



**MEMORANDUM**

**Management Services Memo No. 13-049**

**DATE:** APRIL 25, 2013

**TO:** MAYOR AND COUNCIL

**THRU:** RICH DLUGAS, CITY MANAGER *RD*

**FROM:** DAWN LANG, MANAGEMENT SERVICES DIRECTOR *DL*

**SUBJECT:** RESOLUTION NO. 4679 ADOPTING ISSUANCE AND POST-ISSUANCE COMPLIANCE PROCEDURES RELATING TO TAX-EXEMPT BONDS, OTHER TAX EXEMPT FINANCINGS, BUILD AMERICA BONDS (DIRECT PAY), TAX CREDIT BONDS, AND TAX CREDIT BONDS (DIRECT PAY) FOR THE CITY OF CHANDLER, ARIZONA

**RECOMMENDATION**

Staff recommends approval of Resolution No. 4679 adopting Issuance and Post-Issuance Compliance Procedures Relating to Tax Exempt Bonds, Other Tax Exempt Financings, Build America Bonds (Direct Pay), Tax Credit Bonds, and Tax Credit Bonds (Direct Pay) for the City of Chandler, Arizona based on guidance from the Internal Revenue Service (IRS) and questions on IRS Form 8038-G, which must be filed with the IRS following the closing of any tax-exempt bond issue.

**DISCUSSION**

The City of Chandler follows post-issuance compliance procedures internally and works closely with our externally contracted Bond Counsel (Gust Rosenfeld), Financial Advisor (Piper Jaffray), and Arbitrage Compliance Specialist (BLX) to ensure bonds remain in compliance with federal tax requirements from the time they are issued until they are no longer outstanding.

Although the procedures are in place, for some time now the IRS has been urging issuers of tax-exempt bonds to adopt "*written procedures*" to help ensure their post-issuance compliance with the requirements of the Internal Revenue Code of 1986, as amended. Informal guidance from the IRS and questions on Form 8038-G have made it clear that detailed post-issuance compliance procedures should be an integral part of any government issuer's bond program. The questions ask whether the issuer has established written procedures (i) to ensure that all nonqualified bonds are remediated according to the requirements of the federal tax regulations, and (ii) to monitor the requirements of the arbitrage and rebate regulations.

Additionally, the IRS has amended its Voluntary Closing Agreement Program (“VCAP”) (which allows issuers that identify a post-issuance violation to enter into a settlement with the IRS to cure the violation) to give more favorable treatment to an issuer that has adopted post-issuance compliance procedures.

This Post-Issuance Compliance policy sets forth specific procedures for the City of Chandler that are designed to monitor post-issuance compliance of tax-exempt qualified obligations. The written procedures contain provisions for:

- Due diligence review at regular intervals;
- Identifying the official or employee responsible for review;
- Training of the responsible official/employee;
- Retention of adequate records to substantiate compliance (e.g., records related to expenditure of proceeds);
- Procedures reasonably expected to timely identify noncompliance;
- Procedures ensuring that the issuer will take steps to timely correct noncompliance.

The written procedures, attached as Exhibit A to the Resolution, have been reviewed by the City’s Bond Counsel, Scott Ruby as well as the City’s Financial Advisor, Bill Davis, and will document in writing what the City has actually been doing.

**PROPOSED MOTION**

Move to approve Resolution No. 4679, adopting Issuance and Post-Issuance Compliance Procedures Relating to Tax Exempt Bonds, Other Tax Exempt Financings, Build America Bonds (Direct Pay), Tax Credit Bonds, and Tax Credit Bonds (Direct Pay) for the City of Chandler, Arizona.

