

# **CITY OF LONDON, OHIO**

## **POST-ISSUANCE COMPLIANCE POLICY**

### **Purpose:**

The City of London, Ohio (the "City") uses bonds as one means of financing capital projects in support of its mission. This Post-Issuance Compliance Policy (the "Policy") outlines the policies and procedures to promote compliance with federal income tax and securities laws, as well as the requirements set forth in the bond documents for each bond issue. The policy is to strictly follow the U.S. Constitution and laws and the Ohio Constitution and laws. For purposes of this policy, the term "bonds" means any obligation of the City incurred for the purpose of borrowing money, including, without limitation, bonds, notes and certificates of participation in capital leases.

### **I. Monitoring of Post-Issuance Compliance**

Monitoring of post-issuance compliance for bonds will be the responsibility of the Auditor of the City (the "Compliance Officer"). The Compliance Officer may designate employees to carry out the Compliance Officer's duties under this Policy on the Compliance Officer's behalf in the same manner and with the same effect as any similar designation for any other purpose permitted by law.

### **II. Compliance with Covenants in Bond Documents**

The Compliance Officer shall ensure compliance with all financial and operational covenants made by the City in the bond documents, including but not limited to financial reporting, insurance requirements, the recording of mortgages, restrictions on incurring additional indebtedness, restrictions on the disposition of property, and restrictions on granting liens or encumbering property.

### **III. Federal Tax Law Compliance**

#### **A. Proper Use of Proceeds**

The Compliance Officer shall ensure that bond proceeds are allocated to expenditures in a manner that is consistent with the purpose for which each bond issue is undertaken, as set forth in any tax compliance certificate or agreement related to each bond issue.

#### **B. Investment of Bond Proceeds**

The Compliance Officer shall ensure that bond proceeds are invested in investments that are permissible under the terms of the Ohio Revised Code, the bond documents, and any applicable federal tax laws.

#### **C. Arbitrage Rebate Calculations**

The Compliance Officer shall ensure the timely completion of arbitrage rebate calculations and filings.

D. Administration of Direct Pay Bonds

The Compliance Officer shall ensure the proper administration of each issue of bonds qualifying for the payment by the Federal government of a credit equal to a percentage of interest on such bonds, including the timely completion and filing of any forms required by the Internal Revenue Service to maintain or establish the applicable status of the bonds for purposes of federal income taxation.

E. Use of Bond-Financed Facilities

The Compliance Officer shall consult with Bond Counsel for the City before entering into any agreement or other arrangement for the sale, lease, or use of bond-financed property, including, but not limited to, service, vendor, and management contracts, research agreements, licenses to use bond-financed property, or naming rights agreements. The Compliance Officer or the designee of the Compliance Officer shall review such agreements for compliance with federal tax laws and complete a Private Business Use Contract Review Worksheet (attached as Exhibit A) to document that such review has been completed.

F. Post-Issuance Transactions

The Compliance Officer shall consult with Bond Counsel for the City before making any modifications or amendments to the bond documents for a bond issue, including, but not limited to, entering or modifying investment agreements; making any change in security for the bonds; engaging in post-issuance credit enhancement transactions (*e.g.*, bond insurance, letter of credit) or hedging transactions (*e.g.*, interest rate swap, cap); terminating or appointing successor trustees; releasing any liens; or reissuing the bonds.

G. Remedial Action

In the event that it is determined that any use of bond proceeds or bond-financed facilities is inconsistent with the character of the status for federal income tax purposes of the bonds, the Compliance Officer shall consult with the City's Bond Counsel for the purpose of determining the nature and extent of any remedial action necessary or proper for the City to take with respect to such bonds or bond-financed facilities according to Treasury Regulations Section 1.141-12 or other remedial actions authorized by the Commissioner of Internal Revenue under 1.141-12(h).

**IV. Federal Securities Law Compliance**

- A. The Compliance Officer shall ensure compliance with all applicable federal securities laws and regulations, including the continuing disclosure requirements of Rule 15c2-12 promulgated under the Securities Exchange Act of 1934.
- B. To the extent required by any continuing disclosure agreement, the Compliance Officer shall:
  - 1. On an annual basis, submit an annual financial report, including audited financial statements and any other information required by the continuing disclosure agreement, to the entities required by the bond documents.

