

Mayor Tab Townsell

City Attorney Michael Murphy

City Clerk/Treasurer Michael O. Garrett



City Council Members

Ward 1 Position 1 – Andy Hawkins

Ward 1 Position 2 – David Grimes

Ward 2 Position 1 – Mark Vaught

Ward 2 Position 2 – Shelley Mehl

Ward 3 Position 1 – Jim Rhodes

Ward 3 Position 2 – Mary Smith

Ward 4 Position 1 – Theodore Jones Jr.

Ward 4 Position 2 – Shelia Whitmore

City of Conway – Special City Council Meeting

www.cityofconway.org

Friday, February 10th, 2012 @ 12:00pm

City Hall / Downstairs Conference Room – 1201 Oak Street, Conway, AR 72032

Call to Order **Mayor Tab Townsell**
Roll Call **Michael O. Garrett, City Clerk/Treasurer**
Minutes **-----**
Announcements/Proclamations/Recognitions: -----

1. Report of Standing Committees:

A. Finance

- 1. Resolution to adopt additional bond compliance procedures for the City of Conway.

New Business

- 1. Consideration to cancel the February 14th, 2012 City Council meeting.

Adjournment

RESOLUTION NO. _____

RESOLUTION OF THE CITY OF CONWAY, ARKANSAS AUTHORIZING AND ADOPTING POST-ISSUANCE COMPLIANCE POLICIES AND PROCEDURES FOR TAX-EXEMPT BONDS AND TAX CREDIT BONDS.

WHEREAS, the City of Conway, Arkansas (the “City”) is a city of the first class and a public body corporate and politic, duly created and validly existing under the laws of the State of Arkansas; and

WHEREAS, the City and its subordinate entities has previously issued or may in the future issue one or more series of bonds (the “Tax-Exempt Bonds”) the interest on which is excluded from gross income of the owners thereof pursuant to Section 103 of the Internal Revenue Code of 1986, as amended (the “Code”), and the regulations promulgated thereunder (the “Regulations”); and

WHEREAS, the City and its subordinate entities may in the future issue one or more series of tax credit bonds (the “Tax Credit Bonds”) that entitle the City, the owners of the Tax Credit Bonds, or any other permitted party to either a credit against federal income tax liability or a refundable credit from the United States Treasury; and

WHEREAS, the Tax-Exempt Bonds and the Tax Credit Bonds are collectively referred to hereinafter as the “Tax-Advantaged Bonds,” and the “City,” as used hereinafter, is deemed to include both the City of Conway, Arkansas, and its subordinate entities, including the Public Facilities Board of the City of Conway, Arkansas and the City of Conway, Arkansas Health Facilities Board (Conway Regional Medical Center); and

WHEREAS, the proceeds of certain of the City’s Tax-Advantaged Bonds have been and in the future may be loaned to a “conduit borrower” as that term is defined in the Regulations; and

WHEREAS, in connection with the issuance of each series of Tax-Advantaged Bonds, the City has executed or will execute covenants and certificates wherein the City represents that it expects and intends to be able to comply with and will, to the extent permitted by law, comply with the provisions and procedures set forth in such covenants and certificates and will do and perform all acts and things necessary or desirable in order to assure either (i) that the interest on the series of Tax-Exempt Bonds to which such covenants and certificates relate will be excluded from gross income of the owners thereof for federal income tax purposes or (ii) that the Tax Credit Bonds to which such covenants and certificates relate will remain eligible for the applicable federal income tax credit; and

WHEREAS, upon the advice of the City’s Bond Counsel, the City has determined that it is advantageous and in the best interests of the City and the owners of the Tax-Advantaged Bonds to adopt certain post-issuance compliance policies and procedures for its own issuances and conduit borrower issuances substantially in the form attached hereto as Exhibit A and made a part hereof (the “Post-Issuance Compliance Policies and Procedures”), as may be

supplemented from time to time as provided in the Post-Issuance Compliance Policies and Procedures;

NOW THEREFORE, BE IT RESOLVED by the City Council of the City of Conway, Arkansas, as follows:

Section 1. That the City Council hereby approves and adopts the Post-Issuance Compliance Policies and Procedures in the form attached hereto as Exhibit A.

