

# CITY OF EL CENTRO

## POLICY STATEMENT

Policy Statement No: 311  
Category: Financial Management  
Subject: Guidelines Regarding Post-Issuance  
Compliance Applicable to Tax-Exempt  
Bonds Policy

Adopted: December 16, 2014  
Revised:  
Distribution:

### **I. Purpose**

The following policy of the City of El Centro, California (including the El Centro Financing Authority and any other of the City's related entities, the "City") is intended to ensure compliance with tax law requirements applicable to each of the City's tax-exempt issues, whether comprising bonds, bond anticipation notes, certificates of participation, revenue obligations or other instruments.

### **II. In General**

This document contains procedures and guidelines (the "Procedures and Guidelines") of the City to further assure continuing compliance by the City with certain federal tax requirements applicable to each of its issuances of obligations the interest on which is intended to be excluded from the gross income of the owners thereof for federal income tax purposes (each, a "Tax-Exempt Issue").

These Procedures and Guidelines relate to requirements that must be satisfied subsequent to the issuance of a Tax-Exempt Issue to maintain the exclusion of interest on that Tax-Exempt Issue. Such requirements include, without limitation: those requiring the timely allocation of proceeds of that issue to the governmental purposes of the issue; those regulating the investment of proceeds of that issue under the arbitrage rebate rules; those limiting the private business use of facilities financed or refinanced by that issue; and those pertaining to the creation and retention of records of such expenditure, use and investment of such proceeds and of the use of such facilities.

These Procedures and Guidelines supplement any post-issuance compliance policy previously adopted by the City that otherwise would be applicable to that issue, but do not supersede, limit or contravene any representations, statements or covenants of the City contained in the financing

documents, tax certifications and other documents (the “Documents”) delivered in connection with the issuance of or otherwise applicable to the subject Tax-Exempt Issue.

### **III. Policy**

It is the policy of the City to adhere to all applicable tax requirements with respect to each Tax-Exempt Issue necessary to establish and assure the continuing exclusion of interest from gross income. These include, but are not limited to: requirements relating to the use of proceeds of the issue and of facilities financed or refinanced with such proceeds; arbitrage yield restriction and arbitrage rebate requirements, requirements as to timely and accurate return filings; and other tax requirements set forth in the Documents. In furtherance of this general policy, these Procedures and Guidelines address certain compliance monitoring and record creation and retention procedures with respect to each Tax-Exempt Issue.

### **IV. Relevant Issues**

Certain of the City’s Tax-Exempt Issues have been or will be issued for current projects costs or operating or administrative costs of the City (“New Money Purposes”); others of the City’s Tax-Exempt Issues have been or will be issued to refund or prepay one or more prior federally taxable or tax-exempt obligations of the City (“Refunding Purposes”); and other Tax-Exempt Issues of the City have been or will be issued for both New Money Purposes and Refunding Purposes.

The City understands that for purposes of monitoring compliance with the tax requirements applicable to a Tax-Exempt Issue, it is necessary to identify each facility to which any proceeds are to be or were allocated as a New Money Purpose whether those proceeds are those of the Tax-Exempt Issue itself or are those of a prior taxable or tax-exempt obligation that is being refunded (or was refunded through a series of one or more taxable or tax-exempt prior obligations that is being refunded) as a Refunding Purpose of the Tax-Exempt Issue (each, a “Prior Issue” in respect of the Tax-Exempt Issue). Each such facility is referred to herein as an “Original Facility,” and each issue any proceeds of which were or are to be allocated (in a New Money Purpose of that issue) to the costs of acquisition, construction or improvement of the Original Facility (including the Tax-Exempt Issue, to the extent of proceeds so allocated in a New Money Purpose) is referred to as an “Original Issue” in respect of the Tax-Exempt Issue. For purposes of this Policy, the “Relevant Issues” in respect of a Tax-Exempt Issue include each Original Issue and each Prior Issue in respect of that issue.

### **V. Compliance Monitoring**

It is the policy of the City to monitor compliance with the federal tax requirements applicable to each Tax-Exempt Issue, including the tax covenants of the City contained in the Documents for that Tax-

Exempt Issue. It is the further policy of the City, in the event that a Compliance Officer (defined below) designated hereunder determines that any such requirement has or may have been or is in jeopardy of being violated, to evaluate that determination and, if appropriate, to implement remedial or corrective actions with respect to that requirement, all as described herein.

For each Tax-Exempt Issue, it is the policy of the City to identify, collect and maintain in a single central location a copy of each of the Documents pertaining to such issue and, further, to annotate each Document in the manner that appears most likely under the circumstances to create a permanent and useful record to identify and make readily accessible the applicable tax representations, covenants and requirements the compliance with which is required in order to establish and preserve the exclusion of interest on that Tax-Exempt Issue from gross income. In addition, it is the policy of the City to maintain a log or registry as an up-to-date consolidated reliable current record of its Tax-Exempt Issues, setting forth for each Tax-Exempt Issue:

1. the location (physical or virtual) of the relevant Documents in sufficient detail to allow successive Compliance Officers ready access thereto;
2. the location(s) of the Records in respect of that Tax-Exempt Issue and each Relevant Issue (described in more detail below) and, if any Record is held by a third-party, the identity and contact information of that third party;
3. the location of each report or compilation (arbitrage rebate computation report, determination of annual average private business use, cumulative record of private payment, etc.) that either of the Compliance Officers determines is necessary to the demonstration of continuing compliance with the Tax Requirements; and
4. the schedule of future arbitrage rebate determinations, filings, or other actions necessary to maintain compliance with the tax requirements, in a form suitable to act as a "tickler" to assure timely action.

