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## **Post Issuance Compliance Policy Tax-Exempt Financing Adopted: December 20, 2012**

The purpose of the Post-Issuance Tax Compliance Policy (“Policy”) is to establish policies and procedures in connection with tax-exempt bonds (the “Bonds”) issued by the Columbus-Franklin County Finance Authority (the “Finance Authority”) so as to maximize the likelihood that all applicable post-issuance requirements of federal income tax law needed to preserve the tax-exempt status of the Bonds are met. The Finance Authority reserves the right to use its discretion as necessary and appropriate to make exceptions or request additional provisions as circumstances warrant. The Finance Authority also reserves the right to change these policies and procedures from time to time.

Upon the issuance of bonds, the Finance Authority, any conduit borrower and other interested parties have a number of post-issuance responsibilities with regard to monitoring the bond issue for compliance with applicable laws and regulations for the duration that the bonds are outstanding. **With regard to Finance Authority financings, attached to this policy are instructions to be used in the Tax Compliance Certificate for governmental, 501(c)(3) or exempt facility projects.**

To the extent within the scope of their duties, the officials and staff of the Finance Authority are responsible for monitoring and, if necessary, taking steps to obtain legal advice as to the compliance of bond issues with this Policy and applicable legal requirements, including federal income tax requirements, prevailing wage and contracting requirements, continuing disclosure requirements, and notice, filing and other requirements. This Policy is intended to be supplemental to, and is not in derogation of, any such duties.

The President or designee is primarily responsible for implementation of this Policy in consultation with Counsel as necessary. In the absence of the President, the Director of Operations will work with the Board to implement the policy.

### **External Advisors / Documentation**

The Finance Authority and the Borrower shall consult with bond counsel and other legal counsel and investment bankers/advisors, as needed, throughout the Bond issuance process to identify requirements and to establish procedures necessary or appropriate so that the Bonds will continue to qualify for tax-exempt status. Those requirements and procedures (attached) shall be documented in the tax certificate and agreement ("Tax Certificate") and/or other documents finalized at or before issuance of the Bonds. Those requirements and procedures shall include future compliance with applicable arbitrage rebate requirements and all other applicable post-issuance requirements of federal tax law throughout (and in some cases beyond) the term of the Bonds.

The Borrower also shall consult with bond counsel and other legal counsel and advisors, as needed, following issuance of the Bonds to ensure that all applicable post-issuance requirements in fact are met. This shall include, without limitation, consultation in connection with any potential changes in use of Bond-financed or refinanced assets.

If necessary, the Finance Authority shall engage or require the Borrower to engage expert advisors to assist in the calculation of arbitrage rebate payable in respect of the investment of Bond proceeds.

Unless otherwise provided by the indenture relating to the Bonds, unexpended Bond proceeds shall be held by a trustee or other financial institution, and the investment of Bond proceeds shall be managed by the Borrower. The Borrower shall prepare (or cause the trustee to prepare) regular, periodic statements regarding the investments and transactions involving Bond proceeds and such statements shall be delivered to the Finance Authority if it so requests.

### **Preparation of Tracking List**

Within the first three months after closing (or if later, after the adoption of this Policy), or as soon thereafter as practicable, the President of the Finance Authority will develop a Post Issuance Compliance Tracking List ("Tracking List") in consultation with Bond Counsel as part of its duties as bond counsel. The Tracking List will include all key post issuance compliance dates and appropriate monitoring and reporting requirements, with a clear indication as to what party is responsible for compliance, monitoring and reporting with respect to each requirement.

### **Use of Bond Proceeds and Bond-Financed or Refinanced Assets:**

It is the Finance Authority's policy that the Borrower shall be responsible for:

- monitoring the use of Bond proceeds (including investment earnings and reimbursement of expenditures made before bond issuance) and the use of Bond-financed or refinanced assets (e.g., facilities, furnishings or equipment) throughout the term of the Bonds to ensure compliance with covenants and restrictions set forth in the Tax Certificate relating to the Bonds;
- maintaining records identifying the assets or portion of assets that are financed or refinanced with proceeds of each issue of Bonds (including investment earnings and including reimbursement of expenditures made before bond issuance), including a final allocation of Bond proceeds as described below under "Record Keeping Requirements";
- consulting with bond counsel and other legal counsel and advisors in the review of any change in use of Bond-financed or refinanced assets to ensure compliance with all covenants and restrictions set forth in the Tax Certificate relating to the Bonds;
- to the extent that the Borrower discovers that any applicable tax restrictions regarding use of Bond proceeds and Bond-financed or refinanced assets will or may be violated, consulting promptly with bond counsel and other legal counsel and advisors to determine a course of action to remediate all nonqualified bonds, if such counsel advises that a remedial action is necessary;
- with respect to other types of exempt facilities, adopting any such procedures that bond counsel deems appropriate to periodically assess whether such facility continues to qualify as an exempt facility.

The Borrower, in the Tax Certificate relating to the Bonds and/or other documents finalized at or before the issuance of the Bonds, shall identify an employee and/or officer to undertake the tasks listed above.

All relevant records and contracts shall be maintained as described below.

### **Record Keeping Requirement**

It is the Finance Authority's policy that the Borrower shall be responsible for maintaining the following documents for the term of each issue of Bonds (including refunding Bonds, if any) plus at least three years:

- a copy of the Bond closing transcript(s) and other relevant documentation delivered to the Borrower at or in connection with closing of the issue of Bonds;
- a copy of all material documents relating to capital expenditures financed or refinanced by Bond proceeds, including (without limitation) construction contracts, purchase orders, invoices, trustee requisitions and payment records, as well as documents relating to costs reimbursed with Bond proceeds and records identifying the assets or portion of assets that are financed or refinanced with Bond proceeds, including a final allocation of Bond proceeds;

- a copy of all contracts and arrangements involving the use of Bond-financed or refinanced assets; and
- a copy of all records of investments, investment agreements, arbitrage reports and underlying documents, including trustee statements, in connection with any investment agreements, and copies of all bidding documents, if any.

The Borrower, in the Tax Certificate relating to the Bonds and/or other documents finalized at or before the issuance of the Bonds, shall identify an employee and/or officer to retain the records listed above.

### **Information to be submitted to the Finance Authority**

Upon request of the Finance Authority, the Borrower must submit to the Finance Authority the following information:

- evidence of annual filing made with EMMA if required by MSRB.
- a copy of the Bond closing transcript(s) and other relevant documentation delivered to the Borrower at or in connection with closing of the issue of Bonds;
- a copy of all material documents relating to capital expenditures financed or refinanced by Bond proceeds, including (without limitation) construction contracts, purchase orders, invoices, trustee requisitions and payment records, as well as documents relating to costs reimbursed with Bond proceeds and records identifying the assets or portion of assets that are financed or refinanced with Bond proceeds, including a final allocation of Bond proceeds;
- a copy of all contracts and arrangements involving the use of Bond-financed or refinanced assets; and
- a copy of all records of investments, investment agreements, arbitrage reports and underlying documents, including trustee statements, in connection with any investment agreements, and copies of all bidding documents, if any.

### **Finance Authority Obligations**

- A Finance Authority staff person or contractor, as identified by the Finance Authority President, will be responsible for annual monitoring and compliance for tax-exempt financings.
- The Finance Authority staff person will annually review EMMA to determine if Finance Authority Borrowers are making the necessary filings, and if not, send out a reminder notice to complete the appropriate filing.

### **Violations**

In the event that a violation is identified, the Finance Authority will work with the Borrower and Bond Counsel to resolve the issue. If the issue cannot be resolved at that level, the Finance Authority will work with the Borrower, Bond Counsel and the IRS to determine an appropriate outcome. The Finance Authority will duly note the

IRS Voluntary Closing Agreement program that is available to resolve issues and violations with tax-exempt bonds.

All documents associated with violations or compliance issues must be kept for the term of the financing plus three (3) additional years.

## Exempt Facilities

### Attachment A

#### Definitions for Tax Compliance Certificate

The following terms, as used in Attachment A and in the Tax Compliance Certificate to which it is attached and in the other Attachments to the Tax Compliance Certificate, have the following meanings unless therein otherwise defined or unless a different meaning is indicated by the context in which the term is used. Capitalized terms used within these definitions that are not defined in Attachment A have the meanings ascribed to them in the Tax Compliance Certificate to which this Attachment A is attached. The word “Issue,” in lower case, refers either to the Issue or to another issue of obligations or portion thereof treated as a separate issue for the applicable purposes of Section 148, as the context requires. The word “obligation” or “obligations,” in lower case, includes any obligation, whether in the form of bonds, notes, certificates, or any other obligation that is a “bond” within the meaning of Section 150(a)(1). All capitalized terms used in this Certificate include either the singular or the plural. All terms used in this Attachment A or in the Tax Compliance Certificate to which this Attachment A is attached, including terms specifically defined, shall be interpreted in a manner consistent with Sections 103 and 141-150 and the applicable Regulations thereunder except as otherwise specified. All references to Section, unless otherwise noted, refer to the Code.

**“Bona Fide Debt Service Fund”** means a fund, including a portion of or an account in that fund (or in the case of a fund established for two or more issues, the portion of that fund properly allocable to an issue), or a combination of such funds, accounts or portions that is used primarily to achieve a proper matching of revenues with Debt Service on an issue within each Bond Year and that is depleted at least once each year except for a reasonable carryover amount not to exceed the greater of the earnings thereon for the immediately preceding Bond Year or one-twelfth of the annual Debt Service on the issue for the immediately preceding Bond Year.

**“Bond Counsel’s Opinion”** or **“Opinion of Bond Counsel”** means an opinion or opinions of a nationally recognized bond counsel firm whose opinion is given with respect to the Issue when issued, or its successors or other nationally recognized bond counsel appointed by the Issuer.

**“Bond Year”** means the annual period relevant to the application of Section 148(f) to an issue, except that the first and last Bond Years may be less than 12 months long. The last day of a Bond Year shall be the close of business on the day preceding the anniversary of the Issuance Date of an issue unless the Issuer selects another date on which to end a Bond Year in the manner permitted by the Code.

**“Capital Expenditures”** means costs of a type that are properly chargeable to a capital account (or would be so chargeable with a proper election) under general federal income tax principles, including capitalized interest computed taking into account the Placed in Service date.

**“Code”** means the Internal Revenue Code of 1986, the Regulations (whether temporary or final) under that Code or the statutory predecessor of that Code, and any amendments of, or successor provisions to, the foregoing and any official rulings, announcements, notices,

procedures and judicial determinations regarding any of the foregoing, all as and to the extent applicable. Unless otherwise indicated, reference to a Section includes any applicable successor section or provision and such applicable Regulations, rulings, announcements, notices, procedures and determinations pertinent to that Section.

**“Commingled Fund”** means any fund or account of the Issuer that contains both Gross Proceeds of an issue and amounts in excess of \$25,000 that are not Gross Proceeds of the issue if the amounts in the fund or account are invested and accounted for collectively, without regard to the source of funds deposited in the fund or account.

**“Commingled Investment Proceeds”** means Investment Proceeds of an issue (other than Investment Proceeds held in a Refunding Escrow) that are deposited in a Commingled Fund with substantial tax or other revenues from governmental operations of the Issuer and that are reasonably expected to be spent for governmental purposes within six months from the date of deposit in the Commingled Fund, using any reasonable accounting assumptions.

**“Computation Date”** means each date on which the Rebate Amount for an issue is required to be computed under Regulations §1.148-3(e). In the case of a Fixed Yield Issue, the first Computation Date shall not be later than five years after the Issuance Date of the issue. Subsequent Computation Dates shall be not later than five years after the immediately preceding Computation Date for which an installment payment of the Rebate Amount was paid. In the case of a Variable Yield Issue, the first Computation Date shall be the last day of any Bond Year irrevocably selected by the Issuer ending on or before the fifth anniversary of the Issuance Date of such issue and subsequent Computation Dates shall be the last day of each Bond Year thereafter or each fifth Bond Year thereafter, whichever is irrevocably selected by the Issuer after the first date on which any portion of the Rebate Amount is required to be paid to the United States. The final Computation Date is the date an issue is retired.

**“Computational Base”** means the amount of Gross Proceeds the Issuer or Conduit Borrower reasonably expects, as of the date a Guaranteed Investment Contract is required, to be deposited in that Guaranteed Investment Contract over its term.

**“Conduit Borrower”** means the obligor on a purpose investment.

**“Conduit Financing Issue”** means an issue the Proceeds of which are reasonably expected to be used to finance one or more Conduit Loans.

**“Conduit Loan”** means a purpose investment acquired by the Issuer with Proceeds of a Conduit Financing Issue, thereby effecting a loan to the Conduit Borrower.

**“Construction Expenditures”** means Capital Expenditures allocable to the cost of real property (including the construction or making of improvements to real property, but excluding acquisitions of interests in land or other existing real property) or constructed personal property within the meaning of Regulations §1.148-7(g).

**“Controlled Group”** means a group of entities controlled directly or indirectly by the same entity or group of entities within the meaning of Regulations §1.150-1(e).

**“Current Refunding Issue”** means a Refunding Issue that is issued not more than 90 days before the last expenditure of any Proceeds of the Refunding Issue for the payment of Debt Service on the Refunded Bonds.

**“Current Refunding Portion”** means that portion of a Multipurpose Issue that constitutes a separate governmental purpose and that would be treated as a Current Refunding Issue if it had been issued as a separate issue.

