of arbitrage rebate payable in respect of the investment of bond proceeds, unless the Tax Certificate documents that arbitrage rebate will not be applicable to an issue of bonds.

Unless otherwise provided by the applicable Tax Certificate providing for the issuance of a series of bonds, unexpended bond proceeds shall be held in a segregated account and the investment of bond proceeds shall be managed by the City. The City shall prepare regular, periodic statements regarding the investments and transactions involving bond proceeds.

Arbitrage Rebate and Yield

Unless the Tax Certificate documents that arbitrage rebate will not be applicable to an issue of tax-exempt bonds, the Compliance Officer or his or her designee shall be responsible for:

- engaging the services of the Rebate Service Provider and, prior to each rebate calculation date, causing the trustee or other account holder to deliver periodic statements concerning the investment of bond proceeds to the Rebate Service Provider;
- providing to the Rebate Service Provider additional documents and information reasonably requested by the Rebate Service Provider;
- monitoring efforts of the Rebate Service Provider;
- assuring payment of required rebate amounts, if any, no later than 60 days after each 5-year anniversary of the issue date of the bonds, and no later than 60 days after the last bond of each issue is redeemed;
- during the construction period of each capital project financed in whole or in part by bonds, monitoring the investment and expenditure of bond proceeds and consulting with the Rebate Service Provider to determine compliance with any applicable exceptions from the arbitrage rebate requirements during each 6-month spending period up to 6 months, 18 months or 24 months, as applicable, following the issue date of the bonds; and
- retaining copies of all arbitrage reports and account statements as described below under "Record Keeping Requirement."

The City, in the Tax Certificate and/or other documents finalized at or before the issuance of each issue of tax-exempt bonds, has agreed or will agree to undertake the tasks listed above

(unless the Tax Certificate documents that arbitrage rebate will not be applicable to an issue of bonds).

Use of Bond Proceeds and Bond-Financed or Refinanced Assets:

The Compliance Officer or his or her designee shall be responsible for:

- monitoring the use of bond proceeds and the use of bond-financed or refinanced assets (*e.g.*, facilities, furnishings or equipment) throughout the term of the bonds to ensure compliance with covenants and restrictions set forth in the Tax Certificate;
- maintaining an inventory of bonds and records identifying the assets or portion of assets that are financed or refinanced with proceeds of the bonds, including a final allocation of bond proceeds as described below under “Record Keeping Requirement;”
- consulting with bond counsel and other legal counsel and advisers as necessary in the review of any contracts or arrangements involving use of bond-financed or refinanced assets to ensure compliance with all covenants and restrictions set forth in the Tax Certificate;
- maintaining records for any contracts or arrangements involving the use of bond-financed or refinanced assets as described below under “Record Keeping Requirement;”
- conferring at least annually with personnel responsible for bond-financed or refinanced assets to identify and discuss any existing or planned use of bond-financed or refinanced assets, to ensure that those uses are consistent with all covenants and restrictions set forth in the Tax Certificate; and
- to the extent that the City discovers that any applicable tax restrictions regarding use of bond proceeds and bond-financed or refinanced assets will or may be violated, consulting promptly with bond counsel and other legal counsel and advisers to determine a course of action to remediate all nonqualified bonds, if such counsel advises that a remedial action is necessary.

The City, in the Tax Certificate and/or other documents finalized at or before the issuance of each series of tax-exempt bonds, has agreed or will agree to undertake the tasks listed above.

All relevant records and contracts shall be maintained as described below.

Record Keeping Requirement

The Compliance Officer or his or her designee shall be responsible for maintaining the following documents for the term of each issue of tax-exempt bonds (including refunding bonds, if any) plus at least three years:

- a copy of the bond closing transcript(s) and other relevant documentation delivered to the City at or in connection with closing of the issue of bonds, including any elections made by the City in connection therewith;
- a copy of all material documents relating to capital expenditures financed or refinanced by bond proceeds, including (without limitation) construction contracts, purchase orders, invoices, and

payment records, draw requests for bond proceeds and evidence as to the amount and date for each draw down of bond proceeds, as well as documents relating to costs paid or reimbursed with bond proceeds and records identifying the assets or portion of assets that are financed or refinanced with bond proceeds, including a final allocation of bond proceeds (although the responsibilities of the City to perform the tasks set forth above may be satisfied by obtaining the written agreement of a Beneficiary to perform such tasks);

- once a project has been completed and placed in service, maintain copies of all prospective contracts and arrangements, if any, involving the use of bond-financed or refinanced assets (although the responsibilities of the City to perform the tasks set forth above may be satisfied by obtaining the written agreement of a Beneficiary to perform such tasks);
- copies of all statements and reports, including arbitrage reports, prepared with respect to City bonds; and
- a copy of all records of investments, arbitrage reports and underlying documents, including statements in connection with any investment agreements, and copies of all bidding documents, if any.