Attachment: Resolution No. 4679; Exhibit A – Issuance and Post-Issuance Compliance Procedures Relating to Tax Exempt Bonds, Other Tax Exempt Financings, Build America Bonds (Direct Pay), Tax Credit Bonds, and Tax Credit Bonds (Direct Pay) for the City of Chandler, Arizona.

c: Pat McDermott, Assistant City Manager  
Marsha Reed, Assistant City Manager

**RESOLUTION NO. 4679**

**RESOLUTION OF THE MAYOR AND COUNCIL OF THE CITY OF CHANDLER, ARIZONA, ADOPTING ISSUANCE AND POST-ISSUANCE COMPLIANCE PROCEDURES RELATING TO TAX-EXEMPT BONDS, OTHER TAX-EXEMPT FINANCINGS, BUILD AMERICA BONDS (DIRECT PAY), TAX CREDIT BONDS AND TAX CREDIT BONDS (DIRECT PAY) FOR THE CITY OF CHANDLER, ARIZONA; AND PROVIDING FOR AN EFFECTIVE DATE.**

**WHEREAS**, the City of Chandler, Arizona (the "City") has issued tax-exempt bonds and other tax-exempt financings and may issue additional types of bonds in the future (collectively the "Bonds"); and

**WHEREAS**, federal tax law encourages the City to develop issuance and post-issuance compliance procedures related to the Bonds; and

**WHEREAS**, the City desires to adopt written issuance and post-issuance compliance procedures related to the Bonds;

**NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND COUNCIL OF THE CITY OF CHANDLER, ARIZONA, THAT:**

**Section 1.** The City hereby adopts the Issuance and Post-Issuance Compliance Procedures Relating to Tax-Exempt Bonds, Other Tax-Exempt Financings, Build America Bonds (Direct Pay), Tax Credit Bonds and Tax Credit Bonds (Direct Pay) for the City of Chandler, Arizona, attached hereto as Exhibit A and incorporated herein by reference.

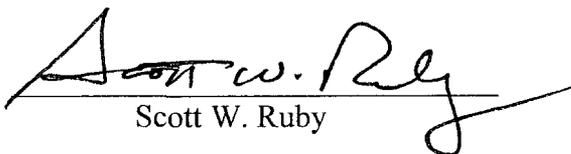
**PASSED AND ADOPTED** by the Mayor and Council of the City of Chandler, Arizona, this 25th day of April, 2013.

\_\_\_\_\_  
Mayor

**ATTEST:**

\_\_\_\_\_  
City Clerk

**APPROVED AS TO FORM:**

  
\_\_\_\_\_  
Scott W. Ruby

**EXHIBIT A  
TO  
RESOLUTION NO. 4679**

[Issuance and Post-Issuance Compliance Procedures]

See following pages 1-10.

**ISSUANCE AND POST-ISSUANCE COMPLIANCE PROCEDURES  
RELATING TO TAX-EXEMPT BONDS, OTHER TAX EXEMPT FINANCINGS,  
BUILD AMERICA BONDS (DIRECT PAY),  
TAX CREDIT BONDS  
AND TAX CREDIT BONDS (DIRECT PAY)  
FOR THE CITY OF CHANDLER, ARIZONA**

**Date of Implementation: April 25, 2013**

**I. INTRODUCTION**

Many conditions, restrictions and requirements must be complied with to permit and preserve the tax-exempt, tax credit or direct federal subsidy treatment of bonds and other financings by the City of Chandler, Arizona (the "City"). Prior to issuance, the City and its bond counsel will review the facts and the reasonable expectations to determine if the issue will comply with these conditions, restrictions and requirements at the time of issuance. There are certain actions the City must do after issuance to preserve the favorable tax treatment and certain actions of the City after issuance can adversely affect the tax treatment. In addition, the City must maintain proper records to demonstrate compliance. Because tax benefits may be critical to the investors' decision to purchase the bonds or other obligations, the City covenants to bond purchasers to comply with all of the conditions, restrictions and requirements throughout the life of the bonds.

To ensure compliance, the City must identify a single person with overall compliance responsibility. The Management Services Director, or his or her designee, will be the responsible person and is referred to in these procedures as the "Bond Compliance Official." Anyone with any questions about the bonds, the proceeds of the bonds, the facilities financed with the bonds or compliance with the conditions, restrictions and requirements should discuss them with the Bond Compliance Official who shall, as necessary, discuss them with bond counsel, financial advisor, and/or arbitrage consultant (the Advisors). The Bond Compliance Official shall meet with the Advisors to discuss these requirements and from time to time any changes in these requirements. In the event the City fails to comply with these procedures, the

Bond Compliance Official shall meet with the Advisors as soon practicable after the discovery of the failure to comply in order to discuss the steps required to correct the noncompliance.