**“Debt Service”** means principal of and interest and any redemption premium on an issue.

**“Federally Guaranteed”** means that (a) the payment of Debt Service on an issue, or the payment of principal or interest with respect to any loans made from the Proceeds of the issue, is directly or indirectly guaranteed in whole or in part by the United States or by an agency or instrumentality of the United States, within the meaning of Section 149(b), or (b) more than 5% of the Proceeds of an issue will be invested directly or indirectly in federally insured deposits or accounts. The preceding sentence does not apply to (a) Proceeds invested during an initial Temporary Period until such Proceeds are needed to pay costs of the project, (b) investments of a Bona Fide Debt Service Fund, (c) direct purchases from the United States of obligations issued by the United States Treasury, or (d) other investments permitted by Section 149(b) or Regulations §1.149(b)-1(b).

**“501(c)(3) Organization”** means an organization described in Section 501(c)(3) and exempt from tax under Section 501(a).

**“Fixed Yield Issue”** means an issue of obligations the Yield on which is fixed and determinable on the Issuance Date.

**“Future Value”** means the value of a Payment or Receipt at the end of a period determined using the economic accrual method as the value of that Payment or Receipt when it is paid or received (or treated as paid or received), plus interest assumed to be earned and compounded over the period at a rate equal to the Yield on the applicable issue, using the same compounding interval and financial conventions that were used to compute that Yield.

**“Governmental Unit”** means a state, territory or possession of the United States, the District of Columbia, or any political subdivision thereof referred to as a “State or local governmental unit” in Regulations §1.103-1(a). “Governmental Unit” does not include the United States or any agency or instrumentality of the United States.

**“Guaranteed Investment Contract”** means any Nonpurpose Investment that has specifically negotiated withdrawal or retirement provisions and a specifically negotiated interest rate and any agreement to supply investments on two or more future dates (*e.g.*, a forward supply contract).

**“Gross Proceeds”** means Proceeds and Replacement Proceeds of an issue.

**“Hedge”** means a contract entered into by the Issuer or the Conduit Borrower primarily to modify the Issuer’s or the Conduit Borrower’s risk of interest rate changes with respect



to an obligation (*e.g.*, an interest rate swap, an interest rate cap, a futures contract, a forward contract or an option).

**“Higher Yielding Investments”** means any Investment Property that produces a Yield that (a) in the case of Investment Property allocable to Replacement Proceeds of an issue and Investment Property in a Refunding Escrow, is more than one thousandth of one percentage point (.00001) higher than the Yield on the applicable issue, and (b) for all other purposes is more than one-eighth of one percentage point (.00125) higher than the Yield on the issue.

**“Investment Proceeds”** means any amounts actually or constructively received from investing Proceeds of an issue in Investment Property.

**“Investment Property”** means investment property within the meaning of Sections 148(b)(2) and 148(b)(3), including any security (within the meaning of Section 165(g)(2)(A) or (B)), any obligation, any annuity contract and any other investment-type property (including certain residential rental property for family units as described in Section 148(b)(2)(E) in the case of any bond other than a Private Activity Bond). Investment Property includes a Tax-Exempt Obligation that is a “specified private activity bond” as defined in Section 57(a)(5)(C), but does not include other Tax-Exempt Obligations.

**“Issuance Costs”** means costs to the extent incurred in connection with, and allocable to, the issuance of an issue, and includes underwriter’s compensation withheld from the Issue Price, counsel fees, financial advisory fees, rating agency fees, trustee fees, paying agent fees, bond registrar, certification and authentication fees, accounting fees, printing costs for bonds and offering documents, public approval process costs, engineering and feasibility study costs, guarantee fees other than for a Qualified Guarantee and similar costs, but does not include fees charged by the Issuer.

**“Issuance Date”** means the date of physical delivery of an issue by the Issuer in exchange for the purchase price of the issue.

**“Issue Price”** means in the circumstances applicable to an issue:

(1) Public Offering. In the case of obligations actually offered to the general public in a bona fide public offering at the initial offering price for each maturity set forth in the certificate of the underwriter or placement agent attached to the Tax Compliance Certificate of the Issuer, the aggregate of the initial offering price for each maturity (including any Pre-Issuance Accrued Interest and taking into account any original issue premium and original issue discount), which price is not more than the fair market value thereof as of the Sale Date, and at which initial offering price not less than 10% of the principal amount of each maturity, as of the Sale Date, was sold or reasonably expected to be sold (other than to bond houses, brokers or other intermediaries). In the case of publicly offered obligations that are not described in the preceding sentence, Issue Price means the aggregate of the initial offering price to the public of each maturity set forth in the certificate of the underwriter or placement agent attached to the Tax Compliance Certificate of the Issuer, at which initial offering price not less than 10% of the principal amount of

each maturity was sold to the public. Notwithstanding the foregoing, in no event shall the Issue Price of an issue exceed the fair market value of the issue as of the Sale Date thereof.

(2) Private Placement. In the case of obligations sold by private placement, the aggregate of the prices (including any Pre-Issuance Accrued Interest and original issue premium, but excluding any original issue discount) paid to the Issuer by the first purchaser(s) (other than bond houses, brokers or other intermediaries). Notwithstanding the foregoing, in no event shall the Issue Price of an issue exceed the fair market value of the issue as of the Sale Date thereof.

**“Minor Portion”** means an amount equal to the lesser of \$100,000 or 5% of the Sale Proceeds of an issue.

**“Multipurpose Issue”** means an issue the bonds of which are allocable to two or more separate governmental purposes within the meaning of Regulations §1.148-9(h).

**“Net Proceeds”** means the Sale Proceeds of an issue less the portion thereof, if any, deposited in a reasonably required reserve or replacement fund for the issue.

**“Net Sale Proceeds”** means the Sale Proceeds of an issue less (a) the portion thereof, if any, deposited in a reasonably required reserve or replacement fund for the issue and (b) the portion invested as a part of a Minor Portion for the issue.

**“New Money Issue”** means an issue that is not a Refunding Issue.

**“New Money Portion”** means that portion of a Multipurpose Issue other than the Refunding Portion.

**“Nonpurpose Investments”** means any Investment Property that is acquired with Gross Proceeds as an investment and not in carrying out any governmental purpose of an issue. “Nonpurpose Investments” does not include any investment that is not regarded as “investment property” or a “nonpurpose investment” for the particular purposes of Section 148 (such as certain investments in U.S. Treasury obligations in the State and Local Government Series and certain temporary investments), but does include any other investment that is a “nonpurpose investment” within the applicable meaning of Section 148.

**“Payment”** means payments actually or constructively made to acquire Nonpurpose Investments, as specified in Regulations §1.148-3(d)(1)(i) through (v).

**“Placed in Service”** means the date on which, based on all the facts and circumstances, a facility has reached a degree of completion that would permit its operation at substantially its design level and the facility is, in fact, in operation at such level.

**“Pre-Issuance Accrued Interest”** means interest on an obligation that accrued for a period not greater than one year before its Issuance Date and that will be paid within one year after such Issuance Date.

**“Preliminary Expenditures”** means any Capital Expenditures that are “preliminary expenditures” within the meaning of Regulations §1.150-2(f)(2), *i.e.*, architectural, engineering, surveying, soil testing, reimbursement bond issuance, and similar costs that are incurred prior to commencement of acquisition, construction, or rehabilitation of a project other than land acquisition, site preparation, and similar costs incident to commencement of construction. The aggregate amount of Preliminary Expenditures may not exceed 20% of the aggregate Issue Price of the issue or issues that financed or are reasonably expected to finance the project for which such Preliminary Expenditures are or were incurred.

**“Prior Issue”** means an issue of obligations all or a portion of the Debt Service on which is paid or provided for with Proceeds of a Refunding Issue. The Prior Issue may be a Refunding Issue.

**“Private Activity Bond”** means (a) obligations of an issue more than 10% of the Proceeds of which, directly or indirectly, are or are to be used for a Private Business Use and more than 10% of the Debt Service on which, directly or indirectly, is or is to be paid from or secured by payments with respect to property, or secured by property, used for a Private Business Use, or (b) obligations of an issue, the Proceeds of which are or are to be used to make or finance loans to any Private Person that, in the aggregate, exceed the lesser of 5% of such Proceeds or \$5,000,000. In the event of Unrelated or Disproportionate Use, the tests in (a) shall be applied by substituting 5% for 10% each place the latter term is used.

**“Private Business Use”** means use (directly or indirectly) in a trade or business carried on by any Private Person other than use as a member of, and on the same basis as, the general public. Any activity carried on by a Private Person (other than a natural person) shall be treated as a trade or business. In the case of a Qualified 501(c)(3) Bond, Private Business Use excludes use by a 501(c)(3) Organization that is not an unrelated trade or business activity by such 501(c)(3) Organization within the meaning of Section 513(a).

**“Private Person”** means any natural person or any artificial person, including a corporation, partnership, trust or other entity, other than a Governmental Unit. “Private Person” includes the United States and any agency or instrumentality of the United States.

**“Private Security or Payments”** means (i) any interest in property used or to be used for a Private Business Use, or in payments in respect of such property, that directly or indirectly secures any payment of principal of, or interest on, an issue, or (ii) payments (whether or not to the Issuer) in respect of property, or borrowed money, used or to be used for a Private Business Use from which payments of principal of, or interest on, an issue are directly or indirectly derived, all as determined and measured in accordance with Treasury Regulations Section 1.141-4.

**“Proceeds”** means any Sale Proceeds, Investment Proceeds and Transferred Proceeds of an issue. “Proceeds” does not include Replacement Proceeds.

**“Qualified Administrative Costs”** means the reasonable, direct administrative costs, other than carrying costs, of purchasing or selling Nonpurpose Investments such as separately stated brokerage or selling commissions. Qualified Administrative Costs do not include legal and accounting fees, recordkeeping, custody and similar costs, general overhead costs and similar

indirect costs of the Issuer such as employee salaries and office expenses and costs associated with computing the Rebate Amount. In general, Qualified Administrative Costs are not reasonable unless they are comparable to administrative costs that would be charged for the same investment or a reasonably comparable investment if acquired with a source of funds other than Gross Proceeds of Tax-Exempt Obligations.

**“Qualified 501(c)(3) Bonds”** means an issue of obligations that satisfies the requirements of Section 145(a).

**“Qualified Guarantee”** means any guarantee of an obligation that constitutes a “qualified guarantee” within the meaning of Regulations §1.148-4(f).

**“Qualified Hedge”** means a Hedge that is a “qualified hedge” within the meaning of Regulations §1.148-4(h)(2).

**“Reasonable Retainage”** means an amount, with respect to an issue, not to exceed 5% of the Net Sale Proceeds of the issue, that is retained for reasonable business purposes relating to the property financed with Proceeds of the issue. For example, Reasonable Retainage may include a retention to ensure or promote compliance with a construction contract in circumstances in which the retained amount is not yet payable, or in which the Issuer reasonably determines that a dispute exists regarding completion or payment.

**“Rebate Amount”** means the excess of the future value, as of any date, of all receipts on Nonpurpose Investments acquired with Gross Proceeds of an issue over the future value, as of that date, of all payments on those Nonpurpose Investments, computed in accordance with Section 148(f) and Regulations §1.148-3.

**“Rebate Analyst”** means an independent individual, firm or entity experienced in the computation of the Rebate Amount pursuant to Section 148(f).

**“Receipt”** means amounts actually or constructively received from Nonpurpose Investments as specified in Regulations §1.148-3(d)(2)(i) through (iii).

**“Refunded Bonds”** means obligations of a Prior Issue the Debt Service on which is or is to be paid from Proceeds of a Refunding Issue.

**“Refunding Bonds”** means obligations of a Refunding Issue.

**“Refunding Escrow”** means one or more funds established as part of a single transaction, or a series of related transactions, containing Proceeds of a Refunding Issue and any other amounts to be used to pay Debt Service on Refunded Bonds of one or more issues.

**“Refunding Issue”** means an issue the Proceeds of which are or are to be used to pay Debt Service on Refunded Bonds and includes Issuance Costs, Pre-Issuance Accrued Interest or permitted capitalized interest, a reasonably required reserve or replacement fund and similar costs of the Refunding Issue.

**“Refunding Portion”** means that portion of a Multipurpose Issue the Proceeds of which are, or are to be, used to pay Debt Service on Refunded Bonds and includes Issuance Costs, Pre-Issuance Accrued Interest or permitted capitalized interest, a reasonably required reserve or replacement fund and similar costs properly allocable to the Refunding Portion.

**“Regulations”** or **“Reg.”** means Treasury Regulations.

**“Reimbursement Allocation”** means an allocation of the Proceeds of an issue for the reimbursement of Capital Expenditures paid prior to the Issuance Date of such issue that: (a) is evidenced on the books or records of the Issuer maintained with respect to the issue, (b) identifies either actual prior Capital Expenditures or the fund or account from which the prior Capital Expenditures were paid, (c) evidences the Issuer’s use of Proceeds of the issue to reimburse a Capital Expenditure for a governmental purpose that was originally paid from a source other than the Proceeds of the issue and (d) satisfies the following requirements: except for Preliminary Expenditures, (i) the Issuer adopted an official intent for the Capital Expenditure that satisfies Regulations §1.150-2(e) prior to, or within 60 days after, payment of the Capital Expenditure, and (ii) the allocation in reimbursement of that Capital Expenditure occurs or will occur within 18 months after the later of the date the Capital Expenditure was paid or the date the project resulting from such Capital Expenditure was Placed in Service or abandoned, but in no event more than three years after the Capital Expenditure was paid.

**“Related Party”** means, in reference to a Governmental Unit or 501(c)(3) Organization, any member of the same Controlled Group and, in reference to any person that is not a Governmental Unit or 501(c)(3) Organization, a “related person” as defined in Section 144(a)(3).

**“Replacement Proceeds”** means, with respect to an issue, amounts (including any investment income, but excluding any Proceeds of any issue) replaced by Proceeds of that issue within the meaning of Section 148(a)(2). “Replacement Proceeds” includes amounts, other than Proceeds, held in a sinking fund, pledged fund or reserve or replacement fund for an issue.

