

CITY OF KIMBALL
MUNICIPAL POLICY NUMBER 02-2012
POST-ISSUANCE COMPLIANCE PROCEDURE AND POLICY FOR TAX-EXEMPT
GOVERNMENTAL BONDS

DATE COUNCIL APPROVED: November 14, 2012

The City of Kimball (the “City”) issues tax-exempt governmental bonds to finance capital improvements. As an issuer of tax-exempt governmental bonds, the City is required by the terms of Sections 103 and 141-150 of the Internal Revenue Code of 1986, as amended (the “Code”), and the Treasury Regulations promulgated thereunder (the “Treasury Regulations”), to take certain actions subsequent to the issuance of such bonds to ensure the continuing tax-exempt status of such bonds. In addition, Section 6001 of the Code and Section 1.6001-1(a) of the Treasury Regulations, impose record retention requirements on the City with respect to its tax-exempt governmental bonds. This Post-Issuance Compliance Procedure and Policy for Tax-Exempt Governmental Bonds (the “Policy”) has been approved and adopted by the City to ensure that the City complies with its post-issuance compliance obligations under applicable provisions of the Code and Treasury Regulations.

1. Effective Date and Term. The effective date of this Policy is the date of approval by the City Council of the City (November 14, 2012) and shall remain in effect until superseded or terminated by action of the City Council of the City.

2. Responsible Parties. The City Clerk/Treasurer of the City (the “City Clerk/Treasurer”) shall be the party primarily responsible for ensuring that the City successfully carries out its post-issuance compliance requirements under applicable provisions of the Code and Treasury Regulations. The City Clerk/Treasurer will be assisted by other City staff and officials when appropriate. The City Clerk/Treasurer will also be assisted in carrying out post-issuance compliance requirements by the following organizations:

- (a) Bond Counsel (the law firm primarily responsible for providing bond counsel services for the City);
- (b) Financial Advisor (the organization primarily responsible for providing financial advisor services to the City);
- (c) Paying Agent (the person, organization, or City officer primarily responsible for providing paying agent services for the City); and
- (d) Rebate Analyst (the organization primarily responsible for providing rebate analyst services for the City).

The City Clerk/Treasurer shall be responsible for assigning post-issuance compliance responsibilities to members of the Finance Department, other staff of the City, Bond Counsel, Paying Agent, and Rebate Analyst. The City Clerk/Treasurer shall utilize such other professional service organizations as are necessary to ensure compliance with the post-issuance compliance requirements of the City. The City Clerk/Treasurer shall provide training and educational resources to City staff who are responsible for ensuring compliance with any portion of the post-issuance compliance requirements of this Policy.

3. Post-Issuance Compliance Actions. The City Clerk/Treasurer shall take the following post-issuance compliance actions or shall verify that the following post-issuance compliance actions have been taken on behalf of the City with respect to each issue of tax-exempt governmental bonds issued by the City:

- (a) The City Clerk/Treasurer shall prepare or cause to be prepared a transcript of principal documents (this action will be the primary responsibility of Bond Counsel).

(b) The City Clerk/Treasurer shall file or cause to be filed with the Internal Revenue Service (the “IRS”), within the time limit imposed by Section 149(e) of the Code and applicable Treasury Regulations, an Information Return for Tax-Exempt Governmental Obligations, Form 8038-G (this action will be the primary responsibility of Bond Counsel).

(c) The City Clerk/Treasurer shall prepare or cause to be prepared an “allocation memorandum” for each issue of tax-exempt governmental bonds in accordance with the provisions of Treasury Regulations, Section 1.148-6(d)(1), that accounts for the allocation of the proceeds of the tax-exempt bonds to expenditures not later than the earlier of:

(i) eighteen (18) months after the later of (A) the date the expenditure is paid, or (B) the date the project, if any, that is financed by the tax-exempt bond issue is placed in service; or

(ii) the date sixty (60) days after the earlier of (A) the fifth anniversary of the issue date of the tax-exempt bond issue, or (B) the date sixty (60) days after the retirement of the tax-exempt bond issue.

Preparation of the allocation memorandum will be the primary responsibility of the City Clerk/Treasurer (in consultation with the Financial Advisor and Bond Counsel).

(d) The City Clerk/Treasurer, in consultation with Bond Counsel, shall identify proceeds of tax-exempt governmental bonds 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.

