



Memorandum

To: Honorable Mayor and Members of the City Council
Administration and Public Works Committee

From: Martin Lyons, Assistant City Manager/Chief Financial Officer
Hitesh Desai, Accounting Manager

Subject: Post Issue Compliance Procedures for Tax Exempt Bonds

Date: September 26, 2012

Recommended Action:

Staff recommends that the attached document describing post issue compliance procedures for bonds be adopted and placed on file. These procedures will be applicable to any bonds issued on or after January 1, 2012.

Funding Source:

Not Applicable

Summary:

The City of Evanston issues bonds to provide funding for various Capital Improvement projects, Water/Sewer Systems upgrades and Parking Garage renovations. The City also frequently uses a portion of bond proceeds to refund the previously issued outstanding bonds to generate interest cost savings. The City has issued bonds each year in the last ten (10) years with the exception of 2009. In most issues, the interest on municipal bonds is excludable from gross income of the owners thereof for federal income tax purpose subject to the municipality's compliance with certain covenants.

The City recently issued Series 2012A General Obligation Corporate Purpose Bonds in the amount of \$15,720,000. The Bonds were issued to provide financing for public improvement projects and certain Sewer debt service payments. The Bonds were also used to refund current outstanding series 2002C Bonds.

At the request of both Moody's Investor Service and Chapman and Cutler, Bond Counsel, the City has created a post issuance procedure manual. Following this manual, the City will comply with the requirements of the Internal Revenue Code of 1986, as amended, and applicable United States Treasury Regulations necessary to maintain the tax exemption of the interest on the bonds or other obligations issued by and for the benefit of the City. Staff has included a list of all General Obligation Bonds

outstanding as of September 30, 2012. The document also includes the list of properties/projects to be financed by Series 2012A bonds.

POST-ISSUANCE PROCEDURES
MANUAL
FOR
TAX-EXEMPT BONDS
AND
ISSUED BY
THE CITY OF EVANSTON, ILLINOIS
(THE “*CITY*”)

Adopted: _____

Ratified: _____

Revised: _____

**NOTHING IN THIS MANUAL IS INTENDED TO REDUCE THE RESPONSIBILITY OF THE CITY.
THESE PROCEDURES ARE INTENDED TO FACILITATE COMPLIANCE WITH TAX RELATED
COVENANTS MADE IN BOND DOCUMENTS.**

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Appendix A – List of Bonds

Appendix B – List of Series 2012A Bond Financed Properties/ Projects

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I. Policy Statement

This Post-Issuance Procedures Manual (the “*Manual*”) is intended to provide procedures (the “*Procedures*”) for compliance with the requirements of the Internal Revenue Code of 1986, as amended (the “*Code*”), and applicable United States Treasury Regulations (the “*Regulations*”) necessary to maintain the tax exemption of the interest on bonds or other obligations issued by and for the benefit of the City. The City has and will from time to time issue various issues of tax-exempt bonds, tax credit bonds or direct pay bonds (the “*Bonds*”). Maintaining the tax-exempt or tax-advantaged status of Bonds requires continuing compliance by the City with certain covenants and agreements contained in the documents relating to the issuance of the Bonds. In connection with each issue of tax-exempt Bonds, the City has covenanted or will covenant not to take any action that would cause the interest on the Bonds to become included in the gross income of the holders of the Bonds for federal income tax purposes. These Procedures are being adopted by the City to assist the City in fulfilling covenants to maintain the tax-exempt or tax-advantaged status of the Bonds. It is the intention of the City that the City will comply with all applicable Federal tax law requirements and maintain sufficient records to demonstrate such compliance.

The City is aware that the Internal Revenue Service (“*IRS*”) maintains an active force of revenue agents who examine bond issues for compliance. As a result of such examinations, the IRS may require payment of financial penalties or impose other sanctions to preserve the tax-exemption or tax-advantaged nature of the Bonds or may declare bonds to no longer be tax-exempt or tax-advantaged. Any such declaration could result in legal action against the City. To minimize the risk of such occurrence, these Procedures have been adopted to provide a framework for post-issuance compliance. This Manual is only for the benefit of the City. No other person (including an owner of a Bond) may rely on the Procedures included in this Manual.

The City is aware that the existence of adequate written procedures may influence the IRS to settle matters on more favorable terms should such settlement be required.