Conduit Bond Issue Compliance Requirements

Any Beneficiary of an issue of tax-exempt bonds by the City must complete the Written Procedures for Ongoing Compliance for a Beneficiary/Borrower in substantially the form attached to these Procedures as Exhibit A. Such Written Procedures must be included in the transcript of closing documents for said tax-exempt bonds.

EXHIBIT A

[This form to be completed by the Borrower/Beneficiary and bond counsel prior to closing and included in the transcript of closing documents for the Bonds.]

Written Procedures for Ongoing Compliance for a Borrower/Beneficiary Of Bonds issued by the City of Fayetteville, Arkansas

The following procedures apply to the [Name of Bond Issue] (the “Bonds”) issued by the City of Fayetteville, Arkansas (the “City”). These procedures are hereby approved and adopted by the [Title of Authorized Official] of the [Name of the Borrower] (the “Borrower”) and will not be amended or rescinded by the Borrower after the issuance of the Bonds without prior written notice to the Mayor and the Senior Director of the City’s Finance and Internal Services Department.

These procedures are intended to supplement the procedures evidenced in writing by the [Name of Federal Tax Agreement] (the “Tax Agreement”), IRS Form 8038 filed in connection with the Bonds, and the instructions to IRS Form 8038.

A. Responsible Person. The Borrower has assigned to [insert name], who is currently the [insert position] of the Borrower (the “Responsible Person”), the responsibility for ensuring compliance with the requirements of the Tax Agreement and the other covenants of the Borrower in the bond documents, including the dissemination to the City of the Borrower’s annual financial information and copies of any continuing disclosure filings the Borrower makes. This responsibility is included in the job description for [insert position] and the Responsible Person has or will review these procedures, the Tax Agreement, Form 8038, and the instructions for Form 8038, and be trained as follows:

[Training procedures to be filled in.]

B. Succession Planning. The Borrower has established the following procedures to ensure that, when [insert name] leaves the position of [insert position], the responsibility for bond covenant compliance will be explained in detail to his/her successor, his/her successor will be provided compliance training in the same manner as the original Responsible Person, and that notice of any succession will be given in writing to the Mayor and the Senior Director of the City’s Finance and Internal Services Department:

[Succession procedures to be filled in.]

C. Procedures for the Timely Expenditure of Bond Proceeds. The Borrower understands that it must spend at least 85% of the net sale proceeds of the Bonds to carry out the projects financed with the proceeds of the Bonds within three years from the date of issuance of the Bonds. The Borrower will treat as “sale proceeds” any amounts actually or constructively received by the Borrower from the sale of the Bonds, including amounts used to pay

underwriter's or purchaser's discount or compensation and accrued interest other than pre-issuance accrued interest. "Net sale proceeds" means the sale proceeds, less any amount deposited into a reasonably required reserve or replacement fund. The Borrower has established the following procedures for tracking and reporting to the Responsible Person the expenditure of net sale proceeds:

[Expenditure monitoring procedures to be filled in.]

D. Procedures for the Assuring Compliance with Arbitrage Yield Restriction and Rebate Requirements. The Responsible Person will create a system to ensure that, not less than six months prior to each five year anniversary of the closing date, the Borrower will retain an arbitrage rebate consultant to prepare a report determining the yield of the Bonds under the Internal Revenue Code of 1986, as amended (the "Code"), and whether there is any amount owed to the IRS under Section 148 of the Code. The Responsible Person will submit to the Bond trustee and the Mayor and the Senior Director of the City's Finance and Internal Services Department the completed arbitrage rebate report no later than 30 days prior to each five year anniversary of the closing date.

