

**RESOLUTION NO. 2019-1954**

**A RESOLUTION OF THE MAYOR AND CITY COUNCIL OF THE CITY OF GOODYEAR, ARIZONA ADOPTING WRITTEN CONTINUING DISCLOSURE COMPLIANCE PROCEDURES AND ISSUANCE AND POST-ISSUANCE TAX COMPLIANCE PROCEDURES RELATING TO TAX-EXEMPT BONDS AND PROVIDING FOR AN EFFECTIVE DATE.**

**WHEREAS**, the City of Goodyear, Arizona (the "*City*") has previously issued tax-exempt and taxable bonds (the "*Bonds*"); and

**WHEREAS**, the City has entered into continuing disclosure undertakings in connection with the Bonds, which require the City to disclose certain financial information; and

**WHEREAS**, the City desires to adopt written compliance procedures related to such continuing disclosure undertakings; 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 CITY COUNCIL OF THE CITY OF GOODYEAR, ARIZONA**, as follows:

**Section 1.** That the Mayor and City Council of the City (the "*Mayor and City Council*") adopt the Continuing Disclosure Compliance Procedures Regarding the Securities and Exchange Commission's Rule 15c2-12 attached hereto as Exhibit A.

**Section 2.** That the Mayor and City Council adopt the Issuance and Post-Issuance Compliance Procedures Relating to Tax-Exempt Bonds for the City in substantially the form attached hereto as Exhibit B.

**Section 3.** This resolution shall become effective immediately upon its passage and thereupon and thereafter the same shall be in full force and effect.

[Signatures on following page]

**PASSED, ADOPTED AND APPROVED** by the Mayor and City Council of the City of Goodyear, Arizona on April 8, 2019.

**CITY OF GOODYEAR, ARIZONA**

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Mayor

**ATTEST:**

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City Clerk

**APPROVED AS TO FORM:**

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Gust Rosenfeld P.L.C.  
Bond Counsel

**CERTIFICATE**

I hereby certify that the above and foregoing resolution was duly passed by the Mayor and City Council of the City of Goodyear, Arizona at a regular meeting held on April 8, 2019, and that a quorum was present thereat and that the vote thereon was \_\_\_\_ ayes and \_\_\_\_ nays; \_\_\_\_ did not vote or were absent.

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City Clerk

EXHIBIT A

**CONTINUING DISCLOSURE COMPLIANCE PROCEDURES REGARDING THE  
SECURITIES AND EXCHANGE COMMISSION'S RULE 15C2-12  
FOR THE CITY OF GOODYEAR, MARICOPA COUNTY, ARIZONA**

**Date of Implementation: April 8, 2019.**

In connection with its issuance of bonds or other obligations, the City of Goodyear, Arizona of Maricopa County, Arizona (the "*City*") has adopted and/or will adopt a Continuing Disclosure Certificate in connection with each series of publicly sold bonds or obligations (each a "*Certificate*" and collectively, the "*Certificates*"). The Certificates require the City to file annually audited financial statements and certain financial and operating information and operating data (the "*Annual Reports*"), as well as to report certain financial events. The procedures described below (the "*Procedures*") are intended to help the City maintain compliance with the Certificates. The City may have other reporting obligations in connection with various loans and privately sold bonds or obligations; these Procedures are not intended to apply to requirements related to transactions for which no Certificate was adopted.

**1. Responsible Officers and Employees**

The implementation and consistent execution of these procedures are extremely important. One employee of the City should be given primary responsibility for compliance with these Procedures (the "*Disclosure Coordinator*"), and at least two employees (who may include the Disclosure Coordinator, referred to herein collectively as the "*Disclosure Officials*") should be familiar with and trained to implement these Procedures at all times. When Disclosure Officials end their employment with the City, new Disclosure Officials should be named in their place. Typically, this responsibility will be assigned based on role or title, but the City may assign responsibility to any appropriate employee. New Disclosure Officials should be briefed on the Certificates, dates, reports, and reminder systems described in these Procedures.

