

**CITY OF VERGAS, MINNESOTA**  
**PRE- AND POST-ISSUANCE COMPLIANCE POLICY AND PROCEDURES**

**I. DEFINITIONS**

For purposes of this policy and procedure, the following capitalized terms have the meanings given:

Bond Counsel: the firm of Fryberger, Buchanan, Smith & Frederick, P.A., of Duluth, Minnesota, or any other firm of nationally recognized bond counsel experienced in tax-exempt financing, selected by the Issuer.

Code: the Internal Revenue Code of 1986, as amended.

Compliance Officer: the Clerk-Treasurer of the Issuer, or any other person designated in writing by the Clerk-Treasurer or by resolution of the governing body of the Issuer.

Conduit Bonds: a common term for Obligations that are issued for the purpose of making loans to Conduit Borrowers.

Conduit Borrower: an entity other than a state or local government who is responsible for the payment of debt service on Conduit Bonds and is contractually obligated to maintain the tax-exempt status of the Conduit Bonds.

Conduit Issue: an issue of Conduit Bonds.

Conduit Issuer: a state or local government which issues Conduit Bonds.

Conduit Loan: the loan of the proceeds of the Conduit Bonds by a Conduit Issuer to a Conduit Borrower.

Declaration: an official action by the Issuer of its intent to reimburse itself for previously paid expenditures out of the proceeds of subsequently issued tax-exempt Obligations.

Designees: one or more employees or consultants under the supervision of the Compliance Officer.

EMMA: the Electronic Municipal Market Access system of the MSRB.

Issuer: the City of Vergas, Minnesota.

MSRB: the Municipal Securities Rulemaking Board, or any successor to its functions.

Obligations: the Issuer's existing, proposed and future obligations on which it is directly obligated.

Official Statement: collectively, preliminary and final Official Statements, remarketing circulars or offering memoranda used in connection with the offering of Obligations.

Treasury Regulations: regulations promulgated by the IRS under the Code.

VCAP: the Treasury's Tax-Exempt Bonds Voluntary Closing Agreement Program.

## **II. STATEMENT OF PURPOSE**

This document sets forth specific policies of the Issuer designated to monitor pre- and post-issuance compliance by the Issuer with provisions of the Code and Treasury Regulations applicable to the Obligations.

This policy and procedure documents various procedures and systems implemented or to be implemented by the Issuer and in order to identify on a timely basis facts relevant to compliance with the requirements that must be satisfied prior and subsequent to the issuance of Obligations in order that the interest on such Obligations be, or continue to be, or would be but for certain provisions of the Code, excludable from gross income for federal income tax purposes. The Issuer recognizes that compliance with applicable provisions of the Code and Treasury Regulations is an on-going process, necessary during the entire term of the Obligations, and an integral component of the Issuer's debt management. Accordingly, the analysis of those facts and implementation of this policy and procedure will require on-going monitoring and, likely, consultation with Bond Counsel beyond the scope of its initial engagement with respect to the issuance of particular Obligations.

## **III. PROCEDURES APPLICABLE TO DIRECT OBLIGATIONS OF THE ISSUER**

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

Monitoring of pre- and post-issuance compliance for tax-exempt Obligations will be the responsibility of the Compliance Officer. The Compliance Officer may appoint Designees to carry out certain duties under this policy and procedure on his or her behalf in the same manner and with the same effect as any similar designation for any other purpose permitted by law.

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

The Compliance Officer shall monitor compliance with all financial and operational covenants made by the Issuer in the documents relating to the issuance of the Obligations, including but not limited to financial reporting and restrictions on incurring additional indebtedness.

### **C. Federal Tax Law Compliance**

1. Issue Price. An issue of obligations is a good candidate for a negotiated sale if the Issuer has not issued its direct obligations in a significant period of time; the Issuer has not traditionally sought a credit rating; the issue is relatively small and as a result the costs of issuance of a competitive sale are unduly burdensome; or the restructuring of debt to be refunded or refinanced and extending repayment and targeting specific debt service and tax levy thresholds requires a fair amount of tinkering and dialogue

with both the Issuer and the investors, which is much easier to accomplish with the flexibility of a negotiated pricing.