**“Sale Date”** means, with respect to an issue, the first date on which there is a binding contract in writing with the Issuer for the sale and purchase of an issue (or of respective obligations of the issue if sold by the Issuer on different dates) on specific terms that are not later modified or adjusted in any material respect.

**“Sale Proceeds”** means that portion of the Issue Price actually or constructively received by the Issuer upon the sale or other disposition of an issue, including any underwriter’s compensation withheld from the Issue Price, but excluding Pre-Issuance Accrued Interest.

**“Spensible Proceeds”** means the Net Sale Proceeds of an issue.

**“Tax-Exempt Obligation”** means any obligation or issue of obligations (including bonds, notes and lease obligations treated for federal income tax purposes as evidence of indebtedness) the interest on which is excluded from gross income for federal income tax purposes within the meaning of Section 150, and includes any obligation or any investment treated as a “tax-exempt bond” for the applicable purpose of Section 148.

**“Tax-Exempt Organization”** means a Governmental Unit or a 501(c)(3) Organization.

**“Temporary Period”** means the period of time, as set forth in the Tax Compliance Certificate, applicable to particular categories of Gross Proceeds of an issue during which such category of Gross Proceeds may be invested in Higher Yielding Investments without the issue being treated as arbitrage bonds under Section 148.

**“Transferred Proceeds”** means that portion of the Proceeds of an issue (including any Transferred Proceeds of that issue) that remains unexpended at the time that any portion of the principal of the Refunded Bonds of that issue is discharged with the Proceeds of a Refunding Issue and that thereupon becomes Proceeds of the Refunding Issue as provided in Regulations §1.148-9(b). “Transferred Proceeds” does not include any Replacement Proceeds.

**“Unrelated or Disproportionate Use”** means Private Business Use that is not related to or is disproportionate to use by a Governmental Unit within the meaning of Section 141(b)(3) and Regulations §1.141-9.

**“Variable Yield Issue”** means any Issue that is not a Fixed Yield Issue.

**“Working Capital Expenditures”** means any costs of a type that do not constitute Capital Expenditures, including current operating expenses.

**“Yield”** has the meaning assigned to it for purposes of Section 148, and means that discount rate (stated as an annual percentage) that, when used in computing the present worth of all applicable unconditionally payable payments of Debt Service, all payments for a Qualified Guarantee, if any, and payments and receipts with respect to a Qualified Hedge, if any, as required by the Regulations, paid and to be paid with respect to an obligation (paid and to be paid during and attributable to the Yield Period in the case of a Variable Yield Issue), reduced by the credit, if any, allowed by Section 6431, produces an amount equal to (a) the Issue Price in the case of a Fixed Yield Issue or the present value of the Issue Price at the commencement of the applicable Yield Period in the case of a Variable Yield Issue, or (b) the purchase price for yield purposes in the case of Investment Property, all subject to the applicable methods of computation provided for under Section 148, including variations from the foregoing. The Yield on Investment Property in which Proceeds or Replacement Proceeds of an issue are invested is computed on a basis consistent with the computation of Yield on that issue, including the same compounding interval of not more than one year selected by the Issuer.

**“Yield Period”** means, in the case of the first Yield Period, the period that commences on the Issuance Date and ends at the close of business on the first Computation Date and, in the case of each succeeding Yield Period, the period that begins immediately after the end of the immediately preceding Yield Period and ends at the close of business on the next succeeding Computation Date.

The terms “bond,” “obligation,” “reasonably required reserve or replacement fund,” “reserve or replacement fund,” “loan,” “sinking fund,” “purpose investment,” “same plan of financing,” “other replacement proceeds” and other terms relating to Code provisions used but not

defined in this Certificate shall have the meanings given to them for purposes of Sections 103 and 141 to 150 unless the context indicates another meaning.

(End of Attachment A)

**Attachment C-1  
to Tax Compliance Certificate**

**ARBITRAGE COMPLIANCE CHECKLIST**

The Issuer certifies in the Tax Compliance Certificate (“Certificate”) that it will comply with the arbitrage rebate requirements of Section 148(f) of the Code. This checklist provides guidance for that compliance, and this checklist is intended to satisfy Section 7.2.3.4.4 of the Internal Revenue Manual. Capitalized terms not defined in this checklist have the meanings given in the Certificate and in Attachment A to that Certificate.

- 1.1 Note the Yield of the Issue, as shown on the IRS Form 8038-G.
- 1.2 Review the Certificate to determine the Temporary Periods for the Issue, during which periods various categories of Gross Proceeds may be invested in Higher Yielding Investments.
- 1.3 Do not invest Gross Proceeds in Higher Yielding Investments following the end of the applicable Temporary Period identified in 1.2 unless Yield reduction payments may be made (see Certificate).
- 1.4 Monitor expenditures of Proceeds, including Investment Proceeds, against Issuance Date expectations for satisfaction of 13-month (Working Capital financings), three-year (most Capital Expenditure financings) or five-year (long-term Capital Expenditure financings) Temporary Period from Yield restriction on investment of Proceeds and to avoid “hedge bond” status.
- 1.5 Ensure that Proceeds are spent for Capital Expenditures or, if spent for Working Capital Expenditures, ensure either that the Proceeds-spent-last rule is satisfied or that an exception to this rule applies (see Certificate).
- 1.6 Ensure that investments acquired with Gross Proceeds satisfy Internal Revenue Service (“IRS”) regulatory safe harbors for establishing fair market value (e.g., through the use of bidding procedures), and maintain records to demonstrate satisfaction of those safe harbors.
- 1.7 Consult with Bond Counsel before engaging in credit enhancement or hedging transactions in respect of the Issue, and before creating separate funds that are reasonably expected to be used to pay Debt Service on the Issue.
- 1.8 Maintain copies of all contracts and certificates relating to credit enhancement and hedging transactions relating to the Issue
- 1.9 *Even after all Proceeds of the Issue have been spent*, ensure that the Bond Fund meets the requirements of a Bona Fide Debt Service Fund, i.e., a fund used primarily to achieve a proper matching of revenues with Debt Service that is depleted at least once each Bond Year, except for a reasonable carryover amount not to exceed the greater of: (i) the earnings on the fund for the immediately preceding Bond Year; or (ii) one-twelfth of the Debt Service on the Issue for the immediately preceding Bond Year. *To the extent that the Bond Fund qualifies as a Bona Fide Debt Service Fund for a given Bond Year, the amounts held in that fund may be invested in Higher Yielding Investments.*



- 1.10 Ensure that amounts held in any reasonably required debt service reserve fund that are invested in Higher Yielding Investments do not exceed the least of: (i) 10% of the stated principal amount of the Issue (or 10% of the Sale Proceeds of the Issue if the Issue has original issue discount or original issue premium that exceeds 2% of the stated principal amount of the Issue plus, in the case of premium, reasonable underwriter's compensation); (ii) maximum annual Debt Service on the Issue; or (iii) 125% of average annual Debt Service on the Issue.
- 1.11 *Compliance with rebate requirement, if applicable -- see Article IV of the Tax Compliance Certificate and, if the small issuer exception to rebate is not satisfied, the Rebate Instructions (which will be attached as Attachment C-2 to the Certificate if the small issuer exception is not met) for possible exceptions from the rebate requirement. Subject to the possible exceptions, including those mentioned below, earnings on Proceeds, to the extent invested at a Yield in excess of the Bond Yield (i.e., positive arbitrage), generally must be rebated to the U.S. Treasury, even if a Temporary Period exception from Yield restriction allowed the earning of that positive arbitrage.*
  - 1.11.1. Ensure that rebate calculations will be timely performed and payment of Rebate Amounts, if any, will be timely made; such payments are generally due 60 days after the fifth anniversary of the Issuance Date, and then in succeeding installments every five years; the final rebate payment for the Issue is due 60 days after retirement of the last bond of the Issue. A rebate consultant generally should be hired.
  - 1.11.2. Review the rebate section of the Certificate to determine whether the "small issuer" rebate exception applies to the Issue.
  - 1.11.3. If the 6-month, 18-month, or 24-month spending exception from the rebate requirement (as described in the Rebate Instructions) may apply to the Issue, ensure that the spending of Proceeds is monitored prior to the semi-annual spending dates for the applicable exception.
  - 1.11.4. *Timely make rebate and Yield reduction payments and file IRS Form 8038-T.*
  - 1.11.5. Even after all other Proceeds of the Issue have been spent, ensure compliance with rebate requirements for any debt service reserve fund and any debt service fund that is not exempt from the rebate requirement (see the Rebate Instructions).
  - 1.11.6. See the Rebate Instructions for more detail regarding the rebate requirement.
- 1.12 The foregoing items in this checklist shall be monitored at least annually as long as there are unspent Gross Proceeds.
- 1.13 Maintain records of investments and expenditures of Proceeds, rebate exception analyses, rebate calculations, Forms 8038-T, and rebate and Yield reduction payments, and any other records relevant to compliance with the arbitrage restrictions.

- 1.14 The person(s) who hold the following title(s) shall be responsible for monitoring compliance with the arbitrage rebate requirements of Section 148 of the Code, as set forth in this checklist: **[INSERT TITLE]**
- 1.15 The person(s) responsible for monitoring compliance with the arbitrage rebate requirements of Section 148 of the Code shall receive appropriate training regarding the Issuer's accounting systems and their application to the investment and expenditure of Gross Proceeds. This training shall occur when a new individual assumes the responsibilities described in this checklist. Training shall also be available to ensure current knowledge of the Issuer's existing accounting systems and exposure to any pertinent modifications that are subsequently implemented by the Issuer.
- 1.16 The records required to be kept under this checklist shall be maintained in paper or electronic format until the date three (3) years after the last bond of the applicable issue of Tax-Exempt Obligations ("Issue") has been retired; if any portion of such Issue is refunded by a Refunding Issue, such records shall be maintained until the later of the date three (3) years after the last bond of the Issue has been retired or the date three (3) years after the last bond of the Refunding Issue has been retired.

(End of Attachment C-1)

**Attachment C-2  
to Tax Compliance Certificate**

**INSTRUCTIONS FOR COMPLIANCE WITH REBATE  
REQUIREMENTS OF SECTION 148(f) OF THE CODE**

The Issuer<sup>1</sup> covenanted in the operative documents (*i.e.*, Ordinance/Resolution/Trust Indenture/Tax Compliance Certificate) to comply with the arbitrage rebate requirement of Section 148(f) of the Code. These Instructions provide guidance for that compliance, including the spending exceptions that free the Issue from all or part of the rebate requirements. Capitalized terms that are not defined in these Rebate Instructions are defined in Attachment A to the Tax Compliance Certificate.

GENERAL

REBATE GENERALLY.

The Rebate Amount with respect to the Issue must be paid (rebated) to the United States to prevent the bonds of the Issue from being arbitrage bonds, the interest on which is subject to federal income tax. In general, the Rebate Amount is the amount by which the actual earnings on Nonpurpose Investments purchased (or deemed to have been purchased) with Gross Proceeds of the Issue exceed the amount of earnings that would have been received if those Nonpurpose Investments had a Yield equal to the Yield on the Issue.<sup>2</sup> Stated differently, the Rebate Amount for the Issue as of any date is the excess of the Future Value, as of that date, of all Receipts on Nonpurpose Investments over the Future Value, as of that date, of all Payments on Nonpurpose Investments, computed using the Yield on the Issue as the Future Value rate.<sup>3</sup>

If the Issue is a Fixed Yield Issue, the Yield on the Issue generally is the Yield to maturity, taking into account mandatory redemptions prior to maturity. If the Issue is a Variable Yield Issue, the Yield on the Issue is computed separately for each Yield Period selected by the Issuer.

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<sup>1</sup> For purposes of these Instructions, the term "Issuer" includes the borrower in a conduit financing issue.

<sup>2</sup> Amounts earned on the Bona Fide Debt Service Fund for the Issue are not taken into account in determining the Rebate Amount: (1) for any Bond Year in which the gross earnings on such Fund for such Year are less than \$100,000; (2) if the average annual Debt Service on the Issue does not exceed \$2,500,000; or (3) if none of the obligations of the Issue are Private Activity Bonds, the rates of interest on the Issue do not vary and the average maturity of the Issue is at least five years.

<sup>3</sup> The scope of these Instructions does not permit a detailed description of the computation of the Rebate Amount with respect to the Issue. If you need assistance in computing the Rebate Amount on the Issue or want Squire Sanders (US) LLP to do the computations, please feel free to contact the Squire Sanders (US) LLP attorney with whom you normally consult to discuss engaging the Firm to provide such assistance.

## EXCEPTIONS TO REBATE

### SPENDING EXCEPTIONS.

The rebate requirements with respect to the Issue are deemed to have been satisfied if any one of three spending exceptions (the 6-Month, the 18-Month, or the 2-Year Spending Exception, collectively, the “Spending Exceptions”) is satisfied. The Spending Exceptions are each independent exceptions. The Issue need not meet the requirements of any other exception in order to use any one of the three exceptions. For example, a Construction Issue may qualify for the 6-Month Spending Exception or the 18-Month Spending Exception even though the Issuer makes one or more elections under the 2-Year Exception with respect to the Issue.

The following rules apply for purposes of all of the Spending Exceptions except as otherwise noted.

Refunding Issues. The only spending exception available for a Refunding Issue<sup>4</sup> is the 6-Month Spending Exception.

Special Transferred Proceeds Rules. In applying the Spending Exceptions to a Refunding Issue, unspent Proceeds of the Prior Issue that become Transferred Proceeds of the Refunding Issue are ignored. If the Prior Issue satisfies one of the rebate Spending Exceptions, the Proceeds of the Prior Issue that are excepted from rebate under that exception are not subject to rebate either as Proceeds of the Prior Issue or as Transferred Proceeds of the Refunding Issue.