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

1. **INVESTMENT OF PROCEEDS UNTIL EXPENDED.**

Detailed records of investments and earnings will be made and kept by the City with respect to all bond proceeds.

Generally, proceeds of bonds cannot be invested at a yield higher than the bond yield unless during certain specific temporary periods. Therefore, prior to closing, the Bond Compliance Official will determine with bond counsel which funds do or do not qualify for a temporary period. Qualifying information will be set out in a tax certificate. No proceeds will be invested at a yield higher than the bond yield unless they qualify. If the actual facts regarding the use of proceeds changes from what was reasonably expected at closing, the Bond Compliance Official will discuss those changes with bond counsel to see if the temporary periods are changed.

Bond proceeds include the amount received from the sale of the bonds, amounts held in a payment or reserve fund for the bonds *and investment earnings on those amounts*.

The proceeds will not be invested in any investment where a yield cannot be determined.

Any investment in a guaranteed investment contract or similar investment agreement will only be made in compliance with the bidding requirements as reviewed by bond counsel.

Bond proceeds will be tracked separately from any other funds of the City, and invested according to the City's investment policy. The City will work with the registrar, trustee or other applicable person or entity to be sure that invested earnings are properly allocated between bond proceeds and other funds.

**2. USE OF PROCEEDS.**

Detailed records will be made and kept by the City with regard to the use of bond proceeds. The amount, date of and purpose for each expenditure will be recorded. If the project is also funded with non-bond proceeds, the records will reflect an allocation of expenditures between bond proceeds and other funds. No proceeds will be used to reimburse an expenditure made prior to the issue date of the bonds unless the reimbursement requirement, including the prior declaration of intent to reimburse, has been fully complied with and evidence of such compliance is maintained. The City Council by taking action, or the City Manager and Management Services Director, or his or her designee, is authorized to complete the declaration of intent to reimburse.

Under federal tax law, the City is expected to exercise diligence to expend the proceeds, to enter into within six months of the issue date a binding contract to expend at least 10% of the proceeds and to have expended most of the proceeds within three years. After the third anniversary of the issue, any remaining proceeds in the construction account must be yield restricted.

The Bond Compliance Official shall periodically review the progress of the projects and the expenditure of proceeds to ensure timely expenditure of proceeds.

Additionally, the City will comply with the specific use of proceed rules and expenditure rules for any Build America Bonds, Tax Credit Bonds or Tax Credit Bonds (Direct Pay) described below.

**3. USE OF BOND FINANCED FACILITIES.**

Detailed records of the use of proceeds will identify those facilities that are financed in whole or in part with bond proceeds and must reflect the allocation of bond proceeds and other funds used. Any sale or lease to, or other agreement for use by, a private party in a trade or business can adversely affect the tax status of the bonds. The City will not sell or lease any bond financed property or enter into any agreement with non-governmental entities for use or management of any bond financed property without a thorough review by the Bond Compliance Official and bond counsel. The Bond Compliance Official shall periodically review the use of all bond financed facilities to ensure compliance with the private use restrictions. In

the event the City takes action that causes the bonds to meet the private business tests or private loan financing test, the Bond Compliance Official shall meet with bond counsel as soon practicable after the issue is discovered to discuss the steps required to correct the noncompliance, including, if necessary, redeeming or defeasing all of the bonds that meet the private business tests or private loan financing test.