- a. In conjunction with the negotiated sale of any direct obligations of the Issuer, the Compliance Officer shall, or shall request the Issuer's independent financial advisor to, monitor the issue price of any direct obligations of the Issuer in accordance with the Government Finance Officers Association's Best Practice relating to Pricing Bonds in a Negotiated Sale.
  - b. In the event the Issuer's independent financial advisor is unavailable, the Issuer will request the purchaser to provide ongoing information to the Issuer about how the market for obligations such as the ones the Issuer is contemplating is changing and how it will impact the rates, especially in the weeks leading up to the sale. In addition, the Issuer will request that the purchaser, during the pricing process, provide "comparables" to the Issuer, for purposes of comparing the pricing on the obligations against other similarly rated issues in the market, including trades posted on EMMA.
2. Proper Use of Proceeds. The Compliance Officer shall monitor the use of proceeds of the Obligations so that such proceeds are allocated to expenditures in a manner that is consistent with the purpose for which each issue of Obligations is undertaken, as set forth in any tax compliance certificate or agreement related to each issue of Obligations.
3. Investment of Bond Proceeds. The Compliance Officer shall monitor the investment of proceeds of the Obligations to ensure that such proceeds are invested in investments that are permissible under Minnesota Statutes, Chapter 118A, the documents relating to the issuance of the Obligations and any applicable federal tax.
4. Arbitrage Rebate. The Compliance Officer shall monitor the expenditures of proceeds of the Obligations to verify compliance with available exceptions to the arbitrage rebate requirements of the Code and Treasury Regulations. If the Obligations do not qualify for an exception, the Compliance Officer shall see to the timely completion of arbitrage rebate calculations, filings and payment to the United States Department of the Treasury of any required arbitrage rebate payments.
5. Yield Reduction Payments and Calculations. The Compliance Officer shall consult with Bond Counsel prior to the calculation of yield reduction payments, filings and payment to the United States Department of the Treasury of any required yield reduction payments.

6. Post-Issuance Transactions. The Compliance Officer shall consult with Bond Counsel as follows:
  - a. before making any modifications or amendments to the documents for an issue of Obligations, including, but not limited to, entering or modifying investment agreements; making any change in security for the Obligations; engaging in post-issuance credit enhancement transactions (e.g., bond insurance, letters of credit) or hedging transactions (e.g., interest rate swaps, caps); terminating or appointing successor trustees; releasing any liens; or reissuing the Obligations; and
  - b. in the event the Issuer determines to change the use of any facilities financed with an issue of Obligations. For purposes of the foregoing, “change of use” includes the lease, management or use of any portion of the financed facilities by a person or entity other than the Issuer.
7. Remedial Action. The Compliance Officer shall be aware of options for voluntary corrections for failure to comply with post-issuance compliance requirements (such as remedial actions under Section 1.141-12 of the Regulations and VCAP). In the event that it is determined that any use of proceeds of or facilities financed by the Obligations is inconsistent with the character of the status for federal income tax purposes of the Obligations, the Compliance Officer shall consult with Bond Counsel for the purpose of determining the nature and extent of any remedial action necessary or proper for the Issuer to take with respect to such Obligations, including participation in VCAP.
8. Tax Credit Bonds. The Compliance Officer will consult with Bond Counsel regarding federal income tax requirements unique to any tax credit bonds issued by the Issuer and any monitoring procedures that need to be put into place by the Issuer in order to achieve tax compliance.

**D. Federal Securities Law Compliance**

1. General. The Compliance Officer shall monitor 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.
2. Official Statements. The Compliance Officer shall monitor compliance with all applicable federal securities laws and regulations and shall timely identify those who, for a particular financing, are appropriate to assist Bond Counsel, underwriter(s), underwriter’s counsel, financial advisors, and appropriate staff in the preparation and review of the related Official Statement. Staff identified to assist with preparation or review of the

Official Statement shall be contacted as soon as reasonably practical in order to provide adequate time for such individuals to perform a thoughtful and critical review or draft of those portions of the Official Statement assigned to them.