However, if the Prior Issue does not satisfy any of the Spending Exceptions and is not otherwise exempt from rebate, the Transferred Proceeds from the Prior Issue will be subject to rebate, even if the Refunding Issue satisfies the 6-Month Spending Exception. The Rebate Amount will be calculated on the Transferred Proceeds on the basis of the Yield of the Prior Issue up to each transfer date and on the basis of the Yield of the Refunding Issue after each transfer date.

Application of Spending Exceptions to a Multipurpose Issue. If the Issue is a Multipurpose Issue, the Refunding Portion and the New Money Portion are treated for purposes of the rebate Spending Exceptions as separate issues. Thus, the Refunding Portion is eligible to use only the 6-Month Spending Exception. The New Money Portion is eligible to use any of the three Spending Exceptions.

Expenditures for Governmental Purposes of the Issue. Each of the spending exceptions requires that expenditures of Gross Proceeds be for the governmental purposes of the Issue. These purposes include payment of interest (but not principal) on the Issue.

### 6-MONTH SPENDING EXCEPTION.

The Issue will be treated as satisfying the rebate requirements if all of the Gross Proceeds of the Issue are allocated to expenditures for the governmental purposes of the Issue within the 6-month period beginning on the Issuance Date and the Rebate Amount, if any, with

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<sup>4</sup> For purposes of these Instructions, references to “Refunding Issue” include the Refunding Portion of a Multipurpose Issue.

respect to earnings on amounts deposited in a reasonably required reserve or replacement fund or a Bona Fide Debt Service Fund if and to the extent that such Fund is subject to rebate (see footnote 3) is timely paid to the United States. If no bond of the Issue is a Private Activity Bond (other than a Qualified 501(c)(3) Bond) or a tax or revenue anticipation bond, the 6-month period is extended for an additional six months if the unexpended Gross Proceeds of the Issue at the end of the 6-month period do not exceed 5% of the Proceeds of the Issue.

For purposes of the 6-Month Spending Exception, Gross Proceeds required to be spent within six months do not include amounts in a reasonably required reserve or replacement fund for the Issue or in a Bona Fide Debt Service Fund for the Issue.

#### 18-MONTH SPENDING EXCEPTION.

The Issue (or the New Money Portion if the Issue is a Multipurpose Issue) is treated as satisfying the rebate requirement if the conditions set forth in (A), (B) and (C) are satisfied.

All of the Gross Proceeds of the Issue (excluding amounts in a reasonably required reserve or replacement fund for the Issue or in a Bona Fide Debt Service Fund for the Issue) are allocated to expenditures for the governmental purposes of the Issue in accordance with the following schedule, measured from the Issuance Date:

at least 15% within six months;

at least 60% within 12 months; and

100% within 18 months, subject to the Reasonable Retainage exception described below.

The Rebate Amount, if any, with respect to earnings on amounts deposited in a reasonably required reserve or replacement fund or in a Bona Fide Debt Service Fund for the Issue, to the extent such Fund is subject to rebate (see footnote 3), is timely paid to the United States.

The Gross Proceeds of the Issue qualify for the initial 3-year Temporary Period.

If the only unspent Gross Proceeds at the end of the 18th month are Reasonable Retainage, the requirement that 100% of the Gross Proceeds be spent by the end of the 18th month is treated as met if the Reasonable Retainage, and all earnings thereon, are spent for the governmental purposes of the Issue within 30 months of the Issuance Date.

For purposes of determining whether the spend-down requirements have been met as of the end of each of the first two spending periods, the amount of Investment Proceeds that the Issuer reasonably expects as of the Issuance Date to earn on the Sale Proceeds and Investment Proceeds of the Issue during the 18-month period are included in Gross Proceeds of the Issue. The final spend-down requirement includes actual Investment Proceeds for the entire 18 months.

The 18-Month Spending Exception does not apply to the Issue (or the New Money Portion, as applicable) if any portion of the Issue (or New Money Portion) is treated as meeting the

rebate requirement under the 2-Year Spending Exception discussed below. This rule prohibits use of the 18-Month Spending Exception for the Nonconstruction Portion of a Bifurcated Issue. The only Spending Exception available for the Nonconstruction Portion of a Bifurcated Issue is the 6-Month Spending Exception.

### 2-YEAR SPENDING EXCEPTION FOR CERTAIN CONSTRUCTION ISSUES.

In general. A Construction Issue no bond of which is a Private Activity Bond (other than a Qualified 501(c)(3) Bond or a Bond that finances property to be owned by a Governmental Unit or a 501(c)(3) Organization) is treated as satisfying the rebate requirement if the Available Construction Proceeds of the Issue are allocated to expenditures for the governmental purposes of the Issue in accordance with the following schedule, measured from the Issuance Date:

at least 10% within six months;

at least 45% within one year;

at least 75% within 18 months; and

100% within two years, subject to the Reasonable Retainage exception described below.

Amounts in a Bona Fide Debt Service Fund or a reasonably required reserve or replacement fund for the Issue are not treated as Gross Proceeds for purposes of the expenditure requirements. However, unless the Issuer has elected otherwise in the Tax Compliance Certificate, earnings on amounts in a reasonably required reserve or replacement fund for the Issue are treated as Available Construction Funds during the 2-year period and therefore must be allocated to expenditures for the governmental purposes of the Issue.

If the Issuer elected in the Tax Compliance Certificate to exclude from Available Construction Proceeds the Investment Proceeds or earnings on a reasonably required reserve or replacement fund for the Issue during the 2-year spend-down period, the Rebate Amount, if any, with respect to such Investment Proceeds or earnings from the Issuance Date must be timely paid to the United States. If the election is not made, the Rebate Amount, if any, with respect to such Investment Proceeds or earnings after the earlier of the date construction is substantially completed or two years after the Issuance Date must be timely paid to the United States. The Rebate Amount, if any, with respect to earnings on amounts in a Bona Fide Debt Service Fund must be timely paid to the extent such Fund is subject to the rebate requirements (see footnote 3).

The Issue does not fail to satisfy the spending requirement for the fourth spend-down period (*i.e.*, 100% within two years of the Issuance Date) if the only unspent Available Construction Proceeds are amounts for Reasonable Retainage if such amounts (together with all earnings on such amounts) are allocated to expenditures within three years of the Issuance Date.

For purposes of determining whether the spend down requirements have been met as of the end of each of the first three spend-down periods, Available Construction Proceeds include the amount of Investment Proceeds or earnings that the Issuer reasonably expected as of the

Issuance Date to earn during the 2-year period unless the Issuer elects, on or before the Issuance Date, to apply these spend-down requirements on the basis of actual facts rather than reasonable expectations. For purposes of satisfying the final spend-down requirement, Available Construction Proceeds include actual Investment Proceeds or earnings from the Issuance Date through the end of the 2-year period.

Available Construction Proceeds do not include Gross Proceeds used to pay Issuance Costs financed by the Issue, but do include earnings on such Proceeds. Thus, an expenditure of Gross Proceeds to pay Issuance Costs does not count toward meeting the spend-down requirements, but expenditures of earnings on such Gross Proceeds to pay Issuance Costs do count.

1½% penalty in lieu of rebate for Construction Issues. If the Issuer elected in the Tax Compliance Certificate for a Construction Issue, or for the Construction Portion of a Bifurcated Issue, to pay a 1½% penalty in lieu of the Rebate Amount on Available Construction Proceeds in the event that the Construction Issue fails to satisfy any of the spend-down requirements, the 1½% penalty is calculated separately for each spend-down period, including each semiannual period after the end of the fourth spend-down period until all Available Construction Proceeds have been spent. The penalty is equal to 0.015 times the underexpended Proceeds as of the end of the applicable spend-down period. The fact that no arbitrage is in fact earned during such spend-down period is not relevant. The Rebate Amount with respect to Gross Proceeds other than Available Construction Proceeds (*e.g.*, amounts in a reasonably required reserve or replacement fund or in a Bona Fide Debt Service Fund, to the extent subject to rebate (see footnote 3)) must be timely paid.

## COMPUTATION AND PAYMENT

### COMPUTATION AND PAYMENT OF REBATE AMOUNT.

If none of the Spending Exceptions described above is satisfied (and if the 1½% penalty election for a Construction Issue or the Construction Portion of a Bifurcated Issue has not been made), then within 45 days after each Computation Date the Issuer shall compute, or cause to be computed, the Rebate Amount as of such Computation Date. The first Computation Date is a date selected by the Issuer, but shall be not later than five years after the Issuance Date. Each subsequent Computation Date shall end five years after the previous Computation Date except that, in a Variable Yield Issue, the Issuer may select annual Yield Periods. The final Computation Date shall be the date the last obligation of the Issue matures or is finally discharged.

Within 60 days after each Computation Date (except the final Computation Date), the Issuer shall pay to the United States not less than 90% of the Rebate Amount, if any, computed as of such Computation Date. Within 60 days after the final Computation Date, the Issuer shall pay to the United States 100% of the Rebate Amount, if any, computed as of the final Computation Date. In computing the Rebate Amount, a computation credit may be taken into account on the last day of each Bond Year to the Computation Date during which there are unspent Gross Proceeds that are subject to the rebate requirement, and on the final maturity date.

If the operative documents pertaining to the Issue establish a Rebate Fund and require the computation of the Rebate Amount at the end of each Bond Year, the Issuer shall calculate, or cause to be calculated, within 45 days after the end of each Bond Year the Rebate Amount, taking into account the computation credit for each Bond Year. Within 50 days after the end of each Bond Year, if the Rebate Amount is positive, the Issuer shall deposit in the Rebate Fund such amount as will cause the amount on deposit therein to equal the Rebate Amount, and may withdraw any amount on deposit in the Rebate Fund in excess of the Rebate Amount. Payments of the Rebate Amount to the Internal Revenue Service on a Computation Date shall be made first from amounts on deposit in the Rebate Fund and second from other amounts specified in the operative documents.

Each payment of the Rebate Amount or portion thereof shall be payable to the Internal Revenue Service and shall be made to the Internal Revenue Service Center, Ogden, UT 84201 by certified mail. Each payment shall be accompanied by Internal Revenue Service Form 8038-T and any other form or forms required to be submitted with such remittance.

#### BOOKS AND RECORDS.

The Issuer or Trustee, as applicable, shall keep proper books of record and accounts containing complete and correct entries of all transactions relating to the receipt, investment, disbursement, allocation and application of the Gross Proceeds of the Issue. Such records shall specify the account or fund to which each Nonpurpose Investment (or portion thereof) held by the Issuer or Trustee is to be allocated and shall set forth as to each Nonpurpose Investment (1) its purchase price, (2) identifying information, including par amount, interest rate, and payment dates, (3) the amount received at maturity or its sales price, as the case may be, including accrued interest, (4) the amounts and dates of any payments made with respect thereto, and (5) the dates of acquisition and disposition or maturity.

The Issuer, Trustee, or Rebate Analyst, as applicable, shall retain the records of all calculations and payments of the Rebate Amount until three years after the retirement of the last obligation that is a part of the Issue.

#### FAIR MARKET VALUE.

No Nonpurpose Investment shall be acquired for an amount in excess of its fair market value. No Nonpurpose Investment shall be sold or otherwise disposed of for an amount less than its fair market value.

The fair market value of any Nonpurpose Investment shall be the price at which a willing buyer would purchase the Nonpurpose Investment from a willing seller in an arm's-length transaction. Fair market value generally is determined on the date on which a contract to purchase or sell the Nonpurpose Investment becomes binding (*i.e.*, the trade date rather than the settlement date). Except as otherwise provided in this Section, a Nonpurpose Investment that is not of a type traded on an established securities market (within the meaning of Section 1273 of the Code) is rebuttably presumed to be acquired or disposed of for a price that is not equal to its fair market value.



Obligations purchased directly from the Treasury. The fair market value of a United States Treasury obligation that is purchased directly from the United States Treasury is its purchase price.

Safe harbor for Guaranteed Investment Contracts. The purchase price of a Guaranteed Investment Contract shall be treated as its fair market value on the purchase date if all the following conditions are met.

The Issuer or broker makes a bona fide solicitation for a specified Guaranteed Investment Contract and receives at least three bona fide bids from reasonably competitive providers (of Guaranteed Investment Contracts) that have no material financial interest in the Issue.

The Issuer purchases the highest-yielding Guaranteed Investment Contract for which a qualifying bid is made (determined net of broker's fees).

The Yield on the Guaranteed Investment Contract (determined net of broker's fees) is not less than the Yield then available from the provider on reasonably comparable Guaranteed Investment Contracts, if any, offered to other persons from a source of funds other than Gross Proceeds of Tax-Exempt Obligations.

The determination of the terms of the Guaranteed Investment Contract takes into account as a significant factor the Issuer's reasonably expected drawdown schedule for the amounts to be invested, exclusive of amounts deposited in a Bona Fide Debt Service Fund and a reasonably required reserve or replacement fund.

The terms of the Guaranteed Investment Contract, including collateral security requirements, are reasonable.

The obligor on the Guaranteed Investment Contract certifies the administrative costs that it is paying (or expects to pay) to third parties in connection with the Guaranteed Investment Contract.

Safe harbor for certificates of deposit. The purchase price of a certificate of deposit shall be treated as its fair market value on the purchase date if all of the following requirements are met.

The certificate of deposit has a fixed interest rate, a fixed payment schedule, and a substantial penalty for early withdrawal.

The Yield on the certificate of deposit is not less than (a) the Yield on reasonably comparable direct obligations of the United States, or (b) the highest Yield that is published or posted by the provider to be currently available from the provider on reasonably comparable certificates of deposit offered to the public.