**4. ARBITRAGE REBATE.**

Any time that bond proceeds are permitted to be invested at a yield higher than the bond yield, the amount earned over the bond yield is arbitrage. With certain exceptions, the City is obligated to pay over (rebate) to the United States any arbitrage earned. The City will keep complete and accurate records of all investments of bond proceeds and all information supporting any applicable exceptions to the rebate requirement and will retain or ensure that the registrar or trustee has retained a professional rebate consultant to review the records and prepare a report so that the City or the registrar or trustee can make any necessary rebate payments. Unless exempt, the City must, at a minimum, make payments at every fifth anniversary of the issue and upon final payment. The Bond Compliance Official will review any exemption prior to each fifth anniversary and upon final payment to determine if any facts have changed which might eliminate the exemption.

**5. RECORD RETENTION.**

All records concerning the bond issue, including

- a) the transcript of the original proceedings,
- b) investment of proceeds,
- c) use and allocation of proceeds, including the declaration of intent to reimburse,
- d) non-governmental use of bond financed property,
- (e) payment of principal and interest on the bonds,
- f) the interest rate or rates on the bonds from time to time, if variable,
- g) compliance with reimbursement requirements,
- h) refunding of all or part of the bonds,

- i) payment of arbitrage rebate or information supporting any exemption to rebate, and
- j) evidence of compliance with special requirements for Build America Bonds (Direct Pay), Tax Credit Bonds or Tax Credit Bonds (Direct Pay)

shall be kept in accordance with the Arizona records retention policies, but in no event less than for the life of the bonds plus three years and, if the bonds are refunded, for the life of all of the refunding bonds plus three years.

**6. SPECIAL REQUIREMENTS FOR BUILD AMERICA BONDS (DIRECT PAY).**

If the City issues any Build America Bonds (Direct Pay), in addition to the tax-exempt bond provisions in Section 1-5 above, the City must comply with the following additional requirements:

a) Capital Expenditure Requirement. All of the sales proceeds, including **investment earnings**, must be spent on capital expenditures (and not working capital) except that up to 2% of the proceeds can be spent on costs of issuance and proceeds can fund a reasonably required reserve fund. The Bond Compliance Official shall consult with bond counsel prior to issuance to determine that the 2% costs of issuance limit will not be exceeded, that any reserve fund complies with requirements, and that the balance of the sales proceeds will be spent on capital expenditures. The Bond Compliance Official will review all expenditures to ensure compliance.

b) De Minimus Premium. No Build America Bonds can be reoffered at an issue price which includes a premium which exceeds .25% of the stated redemption price at maturity, multiplied by the number of complete years to the earlier of maturity, mandatory redemption or first optional redemption date, if applicable. Prior to closing, the Bond Compliance Official shall review the pricing information with its bond underwriter to determine that this requirement has been complied with. The bond purchaser or underwriter will certify at the closing what the reoffering prices were reasonably expected to be to establish the amount of premium for each maturity.

c) Irrevocable Election. To qualify an issue as Build America Bonds, the City must make an irrevocable election to have Section 54AA (BABs) and Section 54AA(g)

(BABs Direct Pay) of the Code apply to the bonds. The Bond Compliance Official shall ensure that the elections have been made and are evidenced in the transcript at the time of closing.

d) Authorize Mayor, City Council, City Manager and Management Services Director to Act. The Authorizing Resolution must authorize the Mayor, City Council, City Manager and Management Services Director or other authorized person to do all things necessary to take any action within its power and authority which would, other than as a result of the application of Section 54AA(g) of the Code, prevent the interest income on the bonds from becoming includable in gross income for federal income tax purposes and to do all things necessary to continue to qualify as BABs – Direct Pay under Sections 54AA and 54AA(g) to receive the direct subsidy payment. The Bond Compliance Official shall ensure that such authorization has been granted and is evidenced in the transcript at the time of closing.

e) Filing for Subsidy. An 8038-B will be prepared by bond counsel, executed by the Bond Compliance Official or other authorized signer, filed promptly after the closing and included in the transcript. For each interest payment, the Bond Compliance Official will prepare, sign and file an 8038-CP to request the payment of the direct pay credit from the United States. With respect to fixed rate bonds, the form must be filed not more than 90 days and not less than 45 days prior to the interest payment date. With respect to variable interest rate bonds, the credit payment will be aggregated on a quarterly basis and the 8038-CP must be filed for reimbursement in arrears not more than 45 days after the last interest payment date within that quarter.