- a. Any request to assist with preparation or review of the Official Statement shall provide that the person assisting must raise any item which could be material for inclusion in the Official Statement.
- b. The Issuer's external auditors should be notified of the Issuer's schedule for publishing the Official Statement.
- c. Confirmation that no material changes exist with respect to Official Statements shall be requested from counsel to the Issuer.

3. Continuing Disclosure. The Compliance Officer will review each continuing disclosure undertaking of the Issuer to determine the financial and operating information required to be filed annually by the Issuer with the MSRB on EMMA. The Compliance Officer shall:

- a. on an annual basis, submit the Issuer's audited financial statements to the entities required by the applicable continuing disclosure undertaking and documents relating to the Obligations;
- b. at such times required by any continuing disclosure undertaking, submit an annual financial report including any operational information required by a continuing disclosure undertaking, to the entities required by the applicable continuing disclosure undertaking and documents relating to the Obligations; and
- c. make a timely report of any significant material events (as defined by the applicable disclosure agreement) related to the Issuer's outstanding Obligations to the entities required by the documents relating to the Obligations.

4. Material Events.

- a. The Compliance Officer shall make a timely report of any significant material events (as defined by the applicable disclosure undertaking) related to the Issuer's outstanding Obligations to the MSRB on EMMA and any other entities required by the documents relating to the Obligations.
- b. If the Compliance Officer obtains actual knowledge of the occurrence of any event that the Compliance Officer believes may constitute an event requiring disclosure, the Compliance Officer will contact Bond Counsel to determine if notice of the event is

required to be given to the MSRB under the continuing disclosure undertakings. If it is determined that notice should be provided to the MSRB or is required to be provided to the MSRB by the continuing disclosure undertaking, the Compliance Officer will cause the appropriate notice to be filed with the MSRB on EMMA within 10 business days after the occurrence of the event or as otherwise directed by Bond Counsel.

**E. Recordkeeping**

1. Responsibility for Records Maintenance

- a. The Compliance Officer is responsible for maintaining records related to Obligations of the Issuer.
- b. The Compliance Officer shall maintain a central list of the records related to each issue of tax-exempt Obligations. The list shall identify all physical or electronic locations for any records relating to an issue of Obligations and the person or persons responsible for maintaining such records.

2. Bond Records to be Maintained

- a. The following records shall be maintained for each outstanding issue of Obligations for the term of the outstanding issue plus three years:
  - i. basic records relating to the transaction, including the trust indenture, loan, lease or other financing agreement, the relevant IRS Form 8038-G with proof of filing, and Bond Counsel opinion (such documents may be held in the form of a bond transcript); and
  - ii. documentation pertaining to investment of the proceeds of the Obligations, including the yield calculations for each class of investments, actual investment income received from the investment of proceeds and rebate calculations shall be held in and maintained by the Compliance Officer's office.
  - iii. log of all individuals, departments or affiliates that were requested to review or draft information in connection with an Official Statement;
  - iv. disclosure documents, investor materials, rating agency presentation materials, annual continuing disclosure filings and records of all disclosure activities, including but not

limited to telephone calls, emails and inquiries from investors.

- b. The Compliance Officer shall maintain the Issuer's audited financial statements for not less than seven years.

**F. Bond Counsel Review.**

The Compliance Officer may engage Bond Counsel or the Issuer's independent financial or municipal advisor to assist in implementing this policy and procedure, including, but not limited to, assistance in the following areas:

1. rebate calculations and compliance;
2. records retention;
3. periodic review of the central list of records related to any Obligations for compliance with federal tax laws regarding private business use;
4. other federal tax law compliance, including any annual reporting requirements that may be imposed by the IRS;
5. federal securities law compliance; and
6. due diligence on Conduit Bonds.

**G. Training Requirements**

If recommended by Bond Counsel or at the discretion of the Compliance Officer, the Compliance Officer and his or her Designees shall undergo training regarding basic federal tax and securities law concepts relating to tax-exempt Obligations, disclosure documents and records required to be maintained under this policy and procedure. Bond Counsel may be engaged to provide such training.