Certificates evidencing the foregoing requirements should be obtained before purchasing any Guaranteed Investment Contract or certificate of deposit.

#### CONSTRUCTIVE SALE/PURCHASE.

Nonpurpose Investments that are held by the Issuer or Trustee as of any Computation Date (or Bond Year if the computations are required to be done annually) shall be treated for purposes of computing the Rebate Amount as of such date as having been sold for their fair market value as of such date. Investment Property that becomes allocated to Gross Proceeds of the Issue on a date after such Investment Property has actually been purchased shall be treated for purposes of the rebate requirements as having been purchased by the Issuer on such date of allocation at its fair market value on such date.

For purposes of constructive or deemed sales or purchases of Investment Property (other than Investment Property in the Escrow Fund or that is otherwise not invested for a Temporary Period or is not part of a reasonably required reserve or replacement fund for the Issue) must be valued at its fair market value on the date of constructive or deemed sale or purchase.

Except as set forth in (B), fixed-rate Investment Property that is (1) issued with not more than 2% of original issue discount or original issue premium, (2) issued with original issue premium that is attributable exclusively to reasonable underwriters' compensation or (3) acquired with not more than 2% of market discount or market premium may be treated as having a fair market value equal to its outstanding stated principal amount plus accrued interest. Fixed-rate Investment Property also may be treated as having a fair market value equal to its present value.

#### ADMINISTRATIVE COSTS.

Administrative costs shall not be taken into account in determining the payments for or receipts from a Nonpurpose Investment unless such administrative costs are Qualified Administrative Costs. Thus, administrative costs or expenses paid, directly or indirectly, to purchase, carry, sell, or retire Nonpurpose Investments generally do not increase the Payments for, or reduce the Receipts from, Nonpurpose Investments.

Qualified Administrative Costs are taken into account in determining the Payments and Receipts on Nonpurpose Investments and thus increase the Payments for, or decrease the Receipts from, Nonpurpose Investments. In the case of a Guaranteed Investment Contract, a broker's commission or similar fee paid on behalf of either the Issuer or the provider is a Qualified Administrative Cost to the extent that (1) the amount of the fee treated as a Qualified Administrative Cost does not exceed the lesser of (a) \$37,000, or such higher amount as determined and published by the Internal Revenue Service as the "cost of living adjustment" for the calendar year in which the Guaranteed Investment Contract is acquired and (b) 0.2% of the Computational Base or, if more, \$4,000, or such higher amount as determined and published by the Internal Revenue Service as the "cost of living adjustment" for the calendar year in which the Guaranteed Investment Contract is acquired and (2) the aggregate amount of broker's commissions or similar fees with respect to all Guaranteed Investment Contracts and

Nonpurpose Investments acquired for a yield-restricted defeasance escrow purchased with Gross Proceeds of the Issue treated as Qualified Administrative Costs does not exceed a cap of \$103,000, or such higher amount as determined and published by the Internal Revenue Service as the “cost-of-living adjustment” for the calendar year in which the Guaranteed Investment Contract is acquired less the portion of such cap, if any, used in prior years with respect to the Issue.

## COMPLIANCE AND AMENDMENT

### COMPLIANCE.

The Issuer, Trustee or Rebate Analyst, as applicable, shall take all necessary steps to comply with the requirements of these Instructions in order to ensure that interest on the Issue is excluded from gross income for federal income tax purposes under Section 103(a) of the Code. However, compliance shall not be required in the event and to the extent stated therein the Issuer and the Trustee receive a Bond Counsel’s Opinion that either (A) compliance with such requirement is not required to maintain the exclusion from gross income for federal income tax purposes of interest on the Issue or (B) compliance with some other requirement in lieu of such requirement will comply with Section 148(f) of the Code, in which case compliance with the other requirement specified in the Bond Counsel’s Opinion shall constitute compliance with such requirement.

### LIABILITY.

If for any reason any requirement of these Instructions is not complied with, the Issuer and the Trustee, if applicable, shall take all necessary and desirable steps to correct such noncompliance within a reasonable period of time after such noncompliance is discovered or should have been discovered with the exercise of reasonable diligence. The Trustee shall have no duty or responsibility to independently verify any of the Issuer’s, or the Rebate Analyst’s, calculations with respect to the payments of the Rebate Amount due and owing to the United States. Under no circumstances whatsoever shall the Trustee be liable to the Issuer, any bondholder or any other person for any inclusion of the interest on the Issue in gross income for federal income tax purposes, or any claims, demands, damages, liabilities, losses, costs or expenses resulting therefrom or in any way connected therewith, so long as the Trustee acts only in accordance with these Instructions and the operative documents pertaining to the Issue.

(End of Attachment C-2)

**Attachment C-3  
to Tax Compliance Certificate**

**USE OF PROCEEDS CHECKLIST AND  
REMEDIAL ACTION INSTRUCTIONS FOR NONQUALIFIED BONDS**

The Issuer and each Borrower, as applicable, certifies in the Tax Compliance Certificate of the Issuer and the Tax Compliance Certificate of each Borrower (collectively, "Certificate") that it will spend the Gross Proceeds of the Issue and use the facilities financed with those Gross Proceeds ("Bond-Financed Facilities") in a manner that complies with the restrictions and requirements imposed by the Code and Regulations on Tax-Exempt Bonds. The Issuer further certifies in the Certificate that it will comply with the remedial action requirements, if necessary, set forth in Regulations §1.142-4. These Instructions provide guidance for that compliance, and they are intended to satisfy Section 7.2.3.4.4 of the Internal Revenue Manual. Capitalized terms not defined in these Instructions have the meanings given in the Certificate or in Attachment A to that Certificate.

**PART I– USE OF PROCEEDS CHECKLIST**

**Use of Proceeds**

- Ensure there exists a clearly established accounting procedure for tracking investment and expenditures of Proceeds, including Investment Proceeds.
- At or shortly after issuance of the Issue, allocate Proceeds to reimbursement of prior expenditures, as appropriate.
- Ensure that a final allocation of Proceeds (including Investment Proceeds) to qualifying expenditures is made if Proceeds are to be allocated to Project expenditures on a basis other than "direct tracing" (direct tracing means treating the Proceeds as spent as shown in the accounting records for Proceeds draws and Project expenditures). This allocation must be made within 18 months after the later of the date the expenditure was made or the date the Project was placed in service, but not later than five years and 60 days after the Issuance Date of the Issue or 60 days after the Issue is retired. Bond counsel can assist with the final allocation of Proceeds to Project costs.
- Maintain careful records of all Bond-Financed Facilities and other costs (e.g., Issuance Costs, credit enhancement and capitalized interest) and uses (e.g., deposit to reserve fund) for which Proceeds were spent or used. These records should be maintained separately for each issue of Tax-Exempt Bonds.
- Ensure that no more than 2% of the Sale Proceeds of the Issue are used to pay Issuance Costs.
- Ensure that all Proceeds of the Issue are spent in accordance with the published notice of public hearing for the Issue and the useful life calculation.

Ensure that all Bond-Financed Facilities are used for the applicable exempt facility purpose.

On at least an annual basis, identify all current and contemplated uses of Bond-Financed Facilities and confer as necessary with Bond Counsel to ensure that the use of the Bond-Financed Facilities complies with the covenants and restrictions set forth in the Certificate.

## 2. **Responsible Person, Training and Record Retention**

2.1 The person(s) who hold the following title(s) shall be responsible for monitoring the use of Proceeds and the existence of any Private Business Use of Bond-Financed Facilities, as set forth in these Instructions: As to the Issuer:[**INSERT TITLE**]. As to each Borrower: [**INSERT TITLE**]

2.2 The person(s) responsible for monitoring the use of Proceeds and use of Bond-Financed Facilities shall receive appropriate training regarding the Issuer's accounting systems (including entries for the expenditure of Proceeds on Bond-Financed Facilities), contract intake system, facilities management and other systems that track the expenditure and use of Proceeds.

2.2.1 This training shall occur when a new individual assumes the responsibilities described in these Instructions.

2.2.2 Training shall be available to ensure current knowledge of the Issuer's and each Borrower's existing accounting, contract, facilities management and other systems that involve exempt facility bonds and exposure to any pertinent additional systems that are subsequently implemented by the Issuer or Borrower, as applicable.

2.3 The records required to be kept under these Instructions shall be maintained in paper or electronic format until the date three (3) years after the last bond of the applicable issue of Tax-Exempt Obligations ("Issue") has been retired; if any portion of such Issue is refunded by a Refunding Issue, such records shall be maintained until the later of the date three (3) years after the last bond of the Issue has been retired or the date three (3) years after the last bond of the Refunding Issue has been retired.

## **PART II – REMEDIAL ACTION**

### 1. **General.**

1.1 The Issuer and the Borrowers covenanted in the Certificate to comply with the remedial action requirements set forth in Regulations § 1.142-2 to remediate failures to properly use proceeds of the exempt facility bonds (such as bonds of the Issue) pursuant to Section 142(a). These Instructions provide guidance for that compliance. Capitalized terms not defined these Instructions have the meanings given them in the Certificate.

### 2. **Failure to Properly Use Proceeds.**

- 2.1 A failure to properly use proceeds of an exempt facility bond (a “Nonqualified Use”) occurs on the following date (the “Nonqualified Use Date”):

For unspent Net Proceeds of the Issue, the Nonqualified Use Date is the earlier of the date on which the Issuer reasonably determines that the Project will not be completed or the date on which the Project is placed in service; and

For Net Proceeds of the Issue that have been spent, the Nonqualified Use Date is the date on which an action is taken that causes the Issue not to be used for the qualifying purpose for which the Issue were issued.

### 3. Remedial Action.

3.1 Effect. A “remedial action” cures the Nonqualified Use; the Issue therefore will be treated as meeting the use of proceeds requirement of Section 142(a).

3.2 Ability to Use. In order to achieve the effects set forth in 3.1, the conditions in 3.3 must be satisfied, and one of the remedial actions in 3.4 must be taken.

3.3 Conditions.

(1) *Reasonable Expectations.* A remedial action described in II(D), below, may be taken only if, on the Issuance Date, the Issuer and Company reasonably expected that 95% of the Net Proceeds of the Issue would be used to provide an exempt facility and for no other purpose for the entire term of the Issue (disregarding any redemption provisions). To meet this condition, the amount of the Issue must have been based on reasonable estimates about the cost of the Project.

(2) *Bonds with A First Call Date Later than 10 ½ Years from Issuance Date.* If the remedial action described in (D)(2), below, is unavailable and if the Issuer cannot redeem its nonqualified bonds (defined below) within 90 days of the Nonqualified Use Date, and if such nonqualified bonds are not callable within 10 ½ years of the Issuance Date, a remedial action cannot be taken with respect to the nonqualified bonds. In such case, a closing agreement with the IRS may be necessary, and Bond Counsel should be consulted.

3.4 Remedial Actions.

(1) *Redemption of Nonqualified Bonds.* The Issuer and the Borrowers meet the requirements of the remedial action described in this section if the Issuer redeems all of the nonqualified bonds on the earliest call date after the Nonqualified Use Date and does not use Proceeds of Tax-Exempt Obligations (other than Proceeds of the Issue) for this purpose. If the earliest call date is not within 90 days of the Nonqualified Use Date, the Issuer must establish a defeasance escrow. If the Issuer establishes such an escrow, it must notify the IRS that it has established the escrow. The Issuer should use the procedures in Regulations §1.150-5 to notify the IRS. As noted in II(C), above, the Issuer cannot use a defeasance escrow to meet the requirements of the remedial action described in this section if the nonqualified bonds are not callable within 10 ½ years from the

Issuance Date. In such case, a closing agreement with the IRS may be necessary, and Bond Counsel should be consulted.

(2). *Special Rule for Certain Dispositions of Personal Property Solely for Cash.* If the Nonqualified Use is caused by the disposition of personal property, and requirements (a) – (c), below, are met with respect to such disposition of personal property, the requirements of this remedial action are satisfied. For this purpose, “disposition proceeds” are any amounts (including property, such as an agreement to provide services) derived from the sale, exchange, or other disposition of property (other than investments) financed with the Proceeds of the Issue. Each of the following requirements must be met to satisfy the requirements of this remedial action:

- (a) All disposition proceeds must consist exclusively of cash;
- (b) All of the disposition proceeds must be spent to acquire replacement property for the same qualifying purpose of the Issue under Section 142; and
- (c) Such replacement property must be acquired within six months of the date of the disposition.

### 3.5 Definition of Nonqualified Bonds.

*3.5.1 If Proceeds of the Issue have been spent to provide an exempt facility.* If some amount of Proceeds of the Issue has been spent to provide an exempt facility, then the nonqualified bonds are the amount of outstanding Bonds of the Issue that, if the remaining Bonds of the issue were issued on the Nonqualified Use Date, at least 95 percent of the Net Proceeds of the remaining bonds would be used to provide an exempt facility.

*3.5.2 If no Proceeds of the Issue have been spent to provide an exempt facility.* If no proceeds have been spent to provide an exempt facility, all of the outstanding Bonds of the Issue are nonqualified bonds.

3.6 Allocation of Nonqualified Bonds. Allocations of nonqualified bonds to the Issue must be made on a pro rata basis, except that the Issuer may treat any Bonds of the issue as the nonqualified bonds so long as the following condition is satisfied. The remaining weighted average maturity of the Issue, determined as of the date on which the nonqualified bonds are redeemed or defeased (“Determination Date”), and excluding from the determination the nonqualified bonds redeemed or defeased by the Issuer to meet the requirements of the remedial action described in II(D)(1), above, must not be greater than the remaining weighted average maturity of the Issue, determined as of the Determination Date, but without regard to the redemption or defeasance of any bonds (including the nonqualified bonds) occurring on the Determination Date. In other words, the nonqualified bonds cannot be allocated to the Bonds in a manner that extends the remaining weighted average maturity of the Issue.

