

**CITY OF ENGLEWOOD  
IN  
MONTGOMERY COUNTY, OHIO**

**ORDINANCE NO: 18-22**

**Passed: December 20, 2018**

**AN ORDINANCE: APPROVING A WRITTEN POST-ISSUANCE COMPLIANCE POLICY IN CONNECTION WITH THE ISSUANCE OF TAX-EXEMPT AND TAX-PREFERRED OBLIGATIONS BY THE CITY OF ENGLEWOOD.**

**WHEREAS**, the City of Englewood, Ohio (the “City”) has previously issued, and intends to issue in the future, bonds and other obligations for the purpose of financing various capital improvements in, or affiliated with, the City; and

**WHEREAS**, such obligations were issued, or will be issued, as tax-exempt and tax-preferred obligations (collectively, the “Obligations”) under the Internal Revenue Code of 1986, as amended; and

**WHEREAS**, in connection with the issuance of the Obligations, it is advised that the City have a formal written policy outlining the policies and procedures necessary to promote compliance with federal income tax and securities laws, as well as the requirements set forth in the documents for each issue of Obligations; and

**WHEREAS**, the Council of the City (the “Council”) desires to formally approve a written policy outlining such policies and procedures;

**NOW, THEREFORE, BE IT ORDAINED** by the Council of the City of Englewood, Ohio, that:

**Section 1.** This Council hereby approves a written post issuance compliance policy (the “Policy”) in connection with the issuance of the Obligations of the City. On behalf of the City, the Director of Finance (“Fiscal Officer”) is hereby authorized to execute the Policy, which Policy shall be in the form attached hereto as Exhibit A. The Fiscal Officer is also hereby authorized to execute any other documents necessary in connection with the Policy. The Fiscal Officer’s execution of such documents shall be conclusive evidence of this Council’s approval of such documents.

**Section 2.** It is hereby found and determined that all formal actions of the Council concerning and relating to the passage of this Ordinance were taken in an open meeting of the Council, and that all deliberations of the Council and of any of its committees that resulted in such formal action were in meetings open to the public in compliance with all legal requirements, including Ohio Revised Code Section 121.22.

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Patricia Burnside

Patricia Burnside, Mayor

Kerry Norman

Kerry Norman, Clerk of Council

Approved as to form:

Michael McNamee

Michael McNamee, Law Director

#### CERTIFICATE

The undersigned Clerk of Council of the City of Englewood, Ohio hereby certifies that the foregoing is a true copy of an ordinance duly passed by the City Council of said City on December 20, 2018.

Kerry Norman

Clerk of Council  
City of Englewood, Ohio

EXHIBIT A

*[Copy of Post Issuance Compliance Policy Attached]*

# **CITY OF ENGLEWOOD, OHIO**

## **POST-ISSUANCE COMPLIANCE POLICY**

### **Purpose:**

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

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

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

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

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

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

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

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

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

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

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

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

**D. Administration of Direct Pay Bonds**

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

**E. Use of Bond-Financed Facilities**

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

**F. Post-Issuance Transactions**

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

**G. Remedial Action**

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

**IV. Federal Securities Law Compliance**

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

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

## **V. Recordkeeping**

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

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

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

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

## **VI. Bond Counsel Review**

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

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

## **VII. Training Requirements**

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

## **VIII. Annual Policy Review**

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

## **EXHIBIT A**

### **CITY OF ENGLEWOOD, OHIO PRIVATE BUSINESS USE CONTRACT REVIEW WORKSHEET**

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

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

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

#### **Agreement Not Subject to Private Use Limitation**

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

#### **Agreement Satisfies Safe Harbors for Management/Service Contracts with Outside Service Providers**

If the arrangement with an outside service provider is not either an “Eligible Expense Reimbursement Arrangement” or an “Other Permissible Arrangement” (both as described below), then Bond Counsel should be consulted.

##### **Eligible Expense Reimbursement Arrangement**

- To be an Eligible Expense Reimbursement Arrangement, the compensation paid to the outside service provider must consist solely of reasonable overhead and the reimbursement of actual and direct expenses paid by the outside service provider to unrelated parties.

##### **Other Permissible Arrangement**

To be an Other Permissible Arrangement, all six of the following elements must be present:

###### **1. Financial Requirements**

- Compensation payments to the service provider (including any reimbursement for actual and direct expenses paid by the service provider and related administrative overhead expenses) are reasonable compensation for services rendered during the term of the contract<sup>(A)</sup>; and

\_\_\_\_\_ The outside service provider does not share in the net profits of the managed facility; and

\_\_\_\_\_ The outside service provider is not forced to share net losses from the operation of the managed facility<sup>(B)</sup>.

(A) Permissible compensation arrangements can include (i) capitation fees (periodic fixed fees for each person served), (ii) periodic fixed fees (stated dollar amount covering a specified period of time), (iii) per unit fees (fees based on a unit of service provided), (iv) incentive compensation based on one or more standards that measure quality of services, performance, or productivity, or (v) a combination of any of these methods.

(B) Deferred compensation due to insufficient net cash flows from the operation of a managed property will not be considered as contingent upon net profits or net losses if the compensation (a) is payable at least annually, (b) is subject to reasonable consequences for late payment (such as reasonable interest charges or late payment fees), and (c) is payable no later than five years after the original due date for such payment.

## 2. Term of the Contract

\_\_\_\_\_ The term of the contract is no longer than the lesser of (i) 30 years, or (ii) 80% of the weighted economic life of the managed property, which term is retested as of the date of any material modification of the contract. Land may be treated as having a useful life of 30 years if 25% or more of the net proceeds of the issue that financed the managed property is used to finance the costs of such land.

## 3. Control of the Managed Property

\_\_\_\_\_ The approval of the City is required for each of the following:

- \_\_\_\_\_ the annual budget of the managed property;
- \_\_\_\_\_ capital expenditures with respect to the managed property;
- \_\_\_\_\_ any disposition of the managed property or any portion thereof;
- \_\_\_\_\_ rates charged for use of managed property (or methodology for setting such rates), or by requiring that charged rates be reasonable and customary as determined by, or negotiated with, an independent third party; and
- \_\_\_\_\_ the general nature and type of use of the managed property (for example, the type of services).

## 4. Risk of Loss

\_\_\_\_\_ The City bears the risk of loss upon damage or destruction of the managed property.

5. Tax Position of Outside Service Provider

\_\_\_\_\_ The outside service provider expressly agrees that it is not entitled to and will not take any tax position that is inconsistent with being an outside service provider to the City with respect to the managed property.

6. Rights of the City

\_\_\_\_\_ The outside service provider does not have any role or relationship with the City that might limit the ability of the City to exercise its rights under the contract.

**Agreement Requires Further Review by Bond Counsel**

\_\_\_\_\_ Ownership (including agreement that transfers title at end of the term)

\_\_\_\_\_ Lease, license, or any other agreement which creates exclusive or priority rights to use any portion of a bond-financed property or which creates an economic benefit for the third-party user

\_\_\_\_\_ Agreement with governmental entity or 501(c)(3) organization

\_\_\_\_\_ Research agreement

\_\_\_\_\_ Management or service contract falling outside safe harbors listed above (provide explanation)

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Reviewer: \_\_\_\_\_

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