Federal tax law imposes restrictions related to the investment and expenditure of Bond proceeds and on the use of facilities financed with Bonds. Compliance with these restrictions is often necessary to maintain the tax-exemption or tax-advantaged nature of the Bonds.

The City is responsible for following tax-related covenants concerning the Bonds. These Procedures are not intended to diminish or augment those covenants.

In order to most efficiently apply limited resources, these Procedures may be limited to any bonds issued after January 1, 2012. Certain concepts and terms addressed and used in these Procedures are further described in the glossary attached hereto, as *Appendix C*.

II. Procedures

A. Bonds Subject to these Procedures

Attached hereto as *Appendix A* is a list of the City's outstanding Bonds. This Manual applies to the listed issues of Bonds. The Compliance Officer (as hereinafter defined) should update this list whenever Bonds are issued and whenever an issue of Bonds subject to the Procedures is fully retired. If payments on the Bonds are provided for by an escrow, such Bonds should remain on the list until the Bonds are paid in full.

B. Facilities/Assets Subject to these Procedures

Attached hereto as *Appendix B-1* is a list of the facilities and assets financed, refinanced or reimbursed with proceeds of the Bonds and that are subject to Federal tax restrictions. .

The City and the Compliance Officer recognize that a list of financed assets is necessary to track Private Business Use of Bond financed facilities. In order to simplify the maintenance of the list, the Compliance Officer may include entire buildings or other facilities even if only partially financed with Bonds. The list for each issue of Bonds should be completed within a reasonable period after the final allocation of Bond proceeds is made. In the case of Refunding Bonds, the list of assets financed should include the list of assets financed by the refunded obligations.

C. Assignment of Responsibility to Staff

The City designates its [Assistant City Manager/Chief Financial Officer]_Martin Lyons (the "*Compliance Officer*") as having responsibility to keep all records required to be kept by the City under these Procedures, to make all reports to the City's governing body¹ required by these Procedures, and to otherwise assure that all actions required of the City hereunder be taken. The Compliance Officer may further delegate certain tasks to other officers, employees or agents of the City. Such delegation shall not relieve the Compliance Officer from responsibility to assure that all tasks assigned to the Compliance Officer hereunder are completed in a timely fashion.

D. Duties of the Compliance Officer

1. *Maintaining List of Bonds.* The Compliance Officer is charged with maintaining the list referred to in Section IIA hereof, and updating such list whenever a new issue of Bonds subject to these Procedures is issued or when an issue of Bonds subject to these Procedures is retired.

¹ Please note that the term "governing body" may not be appropriate for all issuers. The term may be changed to a more appropriate term (e.g. a particular officer or board committee) but, if changed, must be changed throughout this document.

2. *Maintaining List of Facilities.* The Compliance Officer is charged with maintaining the list referred to in Section IIB hereof. The compliance officer would annually update the list when an issue of Bonds financing or refinancing a subject facility is retired or redeemed. The compliance officer would also annually update the list to reflect the spend-down of bond proceeds. The Compliance Officer may simplify the list by including entire buildings or other facilities even if only a portion was Bond financed.

3. *Recordkeeping.* The Compliance Officer is hereby designated as the keeper of all records of the City with respect to the Bonds and that relate to the tax-exempt or tax-advantaged status of the Bonds. The Compliance Officer shall report to the City's governing body not less often than once per year concerning whether he or she has all of the required records in his or her possession, or if not, whether he or she is taking appropriate action to obtain or recover such records. The Compliance Officer should review the records related to the Bonds and shall determine what requirements the City must meet in order to maintain the tax-exemption of interest paid on the Bonds or the tax-advantaged status of the Bonds. The Compliance Officer should then prepare a list of the contracts, requisitions, invoices, receipts and other information that may be needed in order to establish that (i) the interest paid on the Bonds is entitled to be excluded from gross income for federal income tax purposes or (ii) the Bonds remain tax-advantaged. Notwithstanding any other procedures of the City, such retained records shall be kept for at least as long as the related issue of Bonds or any refunding obligations that may directly or indirectly refund such Bonds remain outstanding, plus three years. Such records, at a minimum, shall include the following items.