(End of Attachment C-3)

## 501(c)(3)s

### EXHIBIT A to Tax Certificate and Agreement

#### DEFINITIONS

The following terms, as used in this Exhibit A, the Tax Agreement to which it is attached and in the other Exhibits to the Tax Agreement, have the following meanings unless therein otherwise defined or unless a different meaning is indicated by the context in which the term is used. Capitalized terms used within these definitions that are not defined in this Exhibit A have the meanings ascribed to them in the Tax Agreement to which this Exhibit A is attached. The word “issue,” in lower case, refers either to the Issue or to another issue of obligations or portion thereof treated as a separate issue for the applicable purposes of Section 148, as the context requires. The word “obligation” or “obligations,” in lower case, includes any obligation, whether in the form of bonds, notes, certificates, or any other obligation that is a “bond” within the meaning of Section 150(a)(1). All terms used in this Exhibit A, the Tax Agreement to which it is attached and the other Exhibits to the Tax Agreement, including terms specifically defined, shall be interpreted in a manner consistent with Sections 103 and 141 to 150 and the applicable Regulations thereunder except as otherwise specified. All terms relating to a particular issue, such as Sale Proceeds and Refunding Portion, relate to that issue, unless indicated otherwise. All references to a Section, unless otherwise noted, refer to the Code. All capitalized terms used in this Exhibit A, the Tax Agreement to which it is attached and the other Exhibits to the Tax Agreement include either the singular or the plural.

**“Advance Refunding Issue”** means any Refunding Issue that is not a Current Refunding Issue.

**“Advance Refunding Portion”** means that portion of a Multipurpose Issue that constitutes a separate governmental purpose and that would be treated as an Advance Refunding Issue if it had been issued as a separate issue.

**“Available Construction Proceeds”** means an amount equal to (a) the sum of (i) the Issue Price of an issue, (ii) Investment Proceeds on that Issue Price, (iii) earnings on any reasonably required reserve or replacement fund allocable to the issue not funded from the Issue Price, and (iv) Investment Proceeds and earnings on (ii) and (iii), (b) reduced by the portions, if any, of the Issue Price of the issue (i) attributable to Pre-Issuance Accrued Interest and earnings thereon, (ii) allocable to the underwriter’s discount, (iii) used to pay other Issuance Costs of the issue, and (iv) deposited in a reasonably required reserve or replacement fund allocable to the issue. “Available Construction Proceeds” does not include Investment Proceeds or earnings on a reasonably required reserve or replacement fund allocable to the issue for any period after the earlier of (a) the close of the 2-year period that begins on the Issuance Date or (b) the date the construction of the project financed by the issue is substantially completed, provided, however, that such Investment Proceeds or earnings shall be excluded from “Available Construction Proceeds” if the Issuer has timely elected such exclusion. If an issue is a Multipurpose Issue that includes a New Money Portion that is a Construction Issue, this definition shall be applied by substituting “New Money Portion” for “issue” each place the latter term appears. If an issue or the New Money Portion of a Multipurpose Issue, as applicable, is not a Construction Issue, and the Issuer makes the bifurcation election under Regulations §1.148-7(j)(1) and Section 148(f)(4)(C)(v) to treat the issue or the New Money Portion as two separate issues consisting of the Construction Portion and the Nonconstruction Portion, this definition shall be applied by substituting “Construction Portion” for “issue” each place the latter term appears.



**“Available Project Proceeds”** means “available project proceeds” as defined in Section 54A(e)(4), being the sum of (A) the excess of (i) Sale Proceeds over (ii) Issuance Costs paid with Sale Proceeds (to the extent that such Issuance Costs do not exceed 2% of Sale Proceeds) plus (B) Proceeds actually or constructively received from any investment of such excess.

**“Bifurcated Issue”** means a New Money Issue or the New Money Portion of a Multipurpose Issue that the Issuer, pursuant to Section 148(f)(4)(C)(v) and Regulations §1.148-7(j), has elected in its Tax Agreement to bifurcate into a Construction Portion, which finances 100% of the Construction Expenditures, and a Nonconstruction Portion.

**“Bona Fide Debt Service Fund”** means a fund, including a portion of or an account in that fund (or in the case of a fund established for two or more issues, the portion of that fund properly allocable to an issue), or a combination of such funds, accounts or portions that is used primarily to achieve a proper matching of revenues with Debt Service on an issue within each Bond Year and that is depleted at least once each year except for a reasonable carryover amount not to exceed the greater of the earnings thereon for the immediately preceding Bond Year or one-twelfth of the annual Debt Service on the issue for the immediately preceding Bond Year.

**“Bond Counsel’s Opinion”** or **“Opinion of Bond Counsel”** means an opinion or opinions of a nationally recognized bond counsel firm whose opinion is given with respect to the Issue when issued, or its successors or other nationally recognized bond counsel appointed by the Issuer.

**“Bond Year”** means the annual period relevant to the application of Section 148(f) to an issue, except that the first and last Bond Years may be less than 12 months long. The last day of a Bond Year shall be the close of business on the day preceding the anniversary of the Issuance Date of an issue unless the Issuer selects another date on which to end a Bond Year in the manner permitted by the Code.

**“Capital Expenditures”** means costs of a type that are properly chargeable to a capital account (or would be so chargeable with a proper election) under general federal income tax principles, including capitalized interest computed taking into account the Placed in Service date.

**“Code”** means the Internal Revenue Code of 1986, the Regulations (whether temporary or final) under that Code or the statutory predecessor of that Code, and any amendments of, or successor provisions to, the foregoing and any official rulings, announcements, notices, procedures and judicial determinations regarding any of the foregoing, all as and to the extent applicable. Unless otherwise indicated, reference to a Section includes any applicable successor section or provision and such applicable Regulations, rulings, announcements, notices, procedures and determinations pertinent to that Section.

**“Commingled Fund”** means any fund or account of the Issuer that contains both Gross Proceeds of an issue and amounts in excess of \$25,000 that are not Gross Proceeds of the issue if the amounts in the fund or account are invested and accounted for collectively, without regard to the source of funds deposited in the fund or account.

**“Commingled Investment Proceeds”** means Investment Proceeds of an issue (other than Investment Proceeds held in a Refunding Escrow) that are deposited in a Commingled Fund with substantial tax or other revenues from governmental operations of the Issuer and that are reasonably expected to be spent for governmental purposes within six months from the date of deposit in the Commingled Fund, using any reasonable accounting assumptions.

**“Computation Date”** means each date on which the Rebate Amount for an issue is required to be computed under Regulations §1.148-3(e). In the case of a Fixed Yield Issue, the first Computation Date shall not be later than five years after the Issuance Date of the issue. Subsequent Computation Dates shall be not later than five years after the immediately preceding Computation Date for which an installment payment of the Rebate Amount was paid. In the case of a Variable Yield Issue, the first Computation Date shall be the last day of any Bond Year irrevocably selected by the Issuer ending on or before the fifth anniversary of the Issuance Date of such issue and subsequent Computation Dates shall be the last day of each Bond Year thereafter or each fifth Bond Year thereafter, whichever is irrevocably selected by the Issuer after the first date on which any portion of the Rebate Amount is required to be paid to the United States. The final Computation Date is the date an issue is retired.

**“Computational Base”** means the amount of Gross Proceeds the Issuer or Conduit Borrower reasonably expects, as of the date a Guaranteed Investment Contract is required, to be deposited in that Guaranteed Investment Contract over its term.

**“Conduit Borrower”** means the obligor on a purpose investment.

**“Conduit Financing Issue”** means an issue the Proceeds of which are reasonably expected to be used to finance one or more Conduit Loans.

**“Conduit Loan”** means a purpose investment acquired by the Issuer with Proceeds of a Conduit Financing Issue, thereby effecting a loan to the Conduit Borrower.

**“Construction Expenditures”** means Capital Expenditures allocable to the cost of real property (including the construction or making of improvements to real property, but excluding acquisitions of interests in land or other existing real property) or constructed personal property within the meaning of Regulations §1.148-7(g).

**“Construction Issue”** means an issue at least 75% of the Available Construction Proceeds of which are to be used for Construction Expenditures with respect to property that is, or upon completion will be, owned by a Governmental Unit or a 501(c)(3) Organization. If an issue is a Multipurpose Issue that includes a New Money Portion, this definition shall be applied by substituting “New Money Portion” for “Construction Issue” each place the latter term appears. If an election under Section 148(f)(4)(C)(v) and Regulations §1.148-7(j) is made to bifurcate an issue or the New Money Portion of a Multipurpose Issue, this definition shall be applied by substituting “Construction Portion” for “Construction Issue” each place the latter term appears.

**“Construction Portion”** means that portion of an issue or the New Money Portion of a Multipurpose Issue at least 75% of the Available Construction Proceeds of which are to be used for Construction Expenditures with respect to property that is, or upon completion will be, owned by a Governmental Unit or a 501(c)(3) Organization and that finances 100% of the Construction Expenditures.

**“Controlled Group”** means a group of entities controlled directly or indirectly by the same entity or group of entities within the meaning of Regulations §1.150-1(e).

**“Current Refunding Issue”** means a Refunding Issue that is issued not more than 90 days before the last expenditure of any Proceeds of the Refunding Issue for the payment of Debt Service on the Refunded Bonds.

**“Current Refunding Portion”** means that portion of a Multipurpose Issue that constitutes a separate governmental purpose and that would be treated as a Current Refunding Issue if it had been issued as a separate issue.

**“Debt Service”** means principal of and interest and any redemption premium on an issue.

**“Excess Gross Proceeds”** means all Gross Proceeds of an Advance Refunding Issue that exceed an amount equal to 1% of the Sale Proceeds of such Advance Refunding Issue, other than Gross Proceeds allocable to: (a) payment of Debt Service on the Refunded Bonds; (b) payment of Pre-Issuance Accrued Interest on the Advance Refunding Issue and interest on the Advance Refunding Issue that accrues for a period up to the completion date of any capital project financed by the Prior Issue, plus one year; (c) a reasonably required reserve or replacement fund for the Advance Refunding Issue or Investment Proceeds of such fund; (d) payment of Issuance Costs of the Advance Refunding Issue; (e) payment of administrative costs allocable to repaying the Refunded Bonds, carrying and repaying the Advance Refunding Issue, or investments of the Advance Refunding Issue; (f) Transferred Proceeds allocable to expenditures for the governmental purpose of the Prior Issue (treating for this purpose all unspent Proceeds of the Prior Issue properly allocable to the Refunded Bonds as of the Issuance Date of the Advance Refunding Issue as Transferred Proceeds); (g) interest on purpose investments; (h) Replacement Proceeds in a sinking fund for the Advance Refunding Issue; and (i) fees for a Qualified Guarantee for the Advance Refunding Issue or the Prior Issue. If an Issue is a Multipurpose Issue that includes an Advance Refunding Portion, this definition shall be applied by substituting “Advance Refunding Portion” for “Advance Refunding Issue” each place the latter term appears.

**“Federally Guaranteed”** means that (a) the payment of Debt Service on an issue, or the payment of principal or interest with respect to any loans made from the Proceeds of the issue, is directly or indirectly guaranteed in whole or in part by the United States or by an agency or instrumentality of the United States, within the meaning of Section 149(b), or (b) more than 5% of the Proceeds of an issue will be invested directly or indirectly in federally insured deposits or accounts. The preceding sentence does not apply to (a) Proceeds invested during an initial Temporary Period until such Proceeds are needed to pay costs of the project, (b) investments of a Bona Fide Debt Service Fund, (c) direct purchases from the United States of obligations issued by the United States Treasury, or (d) other investments permitted by Section 149(b) or Regulations §1.149(b)-1(b).

**“501(c)(3) Organization”** means an organization described in Section 501(c)(3) and exempt from tax under Section 501(a).

**“Fixed Yield Issue”** means an issue of obligations the Yield on which is fixed and determinable on the Issuance Date.

**“Future Value”** means the value of a Payment or Receipt at the end of a period determined using the economic accrual method as the value of that Payment or Receipt when it is paid or received (or treated as paid or received), plus interest assumed to be earned and compounded over the period at a rate equal to the Yield on the applicable issue, using the same compounding interval and financial conventions that were used to compute that Yield.

**“Governmental Unit”** means a state, territory or possession of the United States, the District of Columbia, or any political subdivision thereof referred to as a “State or local governmental unit” in Regulations §1.103-1(a). “Governmental Unit” does not include the United States or any agency or instrumentality of the United States.

**“Gross Proceeds”** means Proceeds and Replacement Proceeds of an issue.

**“Guaranteed Investment Contract”** means any Nonpurpose Investment that has specifically negotiated withdrawal or retirement provisions and a specifically negotiated interest rate and any agreement to supply investments on two or more future dates (*e.g.*, a forward supply contract).

**“Hedge”** means a contract entered into by the Issuer or the Conduit Borrower primarily to modify the Issuer’s or the Conduit Borrower’s risk of interest rate changes with respect to an obligation (*e.g.*, an interest rate swap, an interest rate cap, a futures contract, a forward contract or an option).

**“Higher Yielding Investments”** means any Investment Property that produces a Yield that (a) in the case of Investment Property allocable to Replacement Proceeds of an issue and Investment Property in a Refunding Escrow, is more than one thousandth of one percentage point (.00001) higher than the Yield on the applicable issue, and (b) for all other purposes is more than one eighth of one percentage point (.00125) higher than the Yield on the issue.

**“Investment Proceeds”** means any amounts actually or constructively received from investing Proceeds of an issue in Investment Property.

