

# PROCEDURES FOR POST-ISSUANCE FEDERAL TAX COMPLIANCE

Implemented as of this 3<sup>rd</sup> day of August 2022.

## I. GENERAL

These Procedures for Post-Issuance Compliance (the “Procedures”) are for the purpose of maintaining and evidencing compliance with the federal tax requirements that apply to the bond financings of the Galveston Independent School District (the “District”). In furtherance of such purposes the District has adopted these Procedures with respect to the following:

- General Recordkeeping & Record Retention
- Timely return filings
- Proper and timely use of bond proceeds and proper use of bond-financed property
- Arbitrage - yield restriction and rebate
- Reissuance requirements
- Corrective Action

These Procedures apply to any obligations to which Sections 103 and 141 through 150 of the Internal Revenue Code of 1986 (the “Code”) are applicable, whether or not such obligations are in fact tax-exempt. For example, these Procedures will be followed with respect to any issue of tax credit bonds to which such sections of the Code apply. It is the intention of the District to modify or amend these Procedures in the future in order to comply with any requirements set forth in subsequent rulings and other advice published by the Internal Revenue Service (the “Service” or the “IRS”), as such authorities may apply to the District and its obligations.

## II. RESPONSIBLE PARTIES

The District acknowledges that as the issuer of debt obligations subject to the Code, it is responsible for post-issuance compliance with respect to such debt obligations. The Assistant Superintendent of Business and Operations<sup>1</sup> of the District has general oversight of the post-issuance compliance of bond financings. In addition, the following parties are responsible for the duties listed next to their title:

Assistant Superintendent of Business and Operations – Oversees of all financial functions of the District

Director of Finance– responsible for banking, cash management, investment, and certain debt administration activities of the District

Accountant– responsible for all accounting functions of the District

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<sup>1</sup> The “Assistant Superintendent of Business and Operations” refers to the chief financial officer of the District regardless of the title (i.e., Chief Financial Officer, etc.).

Records Manager – responsible for the cataloguing and storage of various financial records of the District

Parties responsible for the financing aspects and the operations aspects of bond-financed facilities will coordinate efforts to ensure that any actions taken with respect to a bond-financed facility will be in compliance with the requirements of the Code. The District will provide training and/or make available educational materials regarding compliance requirements (e.g., private use requirements) to the parties responsible for the oversight of bond-financed facilities.

### **III. GENERAL RECORDKEEPING & RECORD RETENTION**

General record retention duties are the responsibility of the Records Manager.

The Director of Finance will maintain a copy of the following documents on file at all times:

- Audited Financial Statements
- Reports of any examinations by the Internal Revenue Service of the District's financings

With respect to each issue of obligations, the Assistant Superintendent of Business and Operations will retain the following for the life of the obligations (including the life of any obligations issued to refund the original debt) plus three years:

- Bond transcript, including authorizing documents, offering document, the federal tax certificate, and certificates regarding issue price
- Minutes and resolution(s) authorizing the issue
- Any formal elections (e.g., election to employ an accounting methodology other than specific tracing)
- Records relating to the payment of debt service (including credit enhancement)
- Documentation relating to investments and arbitrage compliance, as described in "Arbitrage – Yield Restriction and Rebate - Recordkeeping" below
- Documentary evidence of when and for what purpose the bond proceeds were expended, as described in "Expenditures of Bond Proceeds - Recordkeeping" below
- Any grant requests or fundraising materials and documentation of grants or fundraising receipts relating to projects that also may be financed, in whole or in part, with bond proceeds
- Any agreement of a type described in "Private Business Use – Special Legal Entitlements" that relates to a bond-financed facility
- Bond paying agent/trustee statements
- Rebate compliance reports

- Related IRS filings (e.g., Form 8038-T Rebate)
- IRS correspondence regarding such issue
- Other documentation (including written advice of Bond Counsel) material to the particular requirements that are applicable to the tax status of the financing

Documents may be retained as hard copies or in an electronic format (in accordance with Revenue Procedure Revenue Procedure 97-22, 1997-1 C.B. 652), so long as such documents are retained in organized, accessible format that preserves the accuracy of such documents.

#### **IV. RETURN FILINGS**

The Assistant Superintendent of Business and Operations will be responsible for the timely filing of the Form 8038-G information report (or such other series 8038 form as may be applicable to a specific issue of bonds) with the Service, which filing may be completed by bond counsel after the issuance of the obligations. The District must file a separate Form 8038-G for each issue of bonds not later than the 15<sup>th</sup> day of the second calendar month after the close of the calendar quarter in which the bonds are issued.