a. *Transcript Items.* The Compliance Officer should receive, keep and maintain a true, correct and complete counterpart of each document and agreement delivered in connection with the issuance of the Bonds, including without limitation (i) the proceedings of the City authorizing the Bonds, (ii) any offering document with respect to the offer and sale of the Bonds, (iii) any legal opinions with respect to the Bonds delivered by any lawyers, (iv) notices and minutes of any public hearings held with respect to the Bonds, (v) the tax documentation, including any Tax Exemption Certificate and Agreement, any Tax Compliance Certificate and Agreement and any Non-Arbitrage or Arbitrage Certificates or any tax-related covenants that may be contained in the proceedings of the City authorizing the Bonds, (vi) all written representations of any person delivered in connection with the issuance and initial sale of the Bonds, and (vii) the applicable series of Series 8038 Form filed with respect to the Bonds along with proof of filing. It is likely that such transcript items will be found in the form of or included in a bound volume or compact disc delivered to the City after the Bonds were issued.

b. *Expenditure & Investment Items.* The Compliance Officer should maintain copies of:

(i) Account statements showing the disbursements of all Bond proceeds for their intended purposes, as well as any requisition requests and the invoices and contracts (*e.g.*, construction contracts, third party invoices) to which the expenditure of funds relates;

(ii) Account statements showing all investment activity of any and all accounts in which the proceeds of the Bonds have been held;

(iii) All bid requests and bid responses used in the acquisition of any special investments or derivative products used in connection with the Bonds, including any swaps, swaptions, or other financial derivatives entered into in order to establish that such instruments were acquired at fair market value; and

(iv) Copies of any subscriptions to the U.S. Treasury for the purchase of State and Local Government Series (SLGS) obligations.

To the extent that such records are not in the possession of the Compliance Officer with respect to a particular issue of Bonds, investment or expenditure, the Compliance Officer should make a note that such record is not in his or her possession. In such case, the Compliance Officer should take reasonable steps to obtain such records or, if not possible, consult with counsel concerning possible alternatives.

c. *Records of Use.* The Compliance Officer should maintain records establishing that all Bond-financed property has been used for the purposes required for interest on the Bonds to be excluded from gross income for federal income tax purposes or for the Bonds to remain tax-advantaged. Such records shall include copies of all significant contracts and agreements of the City, including any leases, management contracts, research agreements, or service contracts, with respect to the use of any property owned by the City and acquired or financed with the proceeds of the Bonds (excluding arm's length contracts covering 50 or fewer days). The Compliance Officer shall cause such contracts to be reviewed either by staff of the City or by an outside consultant (i) to determine if such contracts cause any Private Business Use of such facilities, or (ii) if the Compliance Officer cannot reasonably determine whether such contract causes Private Business Use. If any such contract is determined to cause Private Business Use of a Bond-financed facility, the Compliance Officer should determine or cause to be determined for each year, the percentage of such facility so privately used. Such determination may be made in consultation with counsel or other consultants.

d. *Rebate & Yield Calculations.* The Compliance Officer should maintain copies of any calculations of liability for arbitrage rebate or yield reduction payment that is or may become due with respect to the Bonds, and any calculations prepared to show that no arbitrage rebate is due, together, if applicable, with account statements or cancelled checks showing the payment of any rebate amounts to the U.S. Treasury together with any applicable IRS Form 8038-T, Arbitrage Rebate, Yield Reduction and Penalty in Lieu of Arbitrage Rebate, or Form 8038-R, Request for Recovery of Overpayments under Arbitrage Rebate Provisions, or any successor form to either of those.

e. *Actions under these Procedures.* The Compliance Officer should retain all records, memoranda and other documents and correspondence relating to these Procedures or actions taken under these Procedures.

4. *Arbitrage Computations.* The Compliance Officer should review the agreements of the City with respect to each issue of Bonds and shall determine what actions are necessary or advisable to comply with the arbitrage restrictions and arbitrage rebate requirements of the Code. Some issues of Bonds may be exempt from the rebate requirement. Taking into account any applicable exemptions from the arbitrage rebate requirement for each issue of Bonds, the Compliance Officer should cause computations to be made at least once in the first five years the Bonds are outstanding (and at least once every 5-year period thereafter while the Bonds are outstanding) of the accrued arbitrage rebate amount (if any) with respect to each issue of Bonds. The Compliance Officer should, if authorized, retain a law firm or other consultant or use staff of the City to prepare reports stating whether or not there is any rebate or yield reduction payment liability to the U.S. Treasury related to the Bonds, and setting forth any applicable exemptions from rebate liability that may be applicable to any funds or accounts. Such report should be updated annually. Updates will not be required if a report clearly indicates that no additional rebate or yield restriction liability will accrue. The Compliance Officer is responsible for ensuring the timely payment to the U.S. Treasury of all arbitrage rebate payments and yield reduction payments when due, including the filing of any required IRS forms.