**“Investment Property”** means investment property within the meaning of Sections 148(b)(2) and 148(b)(3), including any security (within the meaning of Section 165(g)(2)(A) or (B)), any obligation, any annuity contract and any other investment-type property (including certain residential rental property for family units as described in Section 148(b)(2)(E) in the case of any bond other than a Private Activity Bond). Investment Property includes a Tax-Exempt Obligation that is a “specified private activity bond” as defined in Section 57(a)(5)(C), but does not include other Tax-Exempt Obligations.

**“Issuance Costs”** means costs to the extent incurred in connection with, and allocable to, the issuance of an issue, and includes underwriter’s compensation withheld from the Issue Price, counsel fees, financial advisory fees, rating agency fees, trustee fees, paying agent fees, bond registrar, certification and authentication fees, accounting fees, printing costs for bonds and offering documents, public approval process costs, engineering and feasibility study costs, guarantee fees other than for a Qualified Guarantee and similar costs, but does not include fees charged by the Issuer.

**“Issuance Date”** means the date of physical delivery of an issue by the Issuer in exchange for the purchase price of the issue.

**“Issue Price”** means in the circumstances applicable to an issue:

(1) Public Offering. In the case of obligations actually offered to the general public in a bona fide public offering at the initial offering price for each maturity set forth in the certificate of the underwriter or placement agent attached to the Tax Agreement, the aggregate of the initial offering price for each maturity (including any Pre-Issuance Accrued Interest and taking into account any original issue premium and original issue discount), which price is not more than the fair market value thereof as of the Sale Date, and at which initial offering price not less than 10% of the principal amount of each maturity, as of the Sale Date, was sold or reasonably expected to be sold (other than to bond houses, brokers or other intermediaries). In the case of publicly offered obligations that are not described in the preceding sentence, Issue Price means the aggregate of the initial offering price to the public of each maturity set forth in the certificate of the underwriter or placement agent attached to the Tax Agreement, at which initial offering price not less than 10% of the principal amount of each maturity was sold to the

public. Notwithstanding the foregoing, in no event shall the Issue Price of an issue exceed the fair market value of the issue as of the Sale Date thereof.

(2) **Private Placement.** In the case of obligations sold by private placement, the aggregate of the prices (including any Pre-Issuance Accrued Interest and original issue premium, but excluding any original issue discount) paid to the Issuer by the first purchaser(s) (other than bond houses, brokers or other intermediaries). Notwithstanding the foregoing, in no event shall the Issue Price of an issue exceed the fair market value of the issue as of the Sale Date thereof.

**“Minor Portion”** means an amount equal to the lesser of \$100,000 or 5% of the Sale Proceeds of an issue.

**“Multipurpose Issue”** means an issue the bonds of which are allocable to two or more separate governmental purposes within the meaning of Regulations §1.148-9(h).

**“Net Proceeds”** means the Sale Proceeds of an issue less the portion thereof, if any, deposited in a reasonably required reserve or replacement fund for the issue.

**“Net Sale Proceeds”** means the Sale Proceeds of an issue less (a) the portion thereof, if any, deposited in a reasonably required reserve or replacement fund for the issue and (b) the portion invested as a part of a Minor Portion for the issue.

**“New Money Issue”** means an issue that is not a Refunding Issue.

**“New Money Portion”** means that portion of a Multipurpose Issue other than the Refunding Portion.

**“Nonconstruction Portion”** means that portion of a New Money Issue or of the New Money Portion other than the Construction Portion.

**“Nonpurpose Investments”** means any Investment Property that is acquired with Gross Proceeds as an investment and not in carrying out any governmental purpose of an issue. “Nonpurpose Investments” does not include any investment that is not regarded as “investment property” or a “nonpurpose investment” for the particular purposes of Section 148 (such as certain investments in U.S. Treasury obligations in the State and Local Government Series and certain temporary investments), but does include any other investment that is a “nonpurpose investment” within the applicable meaning of Section 148.

**“Payment”** means payments actually or constructively made to acquire Nonpurpose Investments, as specified in Regulations §1.148-3(d)(1)(i) through (v).

**“Placed in Service”** means the date on which, based on all the facts and circumstances, a facility has reached a degree of completion that would permit its operation at substantially its design level and the facility is, in fact, in operation at such level.

**“Pre-Issuance Accrued Interest”** means interest on an obligation that accrued for a period not greater than one year before its Issuance Date and that will be paid within one year after such Issuance Date.

**“Preliminary Expenditures”** means any Capital Expenditures that are “preliminary expenditures” within the meaning of Regulations §1.150-2(f)(2), *i.e.*, architectural, engineering, surveying, soil testing, reimbursement bond issuance, and similar costs that are incurred prior to commencement of acquisition, construction, or rehabilitation of a project other

than land acquisition, site preparation, and similar costs incident to commencement of construction. The aggregate amount of Preliminary Expenditures may not exceed 20% of the aggregate Issue Price of the issue or issues that financed or are reasonably expected to finance the project for which such Preliminary Expenditures are or were incurred.

**“Prior Issue”** means an issue of obligations all or a portion of the Debt Service on which is paid or provided for with Proceeds of a Refunding Issue. The Prior Issue may be a Refunding Issue.

**“Private Activity Bond”** means (a) obligations of an issue more than 10% of the Proceeds of which, directly or indirectly, are or are to be used for a Private Business Use and more than 10% of the Debt Service on which, directly or indirectly, is or is to be paid from or secured by payments with respect to property, or secured by property, used for a Private Business Use, or (b) obligations of an issue, the Proceeds of which are or are to be used to make or finance loans to any Private Person that, in the aggregate, exceed the lesser of 5% of such Proceeds or \$5,000,000. In the event of Unrelated or Disproportionate Use, the tests in (a) shall be applied by substituting 5% for 10% each place the latter term is used.

**“Private Business Use”** means use (directly or indirectly) in a trade or business carried on by any Private Person other than use as a member of, and on the same basis as, the general public. Any activity carried on by a Private Person (other than a natural person) shall be treated as a trade or business. In the case of a Qualified 501(c)(3) Bond, Private Business Use excludes use by a 501(c)(3) Organization that is not an unrelated trade or business activity by such 501(c)(3) Organization within the meaning of Section 513(a).

**“Private Person”** means any natural person or any artificial person, including a corporation, partnership, trust or other entity, other than a Governmental Unit. “Private Person” includes the United States and any agency or instrumentality of the United States.

**“Private Security or Payments”** means (i) any interest in property used or to be used for a Private Business Use, or in payments in respect of such property, that directly or indirectly secures any payment of principal of, or interest on, an issue, or (ii) payments (whether or not to the Issuer or the Borrower) in respect of property, or borrowed money, used or to be used for a Private Business Use from which payments of principal of, or interest on, an issue are directly or indirectly derived, all as determined and measured in accordance with Regulations §1.141-4.

**“Proceeds”** means any Sale Proceeds, Investment Proceeds and Transferred Proceeds of an issue. “Proceeds” does not include Replacement Proceeds.

**“Qualified Administrative Costs”** means the reasonable, direct administrative costs, other than carrying costs, of purchasing or selling Nonpurpose Investments such as separately stated brokerage or selling commissions. Qualified Administrative Costs do not include legal and accounting fees, recordkeeping, custody and similar costs, general overhead costs and similar indirect costs of the Issuer such as employee salaries and office expenses and costs associated with computing the Rebate Amount. In general, Qualified Administrative Costs are not reasonable unless they are comparable to administrative costs that would be charged for the same investment or a reasonably comparable investment if acquired with a source of funds other than Gross Proceeds of Tax-Exempt Obligations.

**“Qualified 501(c)(3) Bonds”** means an issue of obligations that satisfies the requirements of Section 145(a).

**“Qualified Guarantee”** means any guarantee of an obligation that constitutes a “qualified guarantee” within the meaning of Regulations §1.148-4(f).

**“Qualified Hedge”** means a Hedge that is a “qualified hedge” within the meaning of Regulations §1.148-4(h)(2).

**“Reasonable Retainage”** means an amount, with respect to an issue, not to exceed 5% of the Net Sale Proceeds of the issue, that is retained for reasonable business purposes relating to the property financed with Proceeds of the issue. For example, Reasonable Retainage may include a retention to ensure or promote compliance with a construction contract in circumstances in which the retained amount is not yet payable, or in which the Issuer reasonably determines that a dispute exists regarding completion or payment.

**“Rebate Amount”** means the excess of the future value, as of any date, of all receipts on Nonpurpose Investments acquired with Gross Proceeds of an issue over the future value, as of that date, of all payments on those Nonpurpose Investments, computed in accordance with Section 148(f) and Regulations §1.148-3.

**“Rebate Analyst”** means an independent individual, firm or entity experienced in the computation of the Rebate Amount pursuant to Section 148(f).

**“Receipt”** means amounts actually or constructively received from Nonpurpose Investments as specified in Regulations §1.148-3(d)(2)(i) through (iii).

**“Refunded Bonds”** means obligations of a Prior Issue the Debt Service on which is or is to be paid from Proceeds of a Refunding Issue.

**“Refunding Bonds”** means obligations of a Refunding Issue.

**“Refunding Escrow”** means one or more funds established as part of a single transaction, or a series of related transactions, containing Proceeds of a Refunding Issue and any other amounts to be used to pay Debt Service on Refunded Bonds of one or more issues.

**“Refunding Issue”** means an issue the Proceeds of which are or are to be used to pay Debt Service on Refunded Bonds and includes Issuance Costs, Pre-Issuance Accrued Interest or permitted capitalized interest, a reasonably required reserve or replacement fund and similar costs of the Refunding Issue.

**“Refunding Portion”** means that portion of a Multipurpose Issue the Proceeds of which are, or are to be, used to pay Debt Service on Refunded Bonds and includes Issuance Costs, Pre-Issuance Accrued Interest or permitted capitalized interest, a reasonably required reserve or replacement fund and similar costs properly allocable to the Refunding Portion.

**“Regulations”** or **“Reg.”** means Treasury Regulations.

**“Reimbursement Allocation”** means an allocation of the Proceeds of an issue for the reimbursement of Capital Expenditures paid prior to the Issuance Date of such issue that: (a) is evidenced on the books or records of the Issuer maintained with respect to the issue, (b) identifies either actual prior Capital Expenditures or the fund or account from which the prior Capital Expenditures were paid, (c) evidences the Issuer’s use of Proceeds of the issue to reimburse a Capital Expenditure for a governmental purpose that was originally paid from a source other than the Proceeds of the issue, and (d) satisfies the following requirements: except for Preliminary Expenditures, (i) the Issuer or, in the case of Qualified 501(c)(3) Bonds, the Conduit Borrower adopted an official intent for the Capital Expenditure that satisfies Regulations

§1.150-2(e) prior to, or within 60 days after, payment of the Capital Expenditure, and (ii) the reimbursement allocation of that Capital Expenditure occurs or will occur within 18 months after the later of the date the Capital Expenditure was paid or the date the project resulting from such Capital Expenditure was Placed in Service or abandoned, but in no event more than three years after the Capital Expenditure was paid.

**“Related Party”** means, in reference to a Governmental Unit or 501(c)(3) Organization, any member of the same Controlled Group and, in reference to any person that is not a Governmental Unit or 501(c)(3) Organization, a “related person” as defined in Section 144(a)(3).

**“Replacement Proceeds”** means, with respect to an issue, amounts (including any investment income, but excluding any Proceeds of any issue) replaced by Proceeds of that issue within the meaning of Section 148(a)(2). “Replacement Proceeds” includes amounts, other than Proceeds, held in a sinking fund, pledged fund or reserve or replacement fund for an issue.

**“Sale Date”** means, with respect to an issue, the first date on which there is a binding contract in writing with the Issuer for the sale and purchase of an issue (or of respective obligations of the issue if sold by the Issuer on different dates) on specific terms that are not later modified or adjusted in any material respect.

**“Sale Proceeds”** means that portion of the Issue Price actually or constructively received by the Issuer upon the sale or other disposition of an issue, including any underwriter’s compensation withheld from the Issue Price, but excluding Pre-Issuance Accrued Interest.

**“Spensible Proceeds”** means the Net Sale Proceeds of an issue.

**“Tax-Exempt Obligation”** means any obligation or issue of obligations (including bonds, notes and lease obligations treated for federal income tax purposes as evidence of indebtedness) the interest on which is excluded from gross income for federal income tax purposes within the meaning of Section 150, and includes any obligation or any investment treated as a “tax-exempt bond” for the applicable purpose of Section 148.

**“Tax-Exempt Organization”** means a Governmental Unit or a 501(c)(3) Organization.

**“Temporary Period”** means the period of time, as set forth in the Tax Compliance Certificate, applicable to particular categories of Proceeds of an issue during which such category of Proceeds may be invested in Higher Yielding Investments without the issue being treated as arbitrage bonds under Section 148.

**“Transferred Proceeds”** means that portion of the Proceeds of an issue (including any Transferred Proceeds of that issue) that remains unexpended at the time that any portion of the principal of the Refunded Bonds of that issue is discharged with the Proceeds of a Refunding Issue and that thereupon becomes Proceeds of the Refunding Issue as provided in Regulations §1.148-9(b). “Transferred Proceeds” does not include any Replacement Proceeds.

**“Unrelated or Disproportionate Use”** means Private Business Use that is not related to or is disproportionate to use by a Governmental Unit within the meaning of Section 141(b)(3) and Regulations §1.141-9.

**“Variable Yield Issue”** means any Issue that is not a Fixed Yield Issue.



**“Working Capital Expenditures”** means any costs of a type that do not constitute Capital Expenditures, including current operating expenses.