#### **V. EXPENDITURE OF BOND PROCEEDS**

##### General

The Assistant Superintendent of Business and Operations is responsible for oversight of the expenditure of bond proceeds, including monitoring whether such expenditures are made in a timely manner for the purposes for which the bonds were authorized in order to meet qualify for rebate exceptions set forth in the Code and Regulations and whether investments of unexpended Bond proceeds continue to qualify for temporary period exceptions to yield-restriction requirements. Bond Counsel may be consulted regarding allocation of expenditures between each Bond issue to ensure timely expenditure of Bond proceeds.

Additionally, the Assistant Superintendent of Business and Operations will monitor compliance with the requirement of the Regulations that proceeds of a bond issue are to be allocated to expenditures by the later of 18 months after the expenditure was made or the date the project is placed in service (and in no event, later than 60 days after (i) the fifth anniversary of the issue date or (ii) retirement of the issue).

With respect to the reimbursement of any expenditure paid prior to the date of issue of the bonds, the Assistant Superintendent of Business and Operations will monitor compliance with the requirement of the Regulations that such reimbursement allocation to bond proceeds is made not later than 18 months after the later of (i) the date the original expenditure is made or (ii) the date the project is placed in service, but in no event more than three years after the original expenditure is paid. Furthermore, the Assistant Superintendent of Business and Operations will monitor compliance with the requirement of the Regulations that such reimbursement allocation is for the reimbursement of expenditures paid on or after 60 days prior to the date of a reimbursement resolution (including for this purpose a bond order).

## Recordkeeping

With respect to each issue of obligations, the District will retain the following for the life of the obligations plus three years:

- Documentation of allocation of bond proceeds to expenditures (e.g., allocation of bond proceeds for expenditures for the construction, renovation, or purchase of facilities)
- Documentation of allocations of bond proceeds to bond issuance costs
- Copies of all requisitions, draw schedules, draw requests, invoices, bills, and cancelled checks related to bond proceeds spent during the construction period
- Copies of all contracts entered into for the construction, renovation or purchase of bond-financed facilities
- Records of expenditure reimbursements incurred prior to issuing bonds for bond-financed facilities
- List or schedule of all bond-financed facilities or equipment
- Depreciation schedules, if any, for bond-financed depreciable property
- Documentation of any purchase or sale of bond-financed assets

Documents may be retained as hard copies or in an electronic format (in accordance with Revenue Procedure Revenue Procedure 97-22, 1997-1 C.B. 652), so long as such documents are retained in organized, accessible format that preserves the accuracy of such documents.

## **VI. PRIVATE BUSINESS USE**

### General

To confirm that the Bonds serve governmental purposes rather than providing proscribed benefits to nongovernmental persons engaged in “private business” activity, it must be determined whether the District expects that there will be any private business use of the proceeds of the bonds. Private business use exists if proceeds of the issue or the property to be financed by the bond proceeds are used directly or indirectly by any nongovernmental person in that person’s trade or business. Private business use may occur due to arrangements (typically contractual) that give nongovernmental persons special legal entitlements with respect to the use of bond-financed property (including a sale or other transfer of bond-financed property to a nongovernmental person). Further, a bond issue is considered to have private security or payments if the payment of the debt service of an issue is either (a) secured directly or indirectly by property or payments derived from private business use or (b) to be derived from payments for a private business use. The tax-exempt status of governmental bonds may be jeopardized if both (a) the private business use associated with an issue of bonds exceeds five percent (and, in certain circumstances, ten percent) of the proceeds of an issue and (b) the private security or payments associated with an issue exceeds five percent (and, in certain circumstances, ten percent) of the proceeds of such issue. Finally, no more than five percent of the proceeds of an issue of bonds may be used to make loans or arrangement that allow a nongovernmental person to defer payments that it is obligated to make with respect to the financed property or the bonds.

The District's finance team will coordinate with the parties responsible for the use and operation of a bond-financed facility by communicating the private business use restrictions to such parties and requiring that all activity that may give rise to such use be communicated to the Executive Director of Facilities in advance of such use. The Assistant Superintendent of Business and Operations is responsible for tracking trade or business activity by third parties as it relates to each issue of obligations and will monitor such activity no less frequently than yearly and, in any event, upon being notified of any new activity that will give rise to a significant amount of trade or business activity by a third party.