If and to the extent that any Bond proceeds are or become subject to a yield restriction requirement, the Compliance Officer is responsible for investing or directing the investment of such proceeds at a yield not in excess of the permitted yield and for making any yield reduction payments to the U.S. Treasury as are necessary.

The Compliance Officer may, if authorized, retain a law firm or other consultant to assist in making such determinations.

5. *Annual Review and Reports.* Not less often than once per year, the Compliance Officer should conduct a review of records and other information described in these Procedures to determine whether any or all of the Bonds comply with the tax requirements applicable to such Bonds. The Compliance Officer, if authorized, may hire counsel or other consultants to assist in such review. To the extent that any violations or potential violations of tax requirements are discovered, the Compliance Officer may make recommendations or take such actions as the Compliance Officer should reasonably deem necessary to assure the timely correction of such violations or potential violations through remedial actions described in the Regulations or the Tax Exempt Bonds Voluntary Closing Agreement Program described in Treasury Notice 2008-31 or any successor guidance. The Compliance Officer should prepare a written report (which may be marked as confidential) and should present such report to the City's governing body no less frequently than once per year. The annual review requirement will continue with respect to a particular Bond issue until the first review to occur after the date that all Bonds of that issue and any refunding obligations that may directly or indirectly refund such Bonds are fully paid and retired. If the City has build America bonds outstanding, the City should conduct appropriate reviews concerning its compliance with the requirements concerning the use of proceeds of such build America bonds prior to filing a Form 8038-CP, Return for Credit Payment to Issuers of Qualified Bonds, to receive a subsidy payment.

6. *Action on the Discovery of a Potential Violation.*

a. *Reallocation.* The City and the Compliance Officer recognize that, in limited circumstances, if there is a failure to spend Bond proceeds properly, such Bond proceeds can be reallocated to qualified costs that may be financed with Bond proceeds, *provided* that such reallocation occurs within specified time frames. If the Compliance Officer determines that a failure to spend Bond proceeds on qualified costs has occurred, the Compliance Officer should (with the aid of a law firm or other consultant or staff of the City) determine if a reallocation of Bond proceeds is possible.

b. *Remediation.* The City and the Compliance Officer recognize that if, among other things, there is a failure to use Bond proceeds properly, a failure to spend all Bond proceeds, or a disposition of Bond-financed property or Private Business Use in excess of allowed limits, a remedial action may be required in accordance with the Code and the Regulations. The Compliance Officer should (with the aid of a law firm or other consultant or staff of the City) determine if such remedial actions are required and possible. The Compliance Officer should prepare or cause to be prepared a memorandum describing any such remedial action or proposed remedial action. The memorandum should describe whether such remedial action will serve to cure any particular tax law violation. The memorandum should include a full description of such required actions of the City. A copy of any such memorandum shall be given to the City's governing body. Following any such remedial action, the Compliance Officer should prepare a report describing the effect of such remedial action. The list of Bond-financed property may need to be revised as a result of such remedial action and, if so, the Compliance Officer should so revise the list.

c. *Voluntary Closing Agreement Program.* The City and the Compliance Officer recognize that if there is a violation of the covenants of the City related to the maintenance of the exclusion from gross income for federal income tax purposes of interest on the Bonds or a violation of the covenants of the City related to the maintenance of the tax-advantaged status of the Bonds, then the City may be able to enter into a voluntary closing agreement with the IRS to preserve the favorable tax status of the Bonds. The Compliance Officer should determine if a voluntary closing agreement is desirable and possible. The Compliance Officer should coordinate the City's efforts in obtaining any voluntary closing agreement. The City may (to the extent authorized) retain or consult with counsel to attempt to obtain a voluntary closing agreement. Following the execution of any such closing agreement, the Compliance Officer should prepare a report describing the effect of such closing agreement. The list of Bond-financed Property may need to be revised as a result of such closing agreement and, if so, the Compliance Officer should so revise the list.