As of the Date of Implementation, the Disclosure Officials are the City's:

Finance Director (Disclosure Coordinator)  
Finance Manager  
Accounting Supervisor

**2. Active Certificates and Financial Obligations**

The City is obligated to comply with the requirements of a Certificate from the time the City adopts the Certificate until the earlier of (i) the date that the last of the bonds or obligations listed in the Certificate are paid or (ii) the date that the bonds or obligations listed in the Certificate are defeased or refunded. Certificates between these two dates are "*Active Certificates*". As of the Date of Implementation, the City has or expects to have the Active Certificates listed in Schedule I.

The Certificates entered into after February 26, 2019 require disclosure of facts relating to certain financial obligations (see Section 4 below). For purposes of these Procedures, "*Financial Obligation*" means, with the exception of bonds or obligations for which the City provided a final official statement to the Municipal Securities Rulemaking Board ("*MSRB*") consistent with the United States Securities and Exchange Commission's Rule 15c2-12 (the "*Rule*"):

- (i) a debt obligation;
- (ii) a derivative instrument entered into in connection with, or pledged as security or a source of payment for, an existing or planned debt obligation; or
- (iii) a guarantee of (i) or (ii).

"*Active Financial Obligations*" are those Financial Obligations which are enforceable against the City and for which the City has not already made all required payments. A list of Active Financial Obligations, in the form set forth in Schedule II, is on file with the City.

The Disclosure Coordinator should maintain an updated list of Active Certificates and Active Financial Obligations, including the information listed in Schedules I and II, and review the list periodically to ensure accuracy. When the City enters into a new Financial Obligation, the Disclosure Coordinator will ensure timely reporting (see Section 4 below), if applicable.

### **3. Annual Reports**

Compliance with the Certificates includes ensuring that all of the tables and information required by Section 4 of the Certificates are included in the Annual Reports. Such information may be included as a part of the City's Comprehensive Annual Financial Report ("*CAFR*"), or may be filed separately. In each case, the *CAFR* and any additional information required by the Certificates should be filed no later than the reporting date listed within each Certificate (the "*Annual Reporting Date*") of each fiscal year while the City's bonds or obligations require such Annual Reports.

To ensure that the Annual Reports are submitted in a timely manner, the earliest Annual Reporting Date should be put into a reminder system, such as a docket, diary or tickler, which is maintained by a minimum of two people (typically, the Disclosure Officials). When those listed on the reminder system leave the City's employment, new names must be added.

The *MSRB* allows the City to schedule automated e-mail reminders for these Annual Reports through its Electronic Municipal Market Access system ("*EMMA*"). The City can add up to three e-mail recipients, so the Disclosure Officials and/or other staff may be included on the reminders.

**Note:** Some issuers of bonds or obligations engage an auditor or a dissemination agent to make the EMMA filings. If the City has such an agreement, the City is still responsible if the auditor or dissemination agent fails to timely file the required Annual Report. Thus, even if the auditor or dissemination agent agrees to make the required filings, the City must comply with the Annual Reporting Date and inquire of the City's auditor or dissemination agent to determine if the filing deadline will be, and ultimately is, met. If there is a substantial risk that the deadline will not be met, it is the City's responsibility – *not* that of the City's auditor or dissemination agent – to file a notice with EMMA indicating that the deadline will not be met and an estimate as to when the Annual Report will be filed. If audited financial statements are not available by the Annual Reporting Date, unaudited financial statements must be filed by the Annual Reporting Date until audited financial statements are available. Such unaudited financial statements may be filed separately or together with the other financial and operating data.

#### **4. Listed Events**

The City is required to file notices of "*Listed Events*" with EMMA within ten (10) business days of such events or occurrences. Please note that Listed Events enumerated in the City's existing and future Certificates may differ. The City should provide notice of the Listed Events from all Certificates. Typically, the most recent Certificate will provide the broadest requirements and can serve as a reference. Required Listed Events are defined by the Rule, which may be revised or amended in the future. As a result, future Certificates may require the reporting of a different set of Listed Events. The City should check with its bond counsel at the time future bonds or obligations are issued to determine if the Listed Events have been changed and if the later Certificate differs from the City's current Certificates. The Listed Events that require notice are listed in Section 5 of the Certificates. Currently, the Rule requires reporting of the following Listed Events:

1. Principal and interest payment delinquencies;
2. Non-payment related defaults, if material;
3. Unscheduled draws on debt service reserves reflecting financial difficulties;
4. Unscheduled draws on credit enhancements reflecting financial difficulties;
5. Substitution of credit or liquidity providers, or their failure to perform;
6. Adverse tax opinions, the issuance by the Internal Revenue Service (the "*IRS*") of proposed or final determinations of taxability, Notices of Proposed Issue (IRS Form 5701-TEB) or other material notices or determinations with respect to the tax status of the securities, or other material events affecting the tax status of the securities;
7. Modifications to rights of security holders, if material;
8. Security calls, if material, and tender offers;
9. Defeasances;
10. Release, substitution, or sale of property securing repayment of the securities, if material;
11. Rating changes;
12. Bankruptcy, insolvency, receivership or similar event of the City;

13. The consummation of a merger, consolidation, or acquisition involving the City or the sale of all or substantially all of the assets of the City, other than in the ordinary course of business, the entry into a definitive agreement to undertake such an action nor the termination of a definitive agreement relating to any such actions, other than pursuant to its terms, if material;
14. Appointment of a successor or additional trustee or the change of name of a trustee, if material;
15. The incurrence of a Financial Obligation of the City, if material, or agreement to covenants, events of default, remedies, priority rights, or other similar terms of a Financial Obligation of the City, any of which affect security holders, if material; and
16. A default, event of acceleration, termination event, modification of terms, or other similar events under the terms of a Financial Obligation of the City, any of which reflect financial difficulties.

"Materiality" will be determined in accordance with the applicable federal securities laws.

Whenever any officer or employee of the City becomes aware of any event that may qualify as a Listed Event, the officer or employee should immediately notify the Disclosure Officials in order to facilitate prompt filing of a notice. If the Disclosure Officials are uncertain as to whether an event qualifies as a Listed Event, including whether a transaction qualifies as a Financial Obligation, or whether an event or Financial Obligation is material, they should contact bond counsel.

SCHEDULE I

The City has the following Active Certificates as of the Date of Implementation.

| <u>Series of Bonds or Obligations</u>   | <u>Certificate Date</u> | <u>Annual Reporting Date</u> | <u>Final Maturity Date</u> |
|---|-------------------------|------------------------------|----------------------------|
| General Obligation Refunding Bonds, Series 2009   | May 28, 2009            | February 1                   | July 1, 2029               |
| Water and Sewer Revenue Refunding Bonds, Series 2009                                      | June 25, 2009           | February 1                   | July 1, 2049               |
| Taxable General Obligation Bonds, Series 2010 (Build America Bonds – Direct Pay)          | January 26, 2010        | February 1                   | July 1, 2030               |
| Subordinate Lien Water and Sewer Revenue Obligations, Series 2010                         | January 26, 2010        | February 1                   | July 1, 2039               |
| General Obligation Refunding Bonds, Series 2010   | June 17, 2010           | February 1                   | July 1, 2030               |
| Subordinate Lien Water and Sewer Revenue Obligations, Series 2011                         | March 30, 2011          | February 1                   | July 1, 2041               |
| Public Improvement Corporation Municipal Facilities Revenue Refunding Bonds, Series 2011A | November 30, 2011       | February 1                   | July 1, 2027               |
| General Obligation Refunding Bonds, Series 2014   | April 3, 2014           | February 1                   | July 1, 2020               |
| Subordinate Lien Water and Sewer Revenue and Refunding Obligations, Series 2016           | June 7, 2016            | February 1                   | July 1, 2045               |
| General Obligation Refunding Bonds, Series 2016   | October 25, 2016        | February 1                   | July 1, 2037               |
| General Obligation Bonds, Series 2017   | November 14, 2017       | February 1                   | July 1, 2037               |
| McDowell Road Commercial Corridor Improvement District Refunding Bonds, Series 2018       | May 29, 2018            | February 1                   | January 1, 2031            |

The City expects to adopt the following Certificates.

| <u>Series of Bonds or Obligations</u>           | <u>Certificate Date*</u> | <u>Annual Reporting Date</u> | <u>Final Maturity Date*</u> |
|---|--------------------------|------------------------------|-----------------------------|
| General Obligation Bonds, Series 2019           | May 29, 2019             | February 1                   | July 1, 2038                |
| General Obligation Refunding Bonds, Series 2019 | May 29, 2019             | February 1                   | July 1, 2029                |