#### Special Legal Entitlements that Can Create Private Business Use

A special legal entitlement that can create private business use can arise from arrangements that convey ownership rights, leasehold rights or management rights (e.g., priority rights to use the facility) or other similar rights. Recognizing that a special legal entitlement may give rise to private business use, each time the District intends to enter into one of the following, the District will determine if such agreement relates to any bond -financed facility:

- Management and other service contracts
- Research agreements
- Naming rights contracts
- Ownership
- Leases
- Subleases
- Leasehold improvement contracts
- Joint venture arrangements
- Limited liability corporation arrangements
- Partnership agreements
- Non-contractual use of bond-financed office space and/or parking facilities by any nongovernmental person
- Any other contract conferring a special legal entitlement or special economic benefit that are comparable to ownership

If such an agreement will be with respect to a bond-financed facility, the District will take measures designed to preserve the intended federal income tax status of that issue of Bonds. Such measures may include ensuring that such agreement falls into an applicable exception under the private business use rules, making a determination that private use will not exceed the applicable limit or such other action as may be recommended by bond counsel, including taking remedial actions with respect to the issue of Bonds whose federal tax status is implicated.

### **VII. PAYMENTS ON THE BONDS**

The trustee/paying agent for the bonds shall determine the amount of principal and interest payable on each payment date for the bonds. Periodically, and no less frequently than annually, the Assistant Superintendent of Business and Operations will review the amount of the interest payments to verify that proper payments of interest have been made.

## VIII. ARBITRAGE – YIELD RESTRICTION & REBATE

### General

The Assistant Superintendent of Business and Operations is responsible for monitoring the District's compliance with the yield restriction requirements of section 148(a) of the Code and the rebate requirements of section 148(f) of the Code. Such monitoring includes, but is not limited to:

- Tracking the allocation of bond proceeds to expenditures for compliance with any temporary period and spending exceptions, no less frequently than yearly
- Ensuring that any forms required to be filed with the IRS relating to arbitrage and any payments required pursuant thereto are filed in a timely manner
- Ensuring that "fair market value" is used with respect to the purchase and sale of investments

Additionally, the District hired Arbitrage Compliance Specialists, Inc., a rebate analyst firm, to monitor compliance with rebate and yield restriction rules on a yearly basis.

Compliance with the investment rules will require that the District be able to account for, in terms of dates and amounts, all uses (including disbursements and investment activity) of particular categories of bond-related money. The Director of Finance will account for all of the following disbursements: monies in the project fund, debt service fund and any other fund into which proceed of the obligations have been deposited, including any reserve fund. In doing so, the Director of Finance will use any reasonable consistently applied accounting method to account for gross proceeds, investments, and expenditures of an issue.

### Recordkeeping

With respect to each issue of obligations, the District will retain the following for the life of the obligations plus three years:

- Documentation of allocations of investments and calculations of investment earnings
- Documentation for investments of the bond proceeds related to:
  - a) Investment contracts (*e.g.*, guaranteed investment contracts)
  - b) Credit enhancement transactions (*e.g.*, bond insurance contracts)
  - c) Financial derivatives (*e.g.*, swaps, caps, etc.)
  - d) Bidding of financial products
- Documentation regarding arbitrage compliance, including:
  - a) Computation of bond yield
  - b) Computation of rebate and yield reduction payments
  - c) Form 8038-T, Arbitrage Rebate, Yield Reduction and Penalty in Lieu of Arbitrage Rebate
  - d) Form 8038-R, *Request for Recovery of Overpayments Under Arbitrage Rebate Provisions*

Documents may be retained as hard copies or in an electronic format (in accordance with Revenue Procedure Revenue Procedure 97-22, 1997-1 C.B. 652), so long as such documents are retained in organized, accessible format that preserves the accuracy of such documents.

## **IX. REISSUANCE**

Prior to making any changes to the terms of an obligation, including its underlying security, the District will consult with bond counsel to determine whether such change will result in the reissuance of such obligation for federal tax law purposes. If it is determined that a change will result in a reissuance, the District will take such action, including the recalculation of yield, the filing of a new form 8038-G and the payment of rebate obligations, as is necessary to maintain the tax status of the bonds.

## **X. CORRECTIVE ACTION**

Reports regarding the aforementioned compliance policies with respect to any issue of bonds will be made by the party given responsibility for such area to the Assistant Superintendent of Business and Operations no less frequently than annually. At such time, the Assistant Superintendent of Business and Operations will determine whether any corrective action is required with respect to the applicable issue.

A corrective action may be required if, for example, it is determined that bond proceeds were not properly expended, the District is not in compliance with the arbitrage requirements imposed by the Code or the District has taken a deliberation action that results in impermissible private business use (e.g., sale of bond-financed property). If the District determines or is advised that corrective action is necessary with respect to any issue of its obligations, the District will, as may be applicable, in a timely manner:

- seek to enter into a closing agreement under the Tax-Exempt Bonds Voluntary Closing Agreement Program described in Notice 2008-31 (or any successor notice thereto)
- take remedial action described under Section 1.141-12 of the Regulations
- take such other action as recommended by bond counsel