**H. Annual Review**

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

**I. Reimbursement Bond Rules**

The Treasury Regulations applicable to the reimbursement of expenditures from proceeds of tax-exempt Obligations, in the situations in which they apply, require the Issuer to have made a Declaration. The Compliance Officer is authorized to

make the Issuer's Declarations or to delegate from time to time that responsibility to other appropriate employees under his or her supervision. Each Declaration shall comply with the requirements of the Treasury Regulations, including without limitation the following:

1. Each Declaration shall be made not later than 60 days after payment of the applicable cost and shall state that the Issuer reasonably expects to reimburse itself for the expenditure out of the proceeds of an issue of tax-exempt Obligations or similar borrowing. Each Declaration may be made substantially in the form of the Exhibit A which is attached to and made a part of this policy and procedure, or in any other format which may at the time comply with the Treasury Regulations.
2. Each Declaration shall (i) contain a reasonably accurate description of the property or program to be financed, as applicable, to which the expenditure relates and (ii) state the maximum principal amount of tax-exempt Obligations expected to be issued for that property or program.
3. Care shall be taken so that the Issuer does not make Declarations in cases where the Issuer does not reasonably expect that tax-exempt Obligations will be issued to finance the subject costs, and the Issuer officials should consult with Bond Counsel concerning the requirements of the Treasury Regulations and their application in particular circumstances.

#### **IV. PROCEDURES APPLICABLE TO CONDUIT BONDS**

##### **A. Borrower Requirements.**

A Conduit Issuer typically issues the bonds and loans the bond proceeds to a Conduit Borrower. A Conduit Borrower is responsible for the payment of debt service on the Conduit Issue and is contractually obligated to maintain the tax-exempt status of the Conduit Bonds. The Conduit Issuer is treated as a "taxpayer" by the IRS for federal tax purposes and procedures. As such, the Conduit Issuer is the party responsible for tax compliance. However, the bond documents usually provide for delegation of certain responsibilities to the Conduit Borrower. In the event the Issuer agrees to issue Conduit Bonds, the Issuer will require the following from the Conduit Borrower as a condition to issuing the Conduit Bonds:

1. Each Conduit Borrower must agree to comply with substantially the same procedures for pre- and post-issuance compliance that apply to the Issuer under this policy, as amended from time to time. It being the Issuer's intent that each Conduit Borrower bears the full burden of compliance with the Code and Treasury Regulations applicable to its related Conduit Issue.
2. The Conduit Borrower must covenant in the documents relating to the Conduit Bonds to take all actions necessary for the Conduit Bonds to



comply with all applicable requirements of the Code and Treasury Regulations, including, but not limited to: (i) the arbitrage and rebate requirements of Section 148 of the Code; and (ii) the qualified bonds provisions of Sections 141(e), 142, 143, 144 and 145 of the Code. The Conduit Borrower is the party responsible for monitoring the Conduit Bonds for compliance with such requirements and to remediate nonqualified bonds in accordance with the requirements of the Code and applicable Treasury Regulations. The Conduit Borrower is also the party responsible for monitoring compliance with the requirements of Section 148 of the Code.

3. The Conduit Borrower must covenant in the documents for the Conduit Bonds to reimburse the Issuer for all costs paid or incurred by the Issuer (including the fees of attorneys, financial advisors, accountants and other advisors) as a result of the Issuer's response to or compliance with an audit, inspection, or compliance check (random or otherwise), by the IRS, the State of Minnesota or any agency or department thereof, or any other governmental agency with respect to the Conduit Bonds or the project financed with the proceeds of the Conduit Bonds.
4. The Conduit Borrower must covenant in the documents for the Conduit Bonds to provide all the information necessary for the Issuer to comply with its obligations applicable to the Conduit Bonds under the Code, Treasury Regulations, state law and generally accepted accounting principle applicable to the Issuer, including the information necessary for the Issuer to complete and file an IRS Form 8038 for the Conduit Bonds.
5. One or more authorized representatives of the Conduit Borrower must, in good faith, certify the Conduit Borrower's reasonable expectations as of the issue date of the Conduit Bonds. The certification must state the facts and estimates that form the basis of the Conduit Borrower's expectations.
6. The Conduit Borrower shall, in the documents for the Conduit Bonds, designate a person to be contacted regarding the matters discussed in this policy.