E. Procedures to comply with Remediation Requirements. The Borrower agrees that the Responsible Person will establish a system for tracking and monitoring the use of the facilities financed with the proceeds of the Bonds to ensure that the use of those facilities will not violate the private business tests or the private loan financing test under Section 141 of the Code. If, after the issuance of the Bonds, the use of the facilities financed with the proceeds of the Bonds changes so that the private business tests or the private loan financing test would be met, or if another violation of these procedures occurs which requires correction, the Borrower will notify the Mayor and the Senior Director of the City's Finance and Internal Services Department and, in connection with consulting bond counsel, undertake a closing agreement through the Tax-Exempt Bonds Voluntary Closing Agreement Program or take one of the actions permitted by the Code and associated regulations.

F. Ongoing Procedures. The Responsible Person will review these procedures, the Tax Agreement, the Form 8038, the instructions for Form 8038, and the status and use of the Bond financed facilities on at least an annual basis and at the following intervals: (i) six months prior to each five-year anniversary of the issue date of the Bonds; (ii) within 30 days of the date the last Bond is retired, defeased or refunded; (iii) when any rebate payment is made; (iv) when a facility financed with proceeds of the Bonds is placed in service; (v) if the Borrower determines that a facility planned to be financed with proceeds of the Bonds will not be completed; and (vi) if any of the representations, statements, circumstances or expectations of the Borrower that are set forth in the Tax Agreement are no longer true, have changed, or have not come to pass as described in the Tax Agreement. This review will be made for the purposes of identifying any possible violation of federal tax requirements related to the Bonds, and to ensure the timely correction of those violations pursuant to the remedial action provisions outlined above or through the Tax-Exempt Bonds Voluntary Closing Agreement Program. If any possible violation is identified, the Responsible Person will notify the Mayor, the Senior Director of the City's Finance and Internal Services Department and the City Attorney so that any existing or expected violation can be corrected.

G. Recordkeeping. The Responsible Person will develop and implement a system for maintaining records relating to the procedures outlined above. Such records shall be kept and maintained for the life of the Bonds, and any bonds that refund the Bonds, plus four years. These records may be maintained on paper, by electronic media, or by any combination thereof.

H. Compliance Meeting. The Borrower agrees to attend a post-closing meeting between the authorized official executing these procedures, the Responsible Person, the Mayor and the Senior Director of the City's Finance and Internal Services Department, and bond counsel. At such meeting, the Borrower and the City will review and discuss these procedures and the Borrower's responsibility for maintaining the status of the Bonds as tax-exempt bonds.

Adopted [insert closing date].

[Authorized Official]

[Responsible Party]

EXHIBIT I
A Bond Issuer's and Conduit Borrower's Procedures
for Post-Issuance Compliance

Some Frequently Asked Questions

Issuers and conduit borrowers of tax-exempt bonds have a responsibility to preserve the tax status of the obligations which they have sold to investors. Under the federal tax law, certain aspects of that responsibility continue for as long as the bonds remain outstanding. Recently, issues involving post-issuance compliance have been the subject of IRS and industry attention. Below are some frequently asked questions regarding post-issuance compliance procedures.

What is post-issuance compliance? Post-issuance compliance refers to the actions which an issuer or conduit borrower may need to take in order to preserve a bond's tax-exempt status. In general, post-issuance compliance for bonds which are tax-exempt under Section 103 of the Internal Revenue Code of 1986, as amended (the "Code"), can be broken down into the following major categories:

1. Monitoring. This consists of controlling the investment and expenditure of bond proceeds and keeping informed as to the use of the bond-financed property.
2. Recordkeeping. In order to defend a challenge to a bond's tax-exempt status by the IRS, it is necessary that the issuer and conduit borrower preserve the appropriate records. These records include documentary evidence with respect to investments, expenditures, arbitrage compliance and use of the bond-financed property.
3. Post-issuance changes. Not infrequently, and either inadvertently or intentionally, bond financed property may be used for a purpose which differs from its initial or intended use. Changes in use raise post-issuance compliance questions and issuers must be prepared to deal with the implications of such a change. The bond documents may also be amended post-issuance in ways which can call into question the continuing tax-exempt status of the bonds.
4. Remediation. In the event an issuer or conduit borrower determines that there is a question as to tax law compliance, there are steps that should be taken to mitigate or eliminate potential taxability of its bonds.