Section 2. That City Council hereby authorizes and directs the officers and staff of the City listed in the Post-Issuance Policies and Procedures (each, an “Authorized Issuer Representative”) to take such actions as any such Authorized Issuer Representative, after appropriate consultation with Bond Counsel to the City, deems necessary, appropriate or desirable to effect the implementation of the Post-Issuance Compliance Policies and Procedures.

Section 3. That this Resolution shall take effect immediately.

Section 4. That the provisions of this Resolution are hereby declared to be separable and if a section, phrase or provision shall be declared invalid, such declaration shall not affect the validity of the remainder of the Resolution.

ADOPTED: _____, 2012.

APPROVED:

MAYOR

ATTEST:

CITY CLERK

[S E A L]

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February 9, 2012

City of Conway, Arkansas
1201 Oak Street
Conway, AR 72032

Re: Adoption of Post-Issuance Compliance Policies and Procedures

Ladies and Gentlemen:

The Internal Revenue Service has recently been focusing on the need for issuers of tax-exempt and tax credit obligations to adopt written policies and procedures dealing with post-issuance diligence and compliance. The need for written policies and procedures applies to issuers of all types, from the issuers of the smallest or most straightforward of governmental deals, to large State issuers, to issuers of conduit loan programs and sophisticated structured financings.

As stated in its most recent internet publication on post-issuance compliance for the tax-exempt bond community (<http://www.irs.gov/taxexemptbond/article/0,,id=243503,00.html>), the IRS indicates that these written procedures must

“... go beyond reliance on tax certificates included in bond documents provided at closing. Sole reliance on the closing bond documents may result in procedures insufficiently detailed or not incorporated into an issuer’s operations. Written procedures should contain certain key characteristics, including making provision for:

- Due diligence review at regular intervals;
- Identifying the official or employee responsible for review;
- Training of the responsible official or employee;
- Retention of adequate records to substantiate compliance (e.g., records relating to expenditure of proceeds);

February 9, 2012

Page 2

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- Procedures reasonably expected to timely identify noncompliance; and
- Procedures ensuring that the issuer will take steps to timely correct noncompliance.

The goal of establishing and following written procedures is to identify and resolve noncompliance, on a timely basis, to preserve the preferential status of tax-advantaged bonds. Generally, an issuer that has established and followed comprehensive written procedures to promote post-issuance compliance is less likely than an issuer that does not have such procedures, to violate the federal tax requirements related to its bonds.”


The IRS has further stated that any issuer who identifies a violation in accordance with the implementation of its written post-issuance compliance procedures can generally expect to receive more favorable treatment in resolving its tax violation under IRS’s voluntary compliance program (VCAP) than if the issuer has not implemented such procedures.

Kutak Rock is of the view that this last statement, more than any other set forth on the IRS’s website, together with revisions to Forms 8038 in 2011 that specifically require an issuer to report whether it has adopted post-issuance compliance procedures, represent a significant change in tone in the IRS’s approach to post-issuance compliance and can be read to be imposing an affirmative duty on issuers and conduit borrowers to adopt such procedures as soon as possible.

To explain further the concept of and requirement for written policies and procedures concerning post-issuance compliance for federal tax purposes, we have attached a memorandum entitled “A Bond Issuer’s and Conduit Borrower’s Procedures for Post-Issuance Compliance” as Exhibit I that answers some frequently asked questions.

Kutak Rock recommends that all issuers of governmental bonds adopt and implement written post-issuance compliance policies and procedures as soon as practicable and, if at all possible, prior to issuance of your next issue of tax-advantaged bonds. To facilitate adoption and implementation, also attached are forms of a resolution and procedures documentation that may be used or tailored by issuers to establish and implement written policies and procedures.

Yours truly,



Kutak Rock LLP