2. Make a timely report of any significant material events (as defined by the continuing disclosure agreement) related to the City's outstanding bond issues to the entities required by the bond documents.

## **V. Recordkeeping**

### **A. Responsibility for Records Maintenance**

- a. The Compliance Officer shall be responsible for maintaining records related to bonds of the City.
- b. The Compliance Officer shall maintain a central list of records related to each issue of bonds of the City. The list shall identify:
  - a. The name and date of the document related to the issue,
  - b. The person or office responsible for the document, and
  - c. The physical or electronic location of the document.

### **B. Bond Records to be Maintained**

1. The following records shall be maintained for each outstanding bond issue for the term of the outstanding bond issue plus three years:
  - a. Basic records relating to the bond transaction, including the trust indenture, loan, lease, or other financing agreement, the relevant IRS Form 8038 (including Forms 8038-G, 8038-B, or 8038-TC, as applicable) with proof of filing, and bond counsel opinion shall be maintained by the Compliance Officer's Office;
  - b. Documentation evidencing the expenditure of bond proceeds, such as construction or contractor invoices and receipts for equipment and furnishings, as well as records of any special allocation made for tax purposes shall be maintained by the Compliance Officer's Office;
  - c. Documentation evidencing the lease or use of bond-financed property by public and private sources, including, but not limited to, service, vendor, and management contracts, research agreements, licenses to use bond-financed property, or naming rights agreements shall be maintained by the City office executing such agreement for use of bond-financed property; and
  - d. Documentation pertaining to investment of bond proceeds, including the yield calculations for each class of investments, actual investment income received from the investment of proceeds, and rebate calculations shall be maintained by the Compliance Officer's Office.
2. The Compliance Officer shall maintain the City's audited financial statements for not less than seven years.

## **VI. Bond Counsel Review**

The Compliance Officer may engage Bond Counsel to assist in implementing this policy, including, but not limited to, assistance in the following areas:

- A. Rebate calculations and compliance;
- B. Records retention;
- C. Periodic review of the central list of records related to bonds for compliance with federal tax laws regarding private business use;
- D. Other federal tax law compliance, including any annual reporting requirements that may be imposed by the Internal Revenue Service; and
- E. Federal securities law compliance.

## **VII. Training Requirements**

Within six months of becoming the Compliance Officer, and on an as needed basis thereafter, the Compliance Officer and the Compliance Officer's designees, if any, shall undergo training regarding basic federal tax concepts relating to bonds and records required to be maintained under this policy.

## **VIII. Annual Policy Review**

On an annual basis, or sooner if deemed necessary by the Compliance Officer, the Compliance Officer shall review this policy and assess the City's compliance with this policy. The Compliance Officer shall make changes to this Policy as appropriate to ensure compliance with any covenants in the bond documents or the requirements of federal tax and securities laws and any other applicable law.

**CITY OF LONDON, OHIO  
PRIVATE BUSINESS USE CONTRACT REVIEW WORKSHEET**

City Department: \_\_\_\_\_

Contracting Parties: \_\_\_\_\_

Type/Title of Agreement: \_\_\_\_\_

**Agreement Not Subject to Private Use Limitation**

- \_\_\_\_\_ Relates solely to construction of bond-financed facility
- \_\_\_\_\_ Relates to property that was not financed with proceeds of a bond issue
- \_\_\_\_\_ Does not relate to use or function of property
- \_\_\_\_\_ Includes incidental services only (janitorial, office equipment repair, or similar services)
- \_\_\_\_\_ Compensation consists solely of reimbursement of actual and direct expenses incurred by the service provider while providing services under the agreement