Why do issuers and conduit borrowers need written post-issuance compliance procedures? Issuers and conduit borrowers each covenant in the bond documents to take certain actions, post-issuance, to preserve the tax-advantaged status of each bond issue. As such, this is an enforceable contract with the bondholders. In addition, the Internal Revenue Service (the "IRS") has recently revised the tax form which must be filed with each new bond issuance to require issuers to report as to whether the issuer has adopted certain written post-issuance compliance procedures. Representatives of the IRS have stated publicly and in the Internal Revenue Manual that whether an issuer or conduit borrower has adopted written post-issuance compliance procedures will be given consideration in the resolution of a bond tax controversy, whether as a result of an examination or through the IRS voluntary compliance program (known

as “VCAP”.) Finally, investors may take note of whether an issuer or conduit borrower is diligent in its compliance responsibility, particularly if it has an audit history, in making their investment decisions.

Who should be responsible for post-issuance compliance? The IRS has made it clear that, in their view, there should be designated officers or employees of the issuer who are clearly identified as being responsible. In turn, by operation of the conduit loan agreement and tax closing documentation, conduit bond issuers can be expected to designate officers and employees of a conduit borrower as being responsible. Much depends on the structure of the issuer, the conduit borrower and the type of bond issue. It may require more than one individual to comply (e.g., with respect to investments, someone who handles the issuer’s or conduit borrower’s finances; with respect to private business use, a person who handles operations such as the manager of a rental housing project; with respect to arbitrage rebate, the issuer may retain an outside expert to provide assistance), however, the IRS position is that there be a “buck stops here” individual who has oversight for continuing compliance.

What is the role of bond counsel in post-issuance compliance? Many bond counsel may have a longstanding history with an issuer, having provided advice for many years. However, the typical engagement of bond counsel is transactional and is completed when each separate bond issue is sold and delivered. Issuers should consult with their bond counsel when presented with post-issuance questions (we encourage it very strongly with our clients), but the ultimate responsibility rests with the issuer. Please note that there may be infrequent circumstances where the ethical rules which govern the practice of law preclude bond counsel from advising the issuer in certain post-compliance matters.

Is the issuer more likely to get audited if it reports that it does not have written post-issuance compliance procedures? The IRS does not publish the criteria they use for selecting audit candidates, but the speculation in the bond community is that failure to have such procedures is a factor that the IRS considers.

What form should the written procedures take? Is there a standard format? The IRS has provided no formal guidance regarding the types of procedures they are expecting of issuers. Many of the written procedures may be found in the transcript of proceedings prepared by bond counsel when bonds are issued. However, the IRS has indicated that sole reliance on the bond transcript may result in procedures that are insufficiently detailed or not incorporated into an issuer’s operations. Additional procedures may be provided by the bond trustee, financial advisors, rebate analysts, accountants and bond counsel. Some of it is probably “one size fits all,” but, depending on the particular transaction, is likely to have a component that is specifically tailored for a single issue or project.

What if an issuer fails to follow its own written procedures? The written procedures are intended to be internal to the issuer. Unlike the bonds themselves, which are a contract with the bondholders, the procedures are merely advisory and not legally binding. They should not be considered as creating additional potential liability for an issuer. Rather, they may be thought of as a recommended “best practice.” It is also likely that the procedures themselves may be modified from time to time while the bonds are outstanding, as the law evolves, the bond-financed project matures, or parties involved alter their practices.

EXHIBIT A

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These procedures are intended to supplement the procedures evidenced in writing by the [Name of Federal Tax Agreement] (the "Tax Agreement"), IRS Form 8038 filed in connection with the Bonds, and the instructions to IRS Form 8038.

A. Responsible Person. The Borrower has assigned to [insert name], who is currently the [insert position] of the Borrower (the "Responsible Person"), the responsibility for ensuring compliance with the requirements of the Tax Agreement and the other covenants of the Borrower in the bond documents, including the dissemination to the City of the Borrower's annual financial information and copies of any continuing disclosure filings the Borrower makes. This responsibility is included in the job description for [insert position] and the Responsible Person has or will review these procedures, the Tax Agreement, Form 8038, and the instructions for Form 8038, and be trained as follows:

[Training procedures to be filled in.]