7. *Action on IRS Contact.*

a. *Examination of Bonds.* The City and the Compliance Officer recognize that the IRS or another regulatory entity may undertake an examination of Bonds. In the event that the City is notified of such an examination, the City shall as quickly as possible

notify the Compliance Officer. The Compliance Officer should coordinate the defense of such examination and should determine if counsel should be hired and, if so, which counsel. Except to the extent that the City determines that another party should undertake a response, the Compliance Officer will be responsible for compiling answers to any information or document request that might be presented to the City as a result of such examination. If an examination cannot be closed without a closing agreement, the Compliance Officer should use reasonable efforts to reach an acceptable closing agreement with such regulatory agency and to obtain all required City approvals of such closing agreement.

Regardless of how an examination of the Bonds is closed, the Compliance Officer should retain all communications with the IRS or other regulatory agency relating to such examination among the records kept under Section II.D.3 of these Procedures (Recordkeeping).

The Compliance Officer should advise the City's governing body of any such examination when, as and in such manner as the Compliance Officer may deem appropriate.

b. *Compliance Checks.* The IRS and other regulatory agencies may conduct compliance checks from time to time. As part of such compliance check, the IRS or another regulatory agency may send questionnaires to the City. The Compliance Officer may, if authorized, hire counsel to assist in the response to a compliance check. The Compliance Officer should advise the City's governing body of any such compliance check promptly after receiving notice thereof.

8. *Training.* The Compliance Officer should undertake to maintain a reasonable level of knowledge concerning the rules related to tax-exempt and tax-advantaged bonds so that he or she may fulfill his or her duties hereunder. The Compliance Officer may consult with counsel, attend conferences and presentations of trade groups, read materials posted on various web sites, including the web site of the Tax-Exempt Bond function of the IRS, and use other means to maintain such knowledge. Recognizing that the Compliance Officer may not be fully knowledgeable in this area, such officer may consult with in-house or outside counsel, consultants and experts to assist in exercising his or her duties under these Procedures. The Compliance Officer should endeavor to make sure that other staff of the City is aware of the need for continuing compliance and coordinate appropriate training and education of other personnel of the City. The Compliance Officer should provide copies of relevant Bond documents and these Procedures to other staff members who may be responsible for taking actions described in the Bond documents and in particular to any person who is expected to be a successor Compliance Officer. The Compliance Officer should assist in the education of any new Compliance Officer and the transition of the duties under these Procedures. The Compliance Officer should review the Bond documents and these Procedures periodically to determine if there are portions that need further explanation and, if so, will attempt to obtain such explanation from counsel or other experts or consultants or staff.

E. Changes to the Manual

The Procedures contained herein may be revised and amended from time to time as the City and the Compliance Officer deem necessary to comply with the requirements of the Code and Regulations. The City and the Compliance Officer may, from time to time and upon the issuance of new Bonds, contact outside counsel to determine whether the Procedures contained herein adequately address the post-issuance responsibilities of the City as required by the Code and Regulations.

F. Specific Procedures for Special Cases

The Procedures contained herein specifically address post-issuance compliance procedures with respect to tax-exempt governmental bonds issued for capital projects under Section 103 of the Code. The City and the Compliance Officer recognize that these Procedures may be inadequate for other types of tax-exempt obligations (including TIF financings), tax-credit or direct pay obligations (other than build America bonds), for which additional procedures may be required. In the event that the City issues private activity tax-exempt obligations, tax-exempt obligations funding a significant amount of working capital, tax increment financing bonds, tax-credit bonds, or direct pay bonds, the City receives an indication from counsel that additional procedures are required, or the City enters into any derivative products, these Procedures should be revised to reflect any specific rules and requirements and post-issuance responsibilities applicable to such type of tax advantaged obligations and derivative products.

G. Authorization and Expense

This Compliance Manual is not intended to provide authorization to the Compliance Officer to enter into contracts for service or to spend City funds. To the extent that the Compliance Officer determines that such contracts or expenditures are desirable and are not otherwise authorized, the Compliance Officer should obtain such authorization before entering into such contracts and spending such City funds.

H. Ratification Required

This Compliance Manual will terminate and not be in effect after December 31, 2012 unless the City Council of the City votes to ratify this Compliance Manual. Alternatively, the City may adopt a different set of written procedures and to the extent that such procedures are inconsistent with this Compliance Manual, the Compliance Manual shall not be in effect after the effective date of such other written procedures.