**B. Issuer Requirements.**

1. Limitations Relating to Fees Charged by the Issuer. The Issuer may charge fees payable either out of the Conduit Bond proceeds or by the Conduit Borrower. The fees may be used by the Issuer to offset all or a portion of the costs payable by the Issuer related to its role as a Conduit Issuer and may also be used to raise funds for governmental purposes of the Issuer. The fees may increase the effective yield of the Conduit Loan. Section 148 of the Code generally limits the yield on the Conduit Loan to the yield on the Conduit Bonds plus a spread. This limitation effectively limits the size of the fees that may be charged by the Issuer regardless of

whether paid up front or periodically over the term of the Conduit Bonds. The Compliance Officer shall see that the Conduit Borrower provides the information necessary to ensure that the yield on the Conduit Loan does not exceed the yield on the Conduit Bonds by more than the permitted spread in order to prevent the Conduit Bonds from becoming taxable.

2. Certification Regarding Expectations for Use and Investment of Proceeds. Based solely on a certification of the Conduit Borrower prepared by Bond Counsel and described above, an officer of the Issuer responsible for issuing the Conduit Bonds will, in good faith, certify the Issuer's reasonable expectations as of the issue date of the Conduit Bonds. The certification is evidence of the Issuer's expectations, but does not establish any conclusions of law or any presumptions regarding either the Issuer's actual expectations or their reasonableness.
3. Due Diligence. The Issuer intends to rely on due diligence examinations conducted by Bond Counsel in conjunction with giving an approving opinion on the Conduit Bonds.

**C. Deliberate and Remedial Actions.**

1. Deliberate Actions. Conduit Bonds can lose their tax-exempt status if a Conduit Issuer or Conduit Borrower takes a deliberate action, subsequent to the issue date, that causes the Conduit Issue to fail to meet the federal tax requirements applicable to the Conduit Bonds. A deliberate action is any action taken by a Conduit Issuer or Conduit Borrower that is within its control. Intent to violate the requirements of the Code is not necessary for an action to be deliberate. It is unlikely that the Issuer will take such a deliberate action. The Conduit Borrower shall covenant in the documents for the Conduit Bonds to comply with all applicable requirements of the Code and Treasury Regulations, and pay any costs incurred by the Issuer in the event a deliberate action of the Conduit Borrower must be remediated as described below.
2. Remedial Actions. If a remedial action is required with respect to an issue of Conduit Bonds, the Conduit Issuer must be involved. The remedial action is taken pursuant to Section 1.141-12 of the Treasury Regulations to cure a deliberate action that would otherwise cause a governmental bond issue or qualified 501(c)(3) bond to become a nonqualified private activity bond issue. If the remedial action requires providing a notice of defeasance to the IRS, such notice must be provided by the Conduit Issuer. Remedial actions include redemption or defeasance of Conduit Bonds, alternative use of disposition proceeds and alternative use of Conduit Bond-financed facilities. Additionally, if the Conduit Bonds are treated as "reissued" under the Treasury Regulations, the Conduit Issuer must test the reissued Conduit Bonds to determine if the interest on the Conduit Bonds remains exempt from gross income for federal tax purposes. The

Conduit Borrower must covenant in the documents for the Conduit Bonds to comply with all applicable requirements of the Code and Treasury Regulations, and if a remedial action is necessary to pay all costs associated with such remedial action. The Issuer shall also consult with Bond Counsel to determine whether the remedial action proposed by the Conduit Borrower is sufficient, including participation in VCAP.