B. Succession Planning. The Borrower has established the following procedures to ensure that, when [insert name] leaves the position of [insert position], the responsibility for bond covenant compliance will be explained in detail to his/her successor, his/her successor will be provided compliance training in the same manner as the original Responsible Person, and that notice of any succession will be given in writing to the Mayor and the Senior Director of the City's Finance and Internal Services Department:

[Succession procedures to be filled in.]

C. Procedures for the Timely Expenditure of Bond Proceeds. The Borrower understands that it must spend at least 85% of the net sale proceeds of the Bonds to carry out the projects financed with the proceeds of the Bonds within three years from the date of issuance of the Bonds. The Borrower will treat as "sale proceeds" any amounts actually or constructively received by the Borrower from the sale of the Bonds, including amounts used to pay underwriter's or purchaser's discount or compensation and accrued interest other than pre-issuance accrued interest. "Net sale proceeds" means the sale proceeds, less any amount

deposited into a reasonably required reserve or replacement fund. The Borrower has established the following procedures for tracking and reporting to the Responsible Person the expenditure of net sale proceeds:

[Expenditure monitoring procedures to be filled in.]

D. Procedures for the Assuring Compliance with Arbitrage Yield Restriction and Rebate Requirements. The Responsible Person will create a system to ensure that, not less than six months prior to each five year anniversary of the closing date, the Borrower will retain an arbitrage rebate consultant to prepare a report determining the yield of the Bonds under the Internal Revenue Code of 1986, as amended (the "Code"), and whether there is any amount owed to the IRS under Section 148 of the Code. The Responsible Person will submit to the Bond trustee and the Mayor and the Senior Director of the City's Finance and Internal Services Department the completed arbitrage rebate report no later than 30 days prior to each five year anniversary of the closing date.

E. Procedures to comply with Remediation Requirements. The Borrower agrees that the Responsible Person will establish a system for tracking and monitoring the use of the facilities financed with the proceeds of the Bonds to ensure that the use of those facilities will not violate the private business tests or the private loan financing test under Section 141 of the Code. If, after the issuance of the Bonds, the use of the facilities financed with the proceeds of the Bonds changes so that the private business tests or the private loan financing test would be met, or if another violation of these procedures occurs which requires correction, the Borrower will notify the Mayor and the Senior Director of the City's Finance and Internal Services Department and, in connection with consulting bond counsel, undertake a closing agreement through the Tax-Exempt Bonds Voluntary Closing Agreement Program or take one of the actions permitted by the Code and associated regulations.

F. Ongoing Procedures. The Responsible Person will review these procedures, the Tax Agreement, the Form 8038, the instructions for Form 8038, and the status and use of the Bond financed facilities on at least an annual basis and at the following intervals: (i) six months prior to each five-year anniversary of the issue date of the Bonds; (ii) within 30 days of the date the last Bond is retired, defeased or refunded; (iii) when any rebate payment is made; (iv) when a facility financed with proceeds of the Bonds is placed in service; (v) if the Borrower determines that a facility planned to be financed with proceeds of the Bonds will not be completed; and (vi) if any of the representations, statements, circumstances or expectations of the Borrower that are set forth in the Tax Agreement are no longer true, have changed, or have not come to pass as described in the Tax Agreement. This review will be made for the purposes of identifying any possible violation of federal tax requirements related to the Bonds, and to ensure the timely correction of those violations pursuant to the remedial action provisions outlined above or through the Tax-Exempt Bonds Voluntary Closing Agreement Program. If any possible violation is identified, the Responsible Person will notify the Mayor, the Senior Director of the City's Finance and Internal Services Department and the City Attorney so that any existing or expected violation can be corrected.

G. Recordkeeping. The Responsible Person will develop and implement a system for maintaining records relating to the procedures outlined above. Such records shall be kept and maintained for the life of the Bonds, and any bonds that refund the Bonds, plus four years. These records may be maintained on paper, by electronic media, or by any combination thereof.

H. Compliance Meeting. The Borrower agrees to attend a post-closing meeting between the authorized official executing these procedures, the Responsible Person, the Mayor and the Senior Director of the City's Finance and Internal Services Department, and bond counsel. At such meeting, the Borrower and the City will review and discuss these procedures and the Borrower's responsibility for maintaining the status of the Bonds as tax-exempt bonds.

Adopted [insert closing date].

[Authorized Official]

[Responsible Party]