APPENDIX A**LIST OF BONDS**

Name of Issue	Date of Issuance	Final Maturity Date	Balance as of September 30, 2012
Series 2004	5/13/2004	12/1/2023	11,040,000
Series 2004B	7/27/2004	12/1/2017	4,460,000
Series 2005	7/28/2005	12/1/2025	22,300,000
Series 2006	7/19/2006	12/1/2026	9,680,000
Series 2006B	12/27/2006	12/1/2023	14,430,000
Series 2007	5/24/2007	12/1/2016	20,550,000
Series 2008A	5/7/2008	12/1/2021	3,215,000
Series 2008B	5/7/2008	12/1/2018	13,705,000
Series 2008C	5/7/2008	12/1/2028	11,085,000
Series 2008D	12/10/2008	12/1/2016	9,905,000
Series 2010A	8/16/2010	12/1/2029	6,260,000
Series 2010B	8/16/2010	12/1/2019	7,305,000
Series 2011A	8/1/2011	12/1/2031	19,240,000
Series 2012A	7/26/2012	12/1/2032	15,720,000

APPENDIX B

LIST OF BOND-FINANCED PROJECTS / USES

Description	Department	Funding Source	Fund	GO Debt Proposal
Service Center Parking Deck Structural and Waterproofing Repairs	PRCS	GO Unabated	CIP	700,000
Police - Fire Roof Replacement	PRCS	GO Unabated	CIP	400,000
Civic Center Parking Lot Improvements	PRCS	GO Unabated	CIP	350,000
Lakefront - Lagoon Area Improvements	PRCS	GO Unabated	CIP	50,000
Fire Station #2 Boiler/Chimney Apparatus Floor Heating Replacement	PRCS	GO Unabated	CIP	210,000
Church Street Brick Sidewalk Replacement - Ridge to Chicago	Public Works	GO Unabated	CIP	240,000
Church Street Rehab - Ridge to Chicago	Public Works	GO Unabated	CIP	160,000
Citywide Pavement Evaluation	Public Works	GO Unabated	CIP	200,000
Davis Street Brick Sidewalk Replacement - Hinman to Orrington	Public Works	GO Unabated	CIP	230,000
CIP Street Resurfacing - Watermain Projects I	Public Works	GO Unabated	CIP	900,000
New Salt Dome	Public Works	GO Unabated	CIP	460,000
Service Center Locker Room Renovations	Public Works	GO Unabated	CIP	400,000
Filter and Filter Roof Rehab	Utilities	GO Abated	Water	1,000,000
SCADA System Improvements	Utilities	GO Abated	Water	700,000
Water Main Installation	Utilities	GO Abated	Water	2,700,000
Sewer Fund IEPA Loan Debt Service payment	Utilities	GO Unabated	Sewer	4,000,000
Refunding 2002C Bonds	N/A	GO Unabated	N/A	<u>3,520,000</u>
TOTAL USES OF BOND FUNDS				<u><u>16,220,000</u></u>

APPENDIX C

GLOSSARY OF TERMS AND CONCEPTS

Private Business Use

“*Private Business Use*” means any use of Bond-financed property by any person other than a state or local government unit, including as a result of (i) ownership, (ii) actual or beneficial use pursuant to a lease or a management, service, incentive payment, research or output contract or (iii) any other similar arrangement, agreement or understanding, whether written or oral, except for use of Bond-financed property on the same basis as the general public. Private Business Use includes any formal or informal arrangement with any person other than a state or local governmental unit that conveys special legal entitlements to any portion of Bond-financed property that is available for use by the general public or that conveys to any person other than a state or local governmental unit any special economic benefit with respect to any portion of the Bond-financed property that is not available for use by the general public. Use by a natural person not engaged in any trade or business is not private use. Any use by the federal government or by a corporation is Private Business Use.

Examples of common uses of Bond-financed property that may create Private Business Use include the following:

- Management contracts with private companies or individuals to manage all or a portion of a Bond-financed facility (*e.g.*, a contract with a private company to manage a Bond-financed cafeteria, convention center, recreation center, etc.)
- A lease of space in a Bond-financed facility to a non-governmental person (*e.g.*, a lease of space in a Bond-financed municipal building to Starbucks or McDonalds)
- Rental arrangements whereby individuals, non-profit organizations or private businesses rent space in a Bond-financed facility

There are certain exceptions to Private Business Use. For example, a “qualified management contract” following certain guidelines set forth in Revenue Procedure 97-13 does not create Private Business Use. In addition, under appropriate circumstances, short-term rentals and other uses of up to 50 days (or in some cases 100 days or 200 days) are permitted.

