

# Post-Issuance Compliance Policy

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Adopted June 7, 2011 by Resolution 2011-12  
Amended November 18, 2014 by Resolution 2014-25  
Amended XX by Resolution 2017-XX

CITY OF POWELL  
Resolution 2017-26  
Exhibit A

The City of Powell (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 securities and income tax laws, as well as the requirement set forth in the bond documents for each bond issue. The policy is to strictly follow the U.S. Constitution and laws, the Ohio Constitution and laws. For purposes of this policy, the term “bonds” means any obligations 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 Finance Director (the “Compliance Officer”). The Compliance Officer may designate employees within their respective office to carry out their duties under this Policy on their 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 Compliance 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, restricting on incurring additional indebtedness, restrictions on the disposition of property, and restrictions on granting liens or encumbering property.

## **III. Continuing Disclosure Compliance**

The City must enter into a continuing disclosure agreement (each, a “Continuing Disclosure Agreement”) for certain bonds issued by the City to comply with the standards from the Securities and Exchange Commission (“SEC”) Rule 15c2-12. The Continuing Disclosure Agreement, in compliance with the SEC standards, obligates the City to provide material event disclosures and annual financial information on a continuing basis.

Annual Financial Information - The City shall provide to the national (Electronic Municipal Market Access system of the MSRB (“EMMA”)) and state repositories the following:

Annual Reports which include quantitative financial information and operating data disclosed in the official statement and the audited financial statements. A comprehensive annual financial report (“CAFR”) meets the SEC requirements provided that the CAFR also meets the requirements necessary for annual disclosure set forth in any continuing disclosure agreements executed in the connection with the issuance of bonds by the City.

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Material Event Disclosures – The City shall file with EMMA ~~in a timely manner~~ within 10 business days of awareness of event, notice of any of the following events with respect to bonds, if the event is material within the meaning of the federal securities laws:

- a) Principal and interest payment delinquencies
- b) Non-payment related defaults
- c) Unscheduled draws on debt service reserves reflecting financial difficulties
- d) Unscheduled draws on credit enhancements reflecting financial difficulties
- e) Substitution of credit or liquidity providers, or their failure to perform
- f) Adverse tax opinions or events affecting the tax-exempt status of the bonds
- g) Modifications to rights of holders of the bonds
- h) Bond calls
- i) Defeasances
- j) Release, substitution or sale of property securing repayment of the bonds
- k) Rating changes
- l) The consummation of a merger, consolidation or acquisition involving the issuer or the sale of all or substantially all of the assets of the issuer.

## Continuing Disclosure Agreement (“CDA”) Execution

Before the City executes a CDA, it should be discussed with the City’s bond counsel, underwriter and/or financial advisor to ensure a full understanding of the City’s obligations. Specific requirements above and beyond the CAFR requirements need to be understood by the Compliance Officer. If and/or when the City has agreed in the CDA to furnish information that is outside the scope of the CAFR, that information should be included as a separate supplement to the CAFR when filing with EMMA.

The City may wish to submit other financial information to EMMA (and post on its website) that is above the minimum requirements in the CDA. Rating agencies and investors may expect that these type of disclosures to be publicly communicated. Types of additional information to be disclosed may include annual budgets, financial plans, financial materials sent to City Council, monthly financial summaries, and investment information and economic and revenue forecasts.

## **IV. Federal Tax Law Compliance**

The City must enter into a tax compliance certificate (each, a “Tax Compliance Certificate”) for bonds issued by the City to comply with federal tax law. The Tax Compliance Certificate obligates the City to comply with the federal tax law in the following aspects.

- a) Proper Use of Proceeds – The Compliance 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 Compliance 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 Compliance Officer shall ensure the timely completion of arbitrage rebate calculations and filings.
- d) Administration of Direct Pay Bonds – The Compliance 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

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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 Compliance 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 Compliance Officer or the designee of the Compliance Officer shall review such agreements for compliance with federal tax laws.
- f) Post-Issuance Transactions – The Compliance 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 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 Compliance 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.

## **V. Information Required to be Provided to Other Entities**

- a) Trustee (s) may request information to be separately disclosed to them.
- b) Rating Agency (ies) may request information to be separately disclosed to them.
- c) Bond Insurer (s) may request information to be separately disclosed to them.
- d) Credit Enhancer (s) may request information to be separately disclosed to them.

## **VI. Dates When Filings are to be Made**

Within fifteen (15) days of completion of the annual audited financial information, the City shall submit the obligated information.

The Government Finance Officers Association (GFOA) recommends a government should complete its audited annual financial information within 180 days of the end of its fiscal year. However, the State of Ohio may dictate a later audit period if the City is not completing a CAFR. When the City does not complete a CAFR or when the CAFR is not available, annual reports need to be filed by June 1<sup>st</sup> for the completed fiscal year.

Material event notices will be filed within ten (10) days of the City becoming aware of the event.

## **VII. Designated to Make Filings**

The City has identified the Compliance Officer as the City's agent to disseminate any post disclosure filings.

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## **VIII. Record Retention**

The City has a statutory recognized Records Commission that works in conjunction with the Ohio Historical Society in determining the records retention life and monitoring the destruction of said documents.

## **IX. Annual Policy Review**

On an annual basis, or sooner if deemed necessary by the Compliance Officer, the Compliance Officer shall review this policy and assess the City's compliance with this Policy. The Compliance 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 law and any other applicable law.

*Best Practices A-024; D-018*