(e) In consultation with Bond Counsel and/or the Rebate Analyst, the City Clerk/Treasurer shall determine whether the City is subject to the rebate requirements of Section 148(f) of the Code with respect to each issue of tax-exempt governmental bonds. In consultation with Bond Counsel, the City Clerk/Treasurer shall determine, with respect to each issue of tax-exempt governmental bonds, whether the City is eligible for any of the temporary periods for unrestricted investments and is eligible for any of the spending exceptions to the rebate requirements. The City Clerk/Treasurer shall contact the Rebate Analyst prior to the fifth anniversary of the date of issuance of each issue of tax-exempt governmental bonds of the City and each fifth anniversary thereafter to arrange for calculations of the rebate requirements with respect to such tax-exempt governmental bonds. If a rebate payment is required to be paid by the City, the City Clerk/Treasurer shall prepare or cause to be prepared the Arbitrage Rebate, Yield Reduction and Penalty in Lieu of Arbitrage Rebate, Form 8038-T, and submit such Form 8038-T to the IRS with the required rebate payment. If the City is authorized to recover a rebate payment previously paid, the City Clerk/Treasurer shall prepare or cause to be prepared the Request for Recovery of Overpayments Under Arbitrage Rebate Provisions, Form 8038-R, with respect to such rebate recovery, and submit such Form 8038-R to the IRS.

4. Procedures for Monitoring, Verification, and Inspections. The City Clerk/Treasurer shall institute such procedures as the City Clerk/Treasurer shall deem necessary and appropriate to monitor the use of the proceeds of tax-exempt governmental bonds issued by the City, to verify that certain post-issuance compliance actions have been taken by the City, and to provide for the inspection of the facilities financed with the proceeds of such bonds. At a minimum, the City Clerk/Treasurer shall establish the following procedures:

(a) The City Clerk/Treasurer shall monitor the use of the proceeds of tax-exempt governmental bonds to: (i) ensure compliance with the expenditure and investment requirements under the temporary period provisions set forth in Treasury Regulations, Section 1.148-2(e); (ii) ensure compliance with the safe harbor restrictions on the acquisition of investments set forth in Treasury Regulations, Section 1.148-5(d); (iii) ensure that the investments of any yield-restricted funds do not exceed the yield to which such investments are restricted; and (iv) determine whether there has been compliance with the spend-down requirements under the spending exceptions to the rebate requirements set forth in Treasury Regulations, Section 1.148-7.

(b) The City Clerk/Treasurer shall monitor the use of all bond-financed facilities in order to: (i) determine whether private business uses of bond-financed facilities have exceeded the *de minimus* limits set forth in Section 141(b) of the Code 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; and (ii) determine whether private security or payments that exceed the *de minimus* limits set forth in Section 141(b) of the Code have been provided by nongovernmental persons with respect to such bond-financed facilities. The City Clerk/Treasurer shall provide training and educational resources to any City staff who have the primary responsibility for the operation, maintenance, or inspection of bond-financed facilities with regard to the limitations on the private business use of bond-financed facilities and as to the limitations on the private security or payments with respect to bond-financed facilities.

(c) The City Clerk/Treasurer shall undertake the following with respect to each outstanding issue of tax-exempt governmental bonds of the City: (i) an annual review of the books and records maintained by the City with respect to such bonds; and (ii) an annual physical inspection of the facilities financed with the proceeds of such bonds, conducted by the City Clerk/Treasurer with the assistance with any City staff who have the primary responsibility for the operation, maintenance, or inspection of such bond-financed facilities.

5. Record Retention Requirements. The City Clerk/Treasurer shall collect and retain the following records with respect to each issue of tax-exempt governmental bonds of the City and with respect to the facilities financed with the proceeds of such bonds: (i) audited financial statements of the City; (ii) appraisals, demand surveys, or feasibility studies with respect to the facilities to be financed with the proceeds of such bonds; (iii) publications, brochures, and newspaper articles related to the bond financing; (iv) trustee or paying agent statements; (v) records of all investments and the gains (or losses) from such investments; (vi) paying agent or trustee statements regarding investments and investment earnings; (vii) reimbursement resolutions and expenditures reimbursed with the proceeds of such bonds; (viii) allocations of proceeds to expenditures (including costs of issuance) and the dates and amounts of such expenditures (including requisitions, draw schedules, draw requests, invoices, bills, and cancelled checks with respect to such expenditures); (ix) contracts entered into for the construction, renovation, or purchase of bond-financed facilities; (x) an asset list or schedule of all bond-financed depreciable property and any depreciation schedules with respect to such assets or property; (xi) records of the purchases and sales of bond-financed assets; (xii) 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; (xiii) arbitrage rebate reports and records of rebate and yield reduction payments; (xiv) resolutions or other actions taken by the governing body subsequent to the date of issue with respect to such bonds; (xv) formal elections authorized by the Code or Treasury Regulations that are taken with respect to such bonds; (xvi) relevant correspondence relating to such bonds; (xvii) documents related to guaranteed investment contracts or certificates of deposit, credit enhancement transactions, and financial derivatives entered into subsequent to the date of issue; (xviii) copies of all Form 8038-Ts and Form 8038-Rs filed with the IRS; and (xix) the transcript prepared with respect to such tax-exempt governmental bonds.