\*Anticipated

SCHEDULE II

|                                     |                 |                     |
|-------------------------------------|-----------------|---------------------|
| Name of Obligation:                 |                 | Dated:              |
|                                     |                 |                     |
| Original Principal Amount:          | Interest Rate:* | Final Payment Date: |
|                                     |                 |                     |
| Other Material Terms:               |                 |                     |
|                                     |                 |                     |
| <b><u>Amortization Schedule</u></b> |                 |                     |
| Maturity                            | Principal       | Interest            |
|                                     |                 |                     |
|                                     |                 |                     |
|                                     |                 |                     |
|                                     |                 |                     |

\*If variable, include method of computation.

|                                     |                 |                     |
|-------------------------------------|-----------------|---------------------|
| Name of Obligation:                 |                 | Dated:              |
|                                     |                 |                     |
| Original Principal Amount:          | Interest Rate:* | Final Payment Date: |
|                                     |                 |                     |
| Other Material Terms:               |                 |                     |
|                                     |                 |                     |
| <b><u>Amortization Schedule</u></b> |                 |                     |
| Maturity                            | Principal       | Interest            |
|                                     |                 |                     |
|                                     |                 |                     |
|                                     |                 |                     |
|                                     |                 |                     |

\*If variable, include method of computation.

## APPENDIX

The following materials are intended to serve as a quick reference for Disclosure Officials. The EMMA website is subject to modification by the MSRB. The City's Disclosure Officials should update this information as necessary.

**The City's CUSIP-6 number:** 382505

### **How to schedule alerts for Annual Reports:**

To schedule the alerts, access EMMA at [www.emma.msrb.org](http://www.emma.msrb.org) and click on the EMMA Dataport tab. Click on the "Login" button and enter your login information (User ID and password). From the Continuing Disclosure tab of the EMMA Dataport Submission Portal, click on "Schedule and manage e-mail reminders for recurring financial disclosures." Click the "Create Reminder" link to access the scheduling form.

### **How to file notices of "Listed Events" with EMMA:**

First, please save the Listed Events notice on your computer in a PDF, word-searchable format. You will also need the information contained in the Listed Events notice, so please print out a copy of the Listed Events notice.

1. Login to EMMA at <http://dataport.emma.msrb.org/>
2. Click CREATE Continuing Disclosure Submission
3. Check Event Filing, click Next
4. Check "Type of Event" – In the description box type: "[type of notice]"
5. Check "I don't know my CUSIP-9s" and then use the City's base CUSIP number to find the affected bonds or obligations
6. Check "all issues for issuer", click Next
7. Click upload
8. Update contact information, if necessary
9. Upload the Listed Events notice
10. Click preview
11. Publish the documents to EMMA
12. Print receipt and save in your bond documents for the life of the bonds or obligations

Please note there is only a limited save option on EMMA. Therefore the City will not be able to start entering the information, exit and continue later.

## EXHIBIT B

### **ISSUANCE AND POST-ISSUANCE COMPLIANCE PROCEDURES RELATING TO TAX-EXEMPT BONDS, TAX CREDIT BONDS, AND OTHER TAX-EXEMPT FINANCINGS FOR THE CITY OF GOODYEAR, MARICOPA COUNTY, ARIZONA**

**Date of Implementation: April 8, 2019**

#### **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 general obligation bonds, revenue bonds, lease-purchase agreements, and other tax-exempt financings by the City of Goodyear, Arizona of Maricopa County, 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 perform 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 the bond purchasers to comply with all of the conditions, restrictions and requirements throughout the life of the bonds.

Failure to comply may cause the City to be (a) liable to the bondholders, (b) subject to enforcement action by the Internal Revenue Service (the "*IRS*"), (c) subject to a loss of all or part of any applicable direct federal subsidy, and (d) subject to enforcement action by the U.S. Securities and Exchange Commission. Therefore, it is important that the City take the necessary action to ensure compliance with the conditions, restrictions and requirements applicable to each bond or other financing.

To ensure compliance, the City must identify a single person with overall compliance responsibility. The City Manager or the Finance 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. The Bond Compliance Official shall meet with bond counsel 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 bond counsel as soon as practicable after the discovery of the failure to comply in order to discuss the steps required to correct the noncompliance.