## **VI. Record creation and Retention**

To implement the policies of the City set forth herein, employees of the City, under the supervision of a Compliance Officer, will create, collect, shepherd and retain the following documents and records with respect to each Tax-Exempt Issue and each Relevant Issue thereto (collectively, the "Records" in respect of that issue):

- Bond transcript;
- Documentation identifying each Original Facility financed in whole or in part by an Original Issue, and, as to each allocation of proceeds of that Original Issue to that Original Facility: (i) the date and amount of that allocation; (ii) supporting documentation for each allocation, evidencing the fact of a cash expenditure (not later than 30 days after the allocation), the purpose of the expenditure (e.g., Trustee requisitions, vendor invoices, etc.); and (iii), where funds from sources other than that Original Issue were or are to be allocated to the capital costs of that Original Facility, a tabulation (which may be in the form of a spreadsheet or database presentation) showing each such source of funds

(including proceeds of the Original Issue), the amount of funds from each source allocated among such capital costs, and the basis (e.g., a timely elected and consistently applied specific tracing; gross proceeds spent first; first-in, first-out; or ratable allocation methodology) supporting such allocation;

- Documentation sufficient to allow the determination of the extent of use of each Original Facility for any private business use (e.g., by reason of an ownership or leasehold interest held by any nongovernmental person, or a management contract, research agreement, output purchase agreement), including: (i) copies of any lease, joint venture agreement, contract or other document establishing that use; (ii) records showing with specificity the periods of time during which such use occurred; (iii) the portion of the Original Facility affected by such use; (iv) the extent of any concurrent or contemporaneous use of the Original Facility by the City, by another governmental person or the general public; and (v) any other documentation that the Compliance Officer believes to be necessary to such determination. In the case of any Original Issue for which such documentation has not previously been collected or retained, the City will diligently shepherd and preserve such relevant documentation as can be located, and investigate and research the prior use of each such Original Facility in order to recreate, to the extent and as accurately as possible, a history of any such private business use;
- Documentation showing the sources of and security for the payment of debt service on the Tax-Exempt Issue and each Relevant Issue;
- Documentation (including copies of contemporaneous Trustee account statements; trade confirmations; bid solicitation materials and responses; fairness opinions or recommendations of financial advisors to the City; and so on) related to the investment of proceeds of the Tax-Exempt Issue, including the purchase and sale of securities, SLGS subscriptions, guaranteed investment contracts, investment income received, yield calculations, and rebate calculations;
- A copy of each return as filed with the IRS for the Tax-Exempt Issue and each Relevant Issue (including, as applicable, IRS Forms 8038, 8038-B, 8038-G, 8038-GC, 8038-T and 8038-R), together with sufficient records to show that such return was correct and, in the case of the Tax-Exempt Issue, timely filed; and
- Any other documentation that is or subsequently may become material to the determination of whether interest on the Tax-Exempt Issue is and continues to be excluded from gross income for federal income tax purposes.
- Except as otherwise set forth in the Documents for a Tax-Exempt Issue, the City will retain the records described above in hard and/or electronic copy format until three years following the final retirement of any obligation comprised by that Tax-Exempt Issue or any Relevant Issue, or by any issue issued to refund that Tax-Exempt Issue. With respect to Tax-Exempt Obligations that are refunding bonds, the City will retain the above-described records for the refunding and refunded bonds (and any earlier issue in the case of a series of refundings).

## **VII. Compliance Officers**

Each of the following officers of the City (each, a "Compliance Officer") is responsible for monitoring compliance with the tax requirements and record creation and maintenance requirements described in this Policy applicable to each Tax-Exempt Issue: the Finance Director and the City Manager. If a vacancy arises in either office, the City Manager shall designate an individual to serve as the Compliance Officer until that vacancy has been filled. Each Compliance Officer may delegate responsibility as that Compliance Officer believes appropriate, but in every event that Compliance Officer will remain ultimately responsible for the performance of these monitoring and record creation and maintenance obligations.

It is the policy of the City that if either of the Compliance Officers determines that any tax requirement in respect of a Tax-Exempt Issue has not or may have not been satisfied, or may be in jeopardy of not being satisfied, that Compliance Officer is to bring the matter to the attention of the other Compliance Officer and, if satisfactory resolution of the matter cannot be agreed or achieved, that such Compliance Officer bring the matter to the attention of the City Council (or of such Committee of the City Council as may have been chartered by the City Council specifically for such purpose) for such further action as may be necessary to comply with the policy of the City set forth herein.

It is the policy of the City to support fully the efforts of the Compliance Officers in carrying out the policy set forth herein. In furtherance thereof, each Compliance Officer is authorized and encouraged to consult with legal counsel of the City, and, if necessary, with outside legal counsel, to assure that such officer is competent to carry out such responsibilities. The City understands that in order to carry out such responsibilities, each Compliance Officer must understand fully the circumstances of the issuance of each Tax-Exempt Issue, and of the investment and use of the proceeds of that issue, and such other facts as that Compliance Officer believes relevant. It is the policy of the City that each Compliance Officer should review such documents of the City, and should consult with each or any employee of the City or outside contractor, vendor or consultant, in order to obtain such information, as he believes to be relevant and necessary to carrying out his responsibilities under this policy. It is the further policy of the City that it is the responsibility of each employee of the City possessing information that he or she believes to be relevant to the fulfillment by a Compliance Officer of his responsibilities, to provide such information to that Compliance Officer freely and without fear of retribution.

## **VIII. Coordination with documents**

In the event of any irreconcilable conflict between these Procedures and Guidelines and the Documents, the Documents shall govern.

## **IX. Effective Date**

These Procedures and Guidelines are effective as of Dec. 16, 2014