The records collected by the City Clerk/Treasurer shall be stored in any format deemed appropriate by the City Clerk/Treasurer and shall be retained for a period equal to the life of the tax-exempt governmental bonds with respect to which the records are collected (which shall include the life of any bonds issued to refund any portion of such tax-exempt governmental bonds or to refund any refunding bonds) plus three (3) years.

6. Remedies.

(a) In consultation with Bond Counsel, the City Clerk/Treasurer 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 *de minimus* limits under Section 141(b)(1) of the Code. If, as result of the procedures described in Section 4(b) of this Policy or otherwise, the City Clerk/Treasurer (in consultation with Bond Counsel) determines that a remedial action is or will be needed in order to prevent governmental bonds from meeting the private use test or the private loan financing test, the City Clerk/Treasurer will work with Bond Counsel to take a remedial action with respect to those bonds.

(b) The City Clerk/Treasurer shall also 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 Code and Treasury Regulations with respect to outstanding tax-exempt bonds.

7. Continuing Disclosure Obligations. In addition to its post-issuance compliance requirements under applicable provisions of the Code and Treasury Regulations, the City has agreed to provide continuing disclosure, such as annual financial information and material event notices, pursuant to a continuing disclosure certificate or similar document (the “Continuing Disclosure Document”) prepared by Bond Counsel and made a part of the transcript with respect to each issue of bonds of the City that is subject to such continuing disclosure requirements. The Continuing Disclosure Documents are executed by the City to assist the underwriters of the City’s bonds in meeting their obligations under Securities and Exchange Commission Regulation, 17 C.F.R. Section 240.15c2-12, as in effect and interpreted from time to time (“Rule 15c2-12”). The continuing disclosure obligations of the City are governed by the Continuing Disclosure Documents and by the terms of Rule 15c2-12. The City Clerk/Treasurer is primarily responsible for undertaking such continuing disclosure obligations and to monitor compliance with such obligations.

8. Other Post-Issuance Actions. If, in consultation with Bond Counsel, the Financial Advisor, the Paying Agent, the Rebate Analyst, the City Attorney, or the City Council, the City Clerk/Treasurer determines that any additional action not identified in this Policy must be taken by the City Clerk/Treasurer to ensure the continuing tax-exempt status of any issue of governmental bonds of the City, the City Clerk/Treasurer shall take such action if the City Clerk/Treasurer has the authority to do so. If, after consultation with Bond Counsel, Financial Advisor, Paying Agent, Rebate Analyst, the City Attorney, or the City Council, the City Clerk/Treasurer determines that this Policy must be amended or supplemented to ensure the continuing tax-exempt status of any issue of governmental bonds of the City, the City Clerk/Treasurer shall recommend to the City Council that this Policy be so amended or supplemented.

9. Taxable Governmental Bonds. Most of the provisions of this Policy, other than the provisions of Section 7, are not applicable to governmental bonds the interest on which is includable in gross income for federal income tax purposes. However, if an issue of taxable governmental bonds is later refunded with the proceeds of an issue of tax-exempt governmental refunding bonds, then the uses of the proceeds of the taxable governmental bonds and the uses of the facilities financed with the proceeds of the taxable governmental bonds will be relevant to the tax-exempt status of the governmental refunding bonds. Therefore, if there is any reasonable possibility that an issue of taxable governmental bonds may be refunded, in whole or in part, with the proceeds of an issue of tax-exempt governmental bonds then, for purposes of this Policy, the City Clerk/Treasurer shall treat the issue of taxable governmental bonds as if such issue were an issue of tax-exempt governmental bonds and shall carry out and comply with the requirements of this Policy with respect to such taxable governmental bonds. The City Clerk/Treasurer shall seek the advice of Bond Counsel as to whether there is any reasonable possibility of issuing tax-exempt governmental bonds to refund an issue of taxable governmental bonds.

10. Qualified 501(c)(3) Bonds. If the City issues bonds to finance a facility to be owned by the City but which may be used, in whole or in substantial part, by a nongovernmental organization that is exempt from federal income taxation under Section 501(a) of the Code as a result of the application of Section 501(c)(3) of the Code (a “501(c)(3) Organization”), the City may elect to issue the bonds as “qualified 501(c)(3) bonds” the interest on which is exempt from federal income taxation under Sections 103 and 145 of the Code and applicable Treasury Regulations. Although such qualified 501(c)(3) bonds are not governmental bonds, at the election of the City Clerk/Treasurer, for purposes of this Policy, the City Clerk/Treasurer shall treat such issue of qualified 501(c)(3) bonds as if such issue were an issue of tax-exempt governmental bonds and shall carry out and comply with the requirements of this Policy with respect to such qualified 501(c)(3) bonds. Alternatively, in cases where compliance activities are reasonably within the control of the relevant 501(c)(3) Organization, the City Clerk/Treasurer may determine that all or some portion of compliance responsibilities described in this Policy shall be assigned to the relevant organization.