**“Yield”** has the meaning assigned to it for purposes of Section 148, and means that discount rate (stated as an annual percentage) that, when used in computing the present worth of all applicable unconditionally payable payments of Debt Service, all payments for a Qualified Guarantee, if any, and payments and receipts with respect to a Qualified Hedge, if any, as required by the Regulations, paid and to be paid with respect to an obligation (paid and to be paid during and attributable to the Yield Period in the case of a Variable Yield Issue), reduced by the credit, if any, allowed by Section 6431, produces an amount equal to (a) the Issue Price in the case of a Fixed Yield Issue or the present value of the Issue Price at the commencement of the applicable Yield Period in the case of a Variable Yield Issue, or (b) the purchase price for yield purposes in the case of Investment Property, all subject to the applicable methods of computation provided for under Section 148, including variations from the foregoing. The Yield on Investment Property in which Proceeds or Replacement Proceeds of an issue are invested is computed on a basis consistent with the computation of Yield on that issue, including the same compounding interval of not more than one year selected by the Issuer.

**“Yield Period”** means, in the case of the first Yield Period, the period that commences on the Issuance Date and ends at the close of business on the first Computation Date and, in the case of each succeeding Yield Period, the period that begins immediately after the end of the immediately preceding Yield Period and ends at the close of business on the next succeeding Computation Date.

The terms “bond,” “obligation,” “reasonably required reserve or replacement fund,” “reserve or replacement fund,” “loan,” “sinking fund,” “purpose investment,” “same plan of financing,” “other replacement proceeds” and other terms relating to Code provisions used but not defined in this Certificate shall have the meanings given to them for purposes of Sections 103 and 141 to 150 unless the context indicates another meaning.

(End of Exhibit A)

**NOTE: 3.1 REQUIRES IDENTIFICATION OF RESPONSIBLE PERSON.**

**EXHIBIT B  
to Tax Certificate and Agreement**

**USE OF PROCEEDS CHECKLIST AND REMEDIAL ACTION INSTRUCTIONS FOR  
NONQUALIFIED BONDS**

The Issuer and Borrower covenanted in the Tax Agreement to monitor the expenditure of Gross Proceeds and use of Bond-Financed Facilities in order to comply with various restrictions and requirements imposed by the Code and Regulations on Qualified 501(c)(3) Bonds. The Issuer and Borrower further covenanted in the Tax Agreement to comply, if necessary, with the remedial action requirements set forth in Regulations §1.141-12 for non-qualified bonds of the Issue. The following Checklist and Instructions provide guidance for such compliance, and the Checklist and Instructions are intended to satisfy Section 7.2.3.4.4 of the Internal Revenue Manual. Capitalized terms not defined in the Checklist and Instructions have the meanings given in the Tax Agreement or in Exhibit A to that Agreement.

**PART 1 - USE OF PROCEEDS CHECKLIST**

**1. Use of Proceeds**

- 1.1. Ensure there exists a clearly established accounting procedure for tracking investment and expenditures of Bond Proceeds, including Investment Proceeds.
- 1.2. At or shortly after issuance of a Bond issue, allocate Proceeds of the Bond issue to reimbursement of prior expenditures, as appropriate.
- 1.3. Ensure that a final allocation of Bond Proceeds (including Investment Proceeds) to qualifying expenditures is made if Bond Proceeds are to be allocated to project expenditures on a basis other than “direct tracing” (direct tracing means treating the Bond Proceeds as spent as shown in the accounting records for bond draws and project expenditures). *An allocation other than on the basis of “direct tracing” is often made to reduce the Private Business Use (see Section 2, below) of Bond Proceeds that would otherwise result from “direct tracing” of Bond Proceeds to project expenditures. This allocation must be made within 18 months after the later of the date the expenditure was made or the date the project was placed in service, but not later than five years and 60 days after the Issuance Date of the Bonds or 60 days after the Bond issue is retired. Bond counsel can assist with the final allocation of Bond Proceeds to project costs.*
- 1.4. Maintain careful records of all facilities and other costs (e.g., Issuance Costs, credit enhancement and capitalized interest) and uses (e.g., deposit to reserve fund) for which Bond Proceeds were spent or used. These records should be maintained separately for each issue of Bonds.
- 1.5. Ensure that no more than 2% of the Sale Proceeds of a Bond issue are used to pay Issuance Costs.
- 1.6. Ensure that all Proceeds are spent in accordance with the published notice of public hearing for the Issue and Exhibit E (useful life calculation) to the Tax Agreement.
- 1.7. Ensure that all Bond-Financed Facilities are owned by a 501(c)(3) Organization or a Governmental Unit.
- 1.8. On at least an annual basis, identify all current and contemplated uses of Bond-Financed Facilities and confer as necessary with Bond Counsel to ensure that the use of the Bond-Financed Facilities complies with the covenants and restrictions set forth in the Tax Agreement.

## **2. Monitoring Private Business Use**

- 2.1. Before entering into any new management, service, or research agreements described in 2.3.3 and 2.3.4, below, engage Bond Counsel to review such agreements to determine whether they result in Private Business Use.
- 2.2. Analyze at least annually any Private Business Use of Bond-Financed Facilities to determine whether the 5% limitation on Private Business Use of Proceeds of the Issue is exceeded. Contact Bond Counsel if this limit is exceeded.
- 2.3. Maintain copies of all of the following contracts or arrangements (or, if no written contract exists, maintain detailed records of the following contracts or arrangements) with a Private Person:
  - 2.3.1. Sales of Bond-Financed Facilities.
  - 2.3.2. Leases of Bond-Financed Facilities.
  - 2.3.3. Management or service contracts relating to Bond-Financed Facilities.
  - 2.3.4. Research contracts under which a Private Person sponsors research in Bond-Financed Facilities.
  - 2.3.5. Any other contracts involving “special legal entitlements” (such as naming rights or exclusive provider arrangements) granted to a Private Person with respect to Bond-Financed Facilities.

Each of the foregoing contracts or arrangements may result in Private Business Use of the Bond-Financed Facilities, and a sale of Bond-Financed Facilities to a Private Person that is not a Tax-Exempt Organization would violate the requirement that a 501(c)(3) Organization or Governmental Unit own all property financed or refinanced by the Issue. Consult with Bond Counsel to undertake any necessary remedial actions, discussed below, in respect of “nonqualified bonds” of the Issue. If a remedial action is not available, consult with Bond Counsel regarding the potential application of the voluntary closing agreement program maintained by the Internal Revenue Service.

## **3. Responsible Person, Training and Record Retention**

- 3.1 The person(s) who hold the following title(s) shall be responsible for monitoring the use of Proceeds and the existence of any Private Business Use of Bond-Financed Facilities, as set forth in this Checklist and Instructions: [TITLE(S) OF PERSON(S) CHARGED WITH THIS RESPONSIBILITY].
- 3.2 The person(s) responsible for monitoring the use of Proceeds and the existence of any Private Business Use of Bond-Financed Facilities shall receive appropriate training regarding the Borrower’s accounting systems (including entries for the expenditure of Proceeds on Bond-Financed Facilities), contract intake system, facilities management and other systems that track the expenditure and use of Proceeds.
  - 3.2.1 This training shall occur when a new individual assumes the responsibilities described in this Checklist and Instructions.
  - 3.2.2 Training shall be available to ensure current knowledge of the Borrower’s existing accounting, contract, facilities management and other systems that involve Qualified 501(c)(3) Bonds and exposure to any pertinent additional systems that are subsequently implemented by the Borrower.
- 3.3 The records required to be kept under this Checklist and Instructions shall be maintained in paper or electronic format until the date three (3) years after the last bond of the applicable issue of Qualified 501(c)(3) Bonds (“Issue”) has been retired; if any portion of such Issue is refunded by a Refunding Issue, such records shall be maintained until the later of the date three (3) years after the last bond of the Issue has been retired or the date three (3) years after the last bond of the Refunding Issue has been retired.

## **PART II – REMEDIAL ACTION INSTRUCTIONS**

**I. Deliberate Action.** A “deliberate action” (“**Deliberate Action**”) is any action taken after the Issuance Date by the Issuer or Borrower that is within the control of the Issuer or Borrower and that causes:

(A) more than 5% of the Net Proceeds of the Issue to be used for a Private Business Use (the “**Private Business Use Limit**”), and more than 5% of either the principal of or interest on the Issue to be secured by or derived from Private Security or Payments (collectively, the “**Private Business Limits**”);

(B) the amount of Proceeds that are to be used to make or finance loans to any Private Person other than a Tax-Exempt Organization with respect to its activities that do not constitute an unrelated trade or business, determined by applying Section 513(a), in the aggregate, exceed the lesser of 5% of such Proceeds or \$5,000,000 (“**Private Loan Limit**” and collectively with the Private Business Limits, “**Limits**”); or

(C) any portion of the Bond-Financed Facilities to be owned by a Private Person other than a Tax-Exempt Organization (“**Ownership Requirement**”).

For this purpose, Proceeds of the Issue used to pay Issuance Costs are treated as used for a Private Business Use.

An action by the Issuer or Borrower is not a Deliberate Action if the action was (i) the result of an involuntary conversion of all or a portion of the Bond-Financed Facilities or (ii) an action that was taken in response to a regulatory directive made by the federal government (see Regulations §1.141-2(d)(3)(ii)).

**II. Timely Reallocation.** If a Deliberate Action occurs, the Issuer or Borrower may reallocate the Proceeds that had been allocated to the Bond-Financed Facilities or portion thereof as to which the Deliberate Action occurred to other permitted uses not later than 18 months after the later of (i) the date of expenditure to which the Proceeds were originally allocated or (ii) the placed in service date of the Bond-Financed Facilities or portion thereof to which such Proceeds were originally allocated, but not later than 60 days after the fifth anniversary of the Issuance Date or the retirement of the Issue, if earlier (see Regulations §§1.141-6(a) and 1.148-6(d)(1)(iii)).

### **III. Remedial Action.**

(A) Effect. A “remedial action” cures the use of Proceeds that caused: (i) the Private Business Use Limit to be exceeded, (ii) the Private Loan Limit to be exceeded, or (iii) the Ownership Requirement to be failed. A remedial action will not impact the amount of Private Security or Payments.

(B) Ability to Use. In order to achieve one or more of the effects set forth in III.(A), five conditions must be satisfied (see III.(C)), and one of three alternative remedial actions must be taken (see III.(D)).

(C) Conditions. An Issuer or Borrower may use a “remedial action” only if the following five conditions are satisfied:

(1) On the Issuance Date, the Issuer and Borrower did not reasonably expect either the Private Business Limits or the Private Loan Limit to be exceeded or the

Ownership Requirement to be failed at any time while any portion of the Issue was outstanding.

(2) On the Issuance Date, the weighted average maturity of the Issue did not exceed 120% of the weighted average of the reasonably expected economic lives of the assets comprising the Bond-Financed Facilities.

(3) Unless the Bond-Financed Facilities are being used for an alternative use (as described in III.D(2) below), the new user of all or any portion of the Bond-Financed Facilities must have paid fair market value therefor.

(4) The Issuer or Borrower must treat any “disposition proceeds”, which are all proceeds received from the sale, transfer or other disposition of all or a portion of the Bond-Financed Facilities, as Gross Proceeds for arbitrage (Section 148) purposes.

(5) Prior to the Deliberate Action, the Proceeds were used for a governmental purpose unless the remedial action to be taken is described in III.(D)(1).

(D) Types of Remedial Action.

(1) *Redemption of Non-Qualified Bonds.* The “non-qualified bonds” are the portion of the Issue allocable to the Deliberate Action that causes the Issue to exceed the Private Business Limits or the Private Loan Limit or causes the Issue to violate the Ownership Requirement. In general, within 90 days after the Deliberate Action, either the non-qualified bonds must be redeemed or an escrow that defeases the non-qualified bonds to their earliest redemption date must be established. A defeasance escrow may not be used, however, if the period between the Issuance Date and the earliest redemption date of the non-qualified bonds is more than 10.5 years; in such case a closing agreement with the Internal Revenue Service (“IRS”) may be necessary. If a defeasance escrow is established, the Issuer must notify the IRS within 90 days of its establishment. Notwithstanding the general requirement stated above that all non-qualified bonds must be redeemed or defeased, if the disposition proceeds consist exclusively of cash, it is sufficient that the disposition proceeds be used to redeem or defease a pro rata portion of the non-qualified bonds.

(2) *Alternative Use of Disposition Proceeds.* An Issuer or Borrower satisfies the requirements of this remedial action if:

(a) all disposition proceeds consist exclusively of cash;

(b) the Issuer or Borrower reasonably expects to spend the disposition proceeds within two years after the date of the Deliberate Action;

(c) the disposition proceeds are treated as Proceeds for purposes of the Limits and the Ownership Requirement, and the use of the disposition proceeds does not cause the Issue to exceed these Limits or fail the Ownership Requirement, and neither the Issuer nor the Borrower takes a subsequent Deliberate Action that causes either of the Limits to be exceeded or the Ownership Requirement to be failed;

(d) any unspent disposition proceeds must be used to redeem all or a portion of the Issue; and

(e) if the disposition proceeds are to be used by a 501(c)(3) Organization, from the date of the Deliberate Action, the non-qualified bonds must constitute Qualified 501(c)(3) Bonds and are treated as reissued for that purpose.

(3) *Alternative Use of Bond-Financed Facilities.* An Issuer or Borrower satisfies the requirements of this remedial action if:

(a) the portion of the Bond-Financed Facilities that is transferred or disposed of could have been financed by another type of tax-exempt bond;

(b) the Deliberate Action taken by the Issuer or Borrower did not involve a purchase financed by another issue of tax-exempt bonds; and

(c) any disposition proceeds resulting from the Deliberate Action (other than those related to the provision of services) are used to pay Debt Service on the Issue on