

City of Cedar Rapids, IA

Post-Issuance Compliance Policy for Tax-Advantaged Obligations

Definitions

For the purpose of this Policy, the following terms shall have the following meanings:

“Bonds”, “Notes” or “Obligations” means any tax-advantaged bonds or notes or Build America Bonds of the Issuer.

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

“Rules” means Section 54AA, Sections 103 and 141 through 150 of the Internal Revenue Code of 1986, as amended, and the U.S. Treasury Regulations promulgated thereunder. Also includes Section 6001 of the Code and Section 1.6001-1(a) of the Treasury Regulations

“Advisors” means the Issuer’s bond counsel, financial advisor, paying agent, trustee and arbitrage consultant.

“Governing Body” means the City Council of the Issuer.

“Issuer” means the City of Cedar Rapids, State of Iowa.

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

Statement of Purpose

This Post-Issuance Compliance Policy (the “Policy”) sets forth specific policies of the City of Cedar Rapids (the “City” or the “Issuer”) designed to monitor post-issuance compliance of tax advantaged

Obligations¹ (the “Obligations”) issued by the City. Issuers of tax-advantaged governmental bonds must comply with federal tax rules pertaining to expenditure of proceeds for qualified costs, rate of expenditure, use of bond financed property, investment of proceeds in compliance with arbitrage rules, and retention of records. As an issuer of such bonds, the Governing Body 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-

advantaged governmental bonds. This Policy is designed to ensure that the Issuer complies with its tax compliance obligations under applicable provisions of the Rules and to ensure that non-compliance is timely identified and corrected.

The Policy does not address bonds or other financing obligations that are issued by other state agencies, boards and authorities and that are subject to the approval of the City, it being the intent that such bond-issuing organizations adopt their own post-issuance compliance policies for tax-advantaged obligations that they issue.

The Policy documents existing practices, reflects past practices and describes various procedures and systems designed to identify on a timely basis facts relevant to demonstrating compliance with the requirements that must be satisfied subsequent to the issuance of Obligations in order that the interest on such Obligations be, or continue to be, or would be but for certain provisions of the Code, excludable from gross income for federal income tax purposes. The City recognizes that compliance with applicable provisions of the Code and Rules is an on-going process, necessary during the entire term of the Obligations, and is an integral component of the City's debt management. Accordingly, the analysis of those facts and implementation of the Policy will require on-going monitoring and consultation with Advisors.

¹ *For purposes of the Policy, tax advantaged obligations shall include (a) obligations the interest on which is excludable from gross income for federal income tax purposes pursuant to the Internal Revenue Code of 1986, as amended, and regulations there under (collectively, the "Code") ("tax-exempt obligations"), and (b) obligations the interest on which is not excludable from gross income for federal income tax purposes, but federal law otherwise requires such obligations to satisfy requirements of the Code applicable to tax-exempt obligations. For example, Section 54AA of the Code, added by the American Recovery and Reinvestment Act of 2009, authorizes the issuance of "Build America Bonds," the interest on which is includible in gross income for federal income tax purposes, provided that (a) the interest on the bonds would, but for such Section 54AA, be excludable from gross income for federal tax purposes under Section 103 of the Code, (b) such bonds are issued before a specified date (currently January 1, 2011), and (c) the issuer makes an irrevocable election to have Section 54AA apply. Accordingly, the Policy will apply to any Build America Bonds issued by the City.*

Effective Date and Term

The City of Cedar Rapids has had a Debt Management Policy in effect since December of 1982. It was most recently updated in March of 2010 to include Post-Issuance Compliance requirements. This Policy further clarifies the procedures for ensuring compliance. The effective date of this Policy shall be the date of approval by the Governing Body, and shall remain in effect until superseded or terminated by action of the Governing Body. The Issuer shall comply with this Policy upon issuance of any 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.

Policy Components

The Finance Director, hereinafter referenced as the Compliance Officer (“CO”), approves the terms and structure of Obligations executed by the City. Such Obligations are issued in accordance with the provisions of the Code of Iowa Section 384 and the Rules.

The CO shall be the person primarily responsible for ensuring that the City of Cedar Rapids successfully carries out its post-issuance compliance requirements under applicable provisions of the Rules with regard to all debt issuances of the City. The CO shall be assisted by other City staff and officials when appropriate. The CO will also be assisted in carrying out post-issuance compliance requirements by contracted entities including Advisors, and/or other consultants deemed necessary.

The CO shall be ultimately responsible for assigning post-issuance compliance responsibilities to other Finance staff and Advisors. The CO shall utilize such other professional service organizations, as necessary, to ensure compliance with the post-issuance compliance requirements of the City of Cedar Rapids.

The CO shall provide for the training and educational resources to Finance staff responsible for ensuring compliance with any portion of the tax compliance requirements of this Policy. Such training and education shall be documented.

General Policies and Procedures

The following policies relate to procedures and systems for monitoring post-issuance compliance generally. Electronic media will be the preferred method for storage of all documents and other records maintained by the Finance Department. In maintaining such electronic storage, the Staff Designees will comply with applicable Internal Revenue Service (the “IRS”) requirements, such as those contained in Revenue Procedure 97-22.