Prior to closing, the City will determine to whom the credit payment will be sent and will obtain the necessary information to properly direct the payment.

f) Yield. The Bond Compliance Officer shall review the yield calculation with bond counsel to ensure that the yield is reduced by the credit allowed under Section 54AA(a).

7. **SPECIAL REQUIREMENTS FOR TAX CREDIT BONDS.**

If the City issues any Qualified Forestry Conservation Bonds, New Clean Renewable Energy Bonds or Qualified Energy Conservation Bonds, the following requirements will be met:

a) Use of Proceeds for Tax Credit Bonds. All of the proceeds, **including investment earnings**, must be spent on 1 or more “qualified purposes” (as defined below) except that up to 2% of the proceeds can be spent on costs of issuance and proceeds can fund a reserve fund that meets the requirements below. The Bond Compliance Official shall consult with bond counsel prior to issuance to determine that the 2% costs of issuance limit will not be exceeded, that any reserve fund complies with requirements, and that the balance of the proceeds will be spent on one or more qualified purposes. The Bond Compliance Official will review all expenditures to ensure compliance.

At the date of issuance, the City must reasonably expect to:

(i) spend 100% or more of the proceeds (except for proceeds used to pay up to 2% costs of issuance or fund a reserve fund) for one or more qualified purposes within the 3-year period beginning on the date of issuance, and

(ii) have a binding commitment with a third party to spend at least 10% of such proceeds within the 6-month period beginning on the date of issuance.

If the City does not spend 100% of the proceeds (except for proceeds used to pay up to 2% costs of issuance or fund a reserve fund) within the 3-year period from the date of issuance, the City shall redeem all of the nonqualified bonds within 90 days after the end of the 3-year period. The City may be able to receive an extension prior to the expiration of the 3-year period if the City establishes that failure to spend the proceeds is due to a reasonable cause and the City will continue to proceed to spend the proceeds with due diligence.

The Bond Compliance Official shall periodically review the progress of the projects and the expenditure of proceeds to ensure timely expenditure of proceeds. If the Bond Compliance Official believes that the City will not spend 100% of the proceeds within the 3-year period beginning the date of issuance, the Bond Compliance Official will contact bond counsel as soon as possible.

A “qualified purpose” for a:

(i) Qualified Forestry Conservation Bond is one or more qualified forestry conservation purposes as defined in IRS Section 54B(e);

(ii) New Clean Renewable Energy Bond is one or more qualified renewable energy facilities as defined in IRS Section 54C(a)(1); and

(iii) Qualified Energy Conservation Bonds is one or more qualified conservation purposes as defined in IRS Section 54D(a)(1).

The Bond Compliance Official shall review the qualified purpose of the applicable Tax Credit Bonds to ensure compliance. Additionally, the Bond Compliance Official shall review the use of proceeds periodically to ensure continued compliance to spend 100% of the proceeds for the applicable qualified purpose.

b) Reserve Fund. The reserve fund shall comply with the following:

(i) such fund is funded at a rate not more rapid than equal annual installments,

(ii) such fund is funded in a manner reasonably expected to result in an amount no greater than an amount necessary to repay the issue, and

(iii) the yield on such fund is not greater than the discount rate determined on the date the bonds are sold or the date the Bond Purchase Agreement is signed and pursuant to the Treasury Rules set forth daily on [www.treasurydirect.gov](http://www.treasurydirect.gov).