**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 from each issue will be invested so that they can be tracked separately from any other funds of the City. The City will work with the County Treasurer to be sure that invested earnings are properly allocated between bond proceeds and other funds, and that interest earnings on tax-exempt bonds are tracked separately from interest earnings on tax credit and direct pay bonds.

## **2. USE OF PROCEEDS.**

Detailed records will be made and kept by the City with regard to the use of bond proceeds and shall be kept on a series by series basis. For each expenditure the amount, date of and purpose 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 Mayor, the City Council, the City Manager, or the Finance Director, by taking action is authorized to complete the declaration of intent to reimburse.

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. Any remaining Qualified School Construction Bond proceeds must be used to redeem bonds after three years.

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

## **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. While not a comprehensive list, the Bond Compliance Official will review the following types of transactions with bond counsel prior to entering into any agreement with non-governmental entities or persons: (a) the sale or lease of any bond financed property, (b) any management contracts with a food service provider or book store, (c) any research agreement and (d) public-private partnerships. 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 County Treasurer has retained a professional rebate consultant to review the records and prepare a report so that the City or the County Treasurer 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 Tax Credit Bonds, Build America Bonds (Direct Pay), or Tax Credit Bonds (Direct Pay) including Qualified School Construction Bonds (Direct Pay)

shall be kept 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 (and in compliance with any State of Arizona records retention policies).

## **6. SPECIAL REQUIREMENTS FOR TAX CREDIT AND CERTAIN TAX CREDIT (DIRECT PAY) BONDS.**

If the City issues any Qualified School Construction Bonds, Qualified Zone Academy Bonds, Qualified Forestry Conservation Bonds, New Clean Renewable Energy Bonds, or Qualified Energy Conservation Bonds (the "*Tax Credit Bonds*"), the following additional requirements will be met:

a) Capital Expenditure Requirement. All of the 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 proceeds will be spent on capital expenditures. The Bond Compliance Official will review all expenditures to ensure compliance.

b) Use of Proceeds for Tax Credit Bonds. At the date of issuance, the City must reasonably expect to

(i) spend 100% or more of the proceeds 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 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 School Construction Bonds is the construction, rehabilitation or repair of a public school facility or for the acquisition of land on which such a facility is to be constructed with part of the proceeds;

(ii) Qualified Zone Academy Bonds is a qualified purpose with respect to a qualified zone academy established by an eligible local education agency;

(iii) Qualified Forestry Conservation Bond is one or more qualified forestry conservation purposes;

(iv) New Clean Renewable Energy Bond is one or more qualified renewable energy facilities; and

(v) Qualified Energy Conservation Bonds is one or more qualified conservation purposes.

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.

c) Reserve Fund. The requirements of a reserve fund must be met, including the requirement that the yield on the reserve cannot exceed the discount rate determined on 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.

d) 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 on 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.

e) 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.

f) Irrevocable Election. To qualify the Tax Credit Bond 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 Section 6431(f)(3)(B) 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.

g) Authorize the Mayor, the City Council, the City Manager and/or the Finance Director to Act. The Mayor, the City Council, the City Manager and/or the Finance 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 6431(f) 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 the applicable Tax Credit Bonds (Direct Pay) under the applicable Tax Credit Bond (Direct Pay) section and 6431(f) 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.

h) 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 direct pay credit 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 to appropriately reduce the amount of the subsidy and shall ensure that the amount of the subsidy

requested is appropriately reduced for New Clean Renewable Energy Bonds and Qualified Energy Conservation Bonds (Direct Pay) on the 8038-TC and subsequent 8038-CPs.

i) De Minimis 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 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.

j) Davis Bacon. If the City issues any New Clean Renewable Energy Bonds, Qualified Energy Conservation Bonds, Qualified Zone Academy Bonds or Qualified School Construction 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.

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

If the City issues any Build America Bonds (Direct Pay), the following additional requirements will be met:

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 Minimis 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. In addition, the City shall review trading information available at <http://www.emma.msrb.org> to monitor all trading activity up to the closing date of the bonds. 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 the Mayor, the City Council, the City Manager and/or the Finance Director to Act. The Authorizing Resolution must authorize the Mayor, the City Council, the City Manager and/or the Finance 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.