- A. The CO and Finance staff will continue to take all necessary steps to maintain an adequate understanding of post-issuance compliance requirements relating to the debt issuances they review.
- B. The CO shall identify the appropriate Finance staff members to be responsible for monitoring post-issuance compliance issues (the “Staff Designees”). The CO shall be responsible for ensuring an adequate succession plan for transferring post-issuance compliance responsibility when changes in staff occur.
- C. The Staff Designees will coordinate procedures for record retention and review of such records.
- D. The Staff Designees will review post-issuance compliance procedures and systems on a periodic basis, but not less than annually and will provide an annual post-issuance report to the CO for approval.

- E. The Staff Designees with the assistance of Bond Counsel shall provide a final bond component list designating the legal project type.

Issuance of Obligations

The Staff Designees will:

- A. Obtain and store a closing binder and/or CD or other electronic copy of the official bond transcript and relevant related documents.
- B. File or, confirm that bond counsel has filed, the applicable information report (e.g., Form 8038-G, Form 8038-CP) for such issue with the IRS on a timely basis.
- C. Coordinate receipt and retention of relevant books and records with respect to the investment and expenditure of the proceeds of such Obligations with other applicable City staff.

Expenditure of Bond Proceeds Review Process

The Staff Designees shall review the resolution authorizing issuance for each Obligation, and shall:

- A. Obtain a computation of the yield on such issue from the City's financial advisor for such issuance (or other outside arbitrage consultant) and maintain a system for tracking investment earnings;
- B. Maintain a procedure for the allocation of proceeds of the issue and investment earnings to expenditures, including the reimbursement of pre-issuance expenditures, in conjunction with the General Accounting Manager;
- C. 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 recorded;
- D. Review all requisitions, draw schedules, draw requests, invoices and bills requesting payment from the Project Fund;
- E. Determine whether payment from the Project Fund is appropriate, and if so, make payment from the Project Fund (and appropriate sub-fund if applicable);
- F. Maintain records of the payment requests and corresponding cancelled checks showing payment;

- G. Consult with the Staff Designees 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;
- H. Maintain records showing the earnings on, and investment of, the Project Fund;
- I. Ensure that investments acquired with proceeds are purchased at fair market value, and in determining whether an investment is purchased at fair market value, any applicable Treasury Regulation safe harbor may be used; and
- J. 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 Staff Designee 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 Staff Designee in the records for the bond issue.

Arbitrage Rules and Rebate Requirements

The Staff Designee shall review the tax compliance certificate, and the expenditure records for each Obligation, and shall:

- A. Coordinate with Finance staff to monitor compliance by departments with the applicable “temporary period” (as defined in the Code and Treasury Regulations and as set forth in the tax exemption certificate) exceptions for the expenditure of proceeds of the issue, and

provide for yield restriction on the investment of such proceeds if such exceptions are not satisfied.

- B. Coordinate to avoid formal or informal creation of funds reasonably expected to be used to pay debt service on such issue without determining in advance whether such funds must be invested at a restricted yield.
- C. Consult with bond counsel prior to engaging in any post-issuance credit enhancement transactions.
- D. Monitor compliance of department' projects with the six-month, 18-month or 2-year spending exceptions to the rebate requirement, as applicable.
- E. Consult with the Advisors to identify bond proceeds that must be yield-restricted 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;
- G. 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.
- H. 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.
- J. 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 city investment policy.
- K. Contact the Arbitrage Consultant (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 timely computation, reports of the rebate requirements and payment of "yield reduction payments" (as such term is defined in the Code and Treasury Regulations), if applicable.
- L. If the Issuer is authorized to recover a rebate payment previously paid, the Staff Designee 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.

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

Advance Refundings

The CO or Staff Designee 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. 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. 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. Collect and review data related to arbitrage yield restriction and rebate requirements for advance refunding bonds. To ensure compliance, the City shall engage an Arbitrage Consultant to prepare a verification report in connection with the advance refunding issuance. The report shall ensure that requirements are satisfied.
- E. Purchase, whenever possible, SLGS to size each advance refunding escrow. The City's financial advisor shall be consulted in the process of subscribing SLGS. To the extent

SLGS are not available for purchase, the City shall, in consultation with bond counsel, comply with IRS regulations.

- F. To the extent the issuer elects to purchase a guaranteed investment contract, the CO 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 CO shall rely on the issue price certification by the purchasing underwriter at closing.
- H. After the issuance of an advance refunding issue, the CO shall ensure timely identification of violations of any federal tax requirements and engage bond counsel in attempt to remediate the violations in accordance with IRS regulations.

Private Activity Concerns and Use of Bond-Financed Property

The Staff Designee shall monitor the use of all bond-financed assets 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.