**Agreement Satisfies Safe Harbors for Management/Service Contracts** (See definitions on page 2.)

- \_\_\_\_\_ Service provider is not an agent or *related party* and
- \_\_\_\_\_ Payments are reasonable in amount and are not based in whole or in part on share of *net profits* and
- \_\_\_\_\_ Compensation meets one of the following sets of criteria:
  - \_\_\_\_\_ at least 95% *Periodic Fixed Fee*; maximum term of 15 years
  - \_\_\_\_\_ at least 80% *Periodic Fixed Fee*; maximum term of 10 years
  - \_\_\_\_\_ at least 50% *Periodic Fixed Fee*, 100% *Capitation Fee*, or combination; maximum term of 5 years; terminable without *penalty* or cause after 3 years
  - \_\_\_\_\_ *Per Unit Fee* or combination *Periodic Fixed Fee* and *Per Unit Fee*; maximum term of 3 years; terminable without *penalty* or cause after 2 years
  - \_\_\_\_\_ percentage of fees charged or combination of *Per Unit Fee* and percentage of gross revenues or expenses (but not both); maximum term of 2 years; terminable without *penalty* or cause after 1 year; and one of the following must apply:
    - \_\_\_\_\_ service provider primarily provides services to third parties
    - \_\_\_\_\_ agreement involves a facility during an initial start-up period for which there have been insufficient operations to establish a reasonable estimate of the amount of the annual gross revenues and expenses (*e.g.* contract for general management services for the first year of operations)

## Agreement Requires Further Review by Bond Counsel

- \_\_\_\_\_ Ownership (including agreement that transfers title at end of the term)
  - \_\_\_\_\_ Lease, license, or any other agreement which creates exclusive or priority rights to use any portion of a bond-financed property or which creates an economic benefit for the third-party user
  - \_\_\_\_\_ Agreement with governmental entity or 501(c)(3) organization
  - \_\_\_\_\_ Research agreement
  - \_\_\_\_\_ Management or service contract falling outside safe harbors listed above (provide explanation)
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Reviewer: \_\_\_\_\_

Date: \_\_\_\_\_

### Definitions:

#### *Related Party:*

In reference to a governmental unit or a 501(c)(3) organization, any member of the same "controlled group" as defined in §1.150-1(e) of the Treasury Regulations, and in reference to any person that is not a governmental unit or 501(c)(3) organization, a "related person" as defined in §144(a)(3) of the Internal Revenue Code.

#### *Net Profits:*

Net profits under generally accepted accounting principles (GAAP). IRS Rev. Proc. 97-13 expressly provides that compensation agreements based on the following are not considered to be compensation based on a share of net profits:

- (a) a percentage of gross revenues (or adjusted gross revenues) of a facility or a percentage of expenses from a facility, but not both;
- (b) a Capitation Fee; or
- (c) a Per Unit Fee is generally not considered to be based on a share of net profits.
- (d) a productivity reward equal to a stated dollar amount based on increases or decreases in gross revenues (or adjusted gross revenues), or reductions in total expenses (but not both increases in gross revenues (or adjusted gross revenues) and reductions in total expenses) in any annual period during the term of the contract

#### *Periodic Fixed Fee:*

A stated dollar amount for services rendered during a specific period of time. The stated dollar amount may automatically increase according to a specified, objective, external standard that is not linked to the output or efficiency of the facility (e.g., the Consumer Price Index). Capitation fees and per-unit fees are not periodic fixed fees.

#### *Capitation Fee:*

A fixed periodic amount for each person for whom the service provider assumes the responsibility to provide all needed services for a specified period so long as the quantity and type of services actually provided to covered persons varies substantially. For example, a capitation fee includes a fixed dollar amount payable per month to a

medical service provider for each member of a health maintenance organization plan for whom the provider agrees to provide all needed medical services for a specified period. A capitation fee may include a variable component of up to 20% of the total capitation fee designed to protect the service provider against risks such as catastrophic loss.

*Per Unit Fee:*

A fee based on a unit of services provided specified in the contract or otherwise specifically determined by an independent third party, such as the administrator of the Medicare program. For example, a stated dollar amount for each specified medical procedure performed, car parked, or passenger mile is a per-unit fee. Separate billing arrangements between physicians and hospitals generally are treated as per-unit fee arrangements.

*Penalty:*

Penalties for terminating a contract include a limitation on the 501(c)(3) organization's right to compete with the service provider; a requirement that the 501(c)(3) organization purchase equipment, goods, or services from the service provider; and a requirement that the 501(c)(3) organization pay liquidated damages for cancellation of the contract. In contrast, a requirement effective on cancellation that the 501(c)(3) organization reimburse the service provider for ordinary and necessary expenses or a restriction on the 501(c)(3) organization against hiring key personnel of the service provider is generally not a contract termination penalty.