The Bond Compliance Official shall review these requirements with bond counsel to ensure compliance and review this periodically to ensure continued compliance.

c) Maximum Term. The bonds cannot exceed the maximum term permitted for Tax Credit Bonds. The maximum term will be determined on the date the bonds are sold or the date the Bond Purchase Agreement is signed and pursuant to the Treasury Rules set forth daily on [www.treasurydirect.gov](http://www.treasurydirect.gov). The Bond Compliance Official shall review this requirement with bond counsel to ensure compliance.

d) Financial Conflicts of Interest. The City must certify that all applicable conflicts of interest are satisfied. The Bond Compliance Official shall review this requirement with bond counsel to ensure compliance.

e) Yield. The Bond Compliance Officer shall review the yield calculation with bond counsel to ensure that the yield is reduced by the credit allowed under Section 6431.

f) Volume Cap. The Bond Compliance Officer shall ensure that the City utilizes its allocated volume cap.

g) Davis Bacon. If the City issues any New Clean Renewable Energy Bonds or Qualified Energy Conservation Bonds, the City must comply with the Davis Bacon

requirements. The Bond Compliance Official shall ensure that the City complies with this requirement and files required quarterly filings.

**8. SPECIAL REQUIREMENTS FOR TAX CREDIT BONDS (DIRECT PAY).**

a) Qualified Tax Credit Bond. The City and Bond Compliance Official shall ensure that the requirements of the applicable Tax Credit Bond regarding Use of Proceeds, Reserve Fund, Maximum Term and Financial Conflicts of Interest as outlined in Section 7 above are met. However, Tax Credit Bonds (Direct Pay) do not have to be issued prior to January 1, 2011, but the following additional requirements must be met:

b) Irrevocable Election. To qualify as one of the applicable Tax Credit Bonds (Direct Pay), the City must make an irrevocable election to have the applicable Tax Credit Bond (Direct Pay) section apply and to have Sections 54D(a) and 6431(f)(3) apply to the bonds. The Bond Compliance Official shall ensure that the elections have been made and are evidenced in the transcript at the time of closing.

c) Authorize Mayor, City Council, City Manager and Management Services Director to Act. The Mayor, City Council, City Manager and Management Services Director or other authorized person to do all things necessary to take any action within its power and authority to maintain the status of the bonds as Tax Credit Bonds (Direct Pay) under the applicable Tax Credit Bond (Direct Pay) section and Section 6431(f) to receive the refundable credit payment to be paid by the United States as a credit allowed under Section 6431(f) of the Code. The Bond Compliance Official shall ensure that such authorization has been granted and is evidenced in the transcript at the time of closing.

d) Filing for Subsidy. An 8038-TC will be prepared by bond counsel, executed by the Bond Compliance Official or other authorized signer, filed promptly after closing and included in the transcript. For each interest payment, the Bond Compliance Official will prepare, sign and file an 8038-CP to request the payment of the refundable credit payment from the United States. With respect to fixed rate bonds, the form must be filed no more than 90 days and not less than 45 days prior to the interest payment date. With respect to variable interest rate bonds, the credit payment will be aggregated on a quarterly basis and the 8038-CP must be filed for reimbursement in arrears not more than 45 days after the last interest payment date within that quarter.

Additionally, the Bond Compliance Official will discuss the requirements with bond counsel to appropriately reduce the amount of the refundable credit payment and shall ensure that the amount of the refundable credit payment requested is appropriately reduced for New Clean Renewable Energy Bonds (Direct Pay) and Qualified Energy Conservation Bonds (Direct Pay) on the 8038-TC and subsequent 8038-CPs.

e) De Minimum Premium. No Tax Credit Bond (Direct Pay) can be reoffered at an issue price which includes a premium which exceeds .25% of the stated redemption price at maturity, multiplied by the number of complete years to the earlier of maturity, mandatory redemption or first optional redemption date, if applicable. Prior to closing, the Bond Compliance Official shall review the pricing information with its bond underwriter and bond counsel to determine that this requirement has been complied with. The bond purchaser or underwriter will certify at the closing what the reoffering prices were reasonably expected to be to establish the amount of premium for each maturity.

f) Yield. The Bond Compliance Officer shall review the yield calculation with bond counsel to ensure that the yield is reduced by the credit allowed under Section 6431(f).

g) Davis Bacon. If the City issues any New Clean Renewable Energy Bonds (Direct Pay) or Qualified Energy Conservation Bonds (Direct Pay), the City must comply with the Davis Bacon requirements. The Bond Compliance Official shall ensure that the City complies with this requirement and files required quarterly filings.