The CO or Staff Designee will:

- A. Coordinate with City staff to 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, including the reimbursement of pre-issuance expenditures.
- B. Coordinate with City staff to maintain records of a project financed with Obligations to properly record any funds from other sources that will be used for otherwise non-qualifying costs.
- C. Coordinate with City staff to monitor the expenditure of proceeds of an issue and investment earnings for qualifying costs.
- D. Coordinate with applicable City staff to monitor private use of financed assets to ensure compliance with applicable percentage limitations on such use. Such monitoring should include the following:
 - 1. Procedures to review the amount of existing private use on a periodic basis; and
 - 2. With respect to each bond financed asset, monitor and confer with bond counsel and obtain copies of any of the following which may be proposed for review by bond counsel:

- 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)
- E. 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 eleven (11) years after retirement of all Obligations issued to fund all or any portion of bond financed assets, or obligations issued to refund those obligations.
- F. 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.
- F. 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 Staff Designee shall consult with bond counsel prior to the sale or transfer of any bond-financed property.
- G. 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 Staff Designee shall contact bond counsel for advice and ensure timely remedial action under IRS Regulation Sections 1.141-12.

Output Facility Financing:

The Staff Designee 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 as described in Code Section 141(d)(2);
 - 1. 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;

2. 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 CO shall contact bond counsel for advice.

Output Facility Contracts – Purchase of Available Output by Nongovernmental 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 CO 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 Staff Designee 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.

Reissuance

The following policies relate to compliance with rules and regulations regarding the reissuance of Obligations for federal law purposes.

The Staff Designee will:

- A. Identify and consult with bond counsel regarding any post-issuance change to any terms of an issue of Obligations which could potentially be treated as a reissuance for federal tax purposes.
- B. Confirm with bond counsel whether any “remedial action” in connection with a “change in use” (as such terms are defined in the Code and Treasury Regulations) would be treated as a reissuance for tax purposes and, if so, confirm the filing of any new Form 8038-G.

Record Retention

The following policies relate to retention of records relating to the Obligations issued.

The Staff Designee will:

- A. Coordinate with staff regarding the records to be maintained by the City to establish and ensure that an issue remains in compliance with applicable federal tax requirements for the life of such issue plus eleven years.
- B. Coordinate with staff to comply with provisions imposing specific recordkeeping requirements and cause compliance with such provisions, where applicable.

C. Coordinate with staff to generally maintain the following:

1. Basic records relating to the bond transcript and relevant related documents (e.g., any non-arbitrage certificate, net revenue estimates and the bond counsel opinion), including the official transcript prepared by bond counsel with respect to each series of Bonds of the Issuer;
2. Documentation evidencing 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;
3. Documentation regarding the types of facilities financed with the proceeds of an issue, including, but not limited to, whether such facilities are land, buildings or equipment, economic life calculations and information regarding depreciation.
4. Documentation evidencing use of financed property by public and private entities (e.g., copies of management contracts and research agreements);
5. Documentation evidencing all sources of payment or security for the issue;
6. Documentation pertaining to any investment of proceeds of the issue (including the purchase and sale of securities, SLGs subscriptions, yield calculations for each class of investments, actual investment income received by the investment of proceeds, guaranteed investment contracts, and rebate calculations);
7. Audited financial statements of the Issuer;
8. Appraisals, demand surveys, or feasibility studies, if any, with respect to the facilities to be financed with the proceeds of such Obligations;
9. Publications, brochures, and newspaper articles, if any, related to the bond financing;
10. Trustee or paying agent statements, including statements regarding investments and investment earnings;
11. Reimbursement resolutions, if any, and expenditures reimbursed with the proceeds of such Bonds;
12. Contracts entered into for the construction, renovation, or purchase of bond-financed facilities;
13. An asset list or schedule of all bond financed depreciable property and any depreciation schedules with respect to such assets or property;

14. Records of the purchases and sales of bond-financed assets;
 15. 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 Governing Body subsequent to the date of issue with respect to such bond;
 16. Formal elections authorized by the Code or Treasury Regulations that are taken with respect to such Bonds;
 17. Relevant correspondence relating to such Bonds;
 18. Documents related to guaranteed investment contracts or certificates of deposit, credit enhancement transactions, and financial derivatives entered into subsequent to the date of issue;
 19. 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.
- D. Coordinate the retention of all records in a manner that ensures their complete access to the IRS. While this is typically accomplished through the maintenance of hard copies, records may be kept in electronic format so long as applicable requirements, such as Revenue Procedure 97-22, are satisfied.
 - E. Preserve records and documents pertaining to cancellation, transfer, redemption or replacement of the Issuer's Obligations for a period of not less than eleven (11) years, as set forth in Iowa Code Section 76.10.
 - F. Preserve other records shall be retained during the period in which the Bonds remain outstanding (plus any refunding Bonds) plus eleven (11) years. Records may be in the form of documents and electronic copies of documents, appropriately indexed to specific bond issues and compliance functions.

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 CO shall immediately consult with the Advisors to ensure that corrective or remedial action is taken. In consultation with bond counsel, the CO 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 CO 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.

Continuing Disclosure

The CO shall assure compliance with each continuing disclosure certificate in accordance with the City's Bond Disclosure Policy.

Other Post-Issuance Actions

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

Annual Post-Issuance Compliance Review

Staff Designee shall compile an annual report and all supporting documentation which evidences compliance with this policy to be reviewed and approved by the CO.