Arbitrage & Arbitrage Rebate

Arbitrage generally is the earnings that an issuer will earn when it invests proceeds of the Bonds in investments with a yield above the yield on the Bonds. Generally, an issuer is required to make payments of any arbitrage it earns as a result of the investment of the proceeds of the Bonds above the yield on the Bonds to the IRS, which is known as “arbitrage rebate.” There are certain exceptions to the requirement to make arbitrage rebate payments to the IRS (*e.g.*, small issuer exceptions, spending exceptions, bona fide debt service fund exceptions).

Yield Restriction and Yield Reduction Payments

Yield restriction is the requirement that an issuer not invest Gross Proceeds (defined below) of the Bonds at a yield higher than Bond yield. Generally, in a capital project financing, an issuer will have a 3-year “temporary period” during which it can invest proceeds of the Bonds in its project fund above the yield on the Bonds. After such time, moneys are yield restricted and cannot be invested above the yield on the Bonds (plus a de minimis percentage). Additionally, after the expiration of the temporary period, proceeds generally cannot be invested in federally guaranteed investments (including FDIC-insured accounts), other than certain de minimis amounts. If an issuer invests amount above the yield on the Bonds after the expiration of a temporary period, it may still be able to achieve yield compliance by making a yield reduction payment to the IRS, which is a rebate payment or any other amount paid to the United States in the same manner as rebate amounts are required to be paid or at such other time or in such manner as IRS may prescribe that will be treated as a reduction in Yield of an investment under the Regulations. Yield reduction payments may only be made in limited circumstances, and do not work for all investments above Bond yield.

Gross Proceeds

“*Gross Proceeds*” generally means (i) sale proceeds of the Bonds and investment earnings thereon and (ii) amounts reasonably expected to be used directly or indirectly to pay principal or interest on the Bonds. In addition, a pledged fund may also constitute gross proceeds. A pledge is any amount that is directly or indirectly pledged to pay the principal of or interest on the bonds. A pledge by the issuer must provide reasonable assurance that such moneys will be available to pay the debt service on the bonds even if the issuer has financial difficulties. Gross proceeds may also arise if Bonds are outstanding longer than reasonably necessary for their governmental purpose. Typically, Gross Proceeds will be contained in a project fund, escrow fund (if the Bond issue is a refunding issue), costs of issuance fund, bond fund and debt service reserve fund (if applicable).

If moneys or investments are pledged or otherwise set aside for payment of principal of or interest on the Bonds, any amounts are derived from the sale of any right that is part of the terms of a Bond or is otherwise associated with a Bond (e.g., a redemption right), or the City enters into any agreement to maintain certain levels of types of assets for the benefit of a holder of a bond or any credit enhancement with respect to the Bonds, such amounts may also constitute Gross Proceeds. Further, if any Bond-financed property is sold or otherwise disposed of any amounts received from such sale or other disposition may also constitute Gross Proceeds.

Remediation

The Code prescribes three self-help mechanisms that an issuer may use to remediate non-qualified Bonds as a result of violation of Private Business Use covenants. These include redemption or defeasance of non-qualified bonds, alternative use of a facility (e.g., if a 501(c)(3) organization leases a Bond-financed municipal facility) or alternative use of disposition proceeds (e.g., if Bond-financed property is sold, the proceeds of the sale are used for other governmental purposes that would have qualified for tax-exempt financing). Prior to taking such remedial

actions, the issuer must satisfy certain pre-conditions. In addition, remedial actions are only able to be taken within a specified time frame before or after the action causing Private Business Use.

Voluntary Closing Agreement Program

Through the Voluntary Closing Agreement Program (VCAP), issuers of Bonds can voluntarily resolve violations of the Code and applicable Regulations (through closing agreements with the IRS). VCAP can be used when a remedial action (described under “Remediation”) is unavailable or there is another violation of the Code or Regulations that cannot be fixed through self-help mechanisms. The incentive for an issuer to go to VCAP is that, generally, a settlement in VCAP will be more favorable to the issuer than if the violation were discovered in an examination.