3. **Bond Modifications.** An agreement between a bondholder and the Conduit Issuer (or Conduit Borrower) to modify the terms of any Conduit Bonds, whether direct or indirect, may cause the modified Conduit Bonds to be treated as new Conduit Bonds for federal income tax purposes (that is, to be “reissued”). If the Conduit Bonds are considered reissued under Section 1001 of the Code, then in general the Conduit Bonds must be tested to determine if the interest on the Conduit Bonds remains exempt from gross income for federal tax purposes. Revenue Ruling 81-281, 1981-2 C.B. 18 provides that interest on tax-exempt Conduit Bonds is not excludable from gross income after the terms of the Conduit Bonds are substantially altered without action by the Conduit Issuer. In general, the Conduit Issuer may meet this requirement to approve reissued Conduit Bonds by adopting a formal resolution of the Conduit Issuer approving the modification of the terms. In addition, the Conduit Issuer must satisfy all applicable federal tax requirements including timely filing Form 8038, 8038-G or 8038-GC, as applicable, treating the date of the modification as the date of issuance of the modified Conduit Bonds. The Issuer shall consult with Bond Counsel immediately upon a Conduit Borrower’s request for a modification of any Conduit Bonds. All costs of any modification must be paid by the Conduit Borrower.

- D. Recordkeeping.** The recordkeeping requirements set forth in Section II.E above are applicable to Conduit Bonds of the Issuer.
- E. IRS Examination of Conduit Issues.** The Compliance Officer will notify the Conduit Borrower and Bond Counsel immediately upon the receipt of any correspondence from the IRS regarding the Conduit Bonds.
- F. Summary, Procedures for Closing and Pre-Closing Matters.** The chart below, prepared by the IRS, identifies certain types of monitoring procedures the Issuer may require a Conduit Borrower to adopt to ensure compliance with the federal tax rules required to be satisfied at, prior to or after the closing of the Conduit Bonds. The Compliance Officer shall consult with Bond Counsel on a case by case basis to determine which monitoring procedures are required for each Conduit Issue.

<b>Type of Procedures</b>	<b>Description of Procedures for Closing and Pre-Closing Matters</b>	<b>Applicable Responsibilities Described Above</b>
Volume Cap	Procedures to monitor utilization of volume cap, including carryforward elections	Volume Cap Limit Carryforward of Unused Volume Cap
Public Approval	Procedures concerning public hearings conducted by the Issuer and any approvals by the Issuer	Limitations Relating to Fees Charged by the Conduit Issuer
Issuer Fees	Procedures to ensure that Issuer fees do not exceed applicable limits in the Code and Treasury Regulations	Limitations Relating to Fees Charged by the Conduit Issuer
Closing Certificates	Due diligence procedures to ensure that certifications are reasonable	Certification Regarding Expectations for Use and Investment of Proceeds
Official Intent	Procedures to ensure that reimbursement resolutions conform to the requirements of Treasury Regulations	Reimbursement Declarations of Official Intent
Qualified Hedge	Procedures to timely identify qualified hedges	Qualified Hedge
Elections	Procedures for federal income tax elections	Elections

## **V. EXHIBIT**

The exhibit to this policy and procedure is as follows:

Exhibit A – Declaration of Official Intent

Dated: January 11, 2022

## EXHIBIT A

### DECLARATION OF OFFICIAL INTENT

The undersigned, being the duly appointed and acting Clerk-Treasurer of the City of Vergas, Minnesota (the "Issuer"), pursuant to and for purposes of compliance with Treasury Regulations, Section 1.150-2 (the "Regulations"), under the Internal Revenue Code of 1986, as amended, hereby states and certifies on behalf of the Issuer as follows:

1. The undersigned has been and is on the date hereof duly authorized by the Issuer to make and execute this Declaration of Official Intent (the "Declaration") for and on behalf of the Issuer.

2. This Declaration relates to the following project (the "Project") and the costs thereof to be financed:

<INSERT PROJECT DESCRIPTION>

3. The Issuer reasonably expects to reimburse itself for the payment of certain costs of the Project out of the proceeds of a bond issue or similar borrowing (the "Obligations") to be issued after the date of payment of such costs. As of the date hereof, the Issuer reasonably expects that \$\_\_\_\_\_ is the maximum principal amount of the Obligations which will be issued to finance the Project.

4. Each expenditure to be reimbursed from the Obligations is or will be a capital expenditure or cost of issuance of the proposed bonds.

5. As of the date hereof, the statements and expectations contained in this Declaration are believed to be reasonable and accurate.

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

---

Clerk-Treasurer  
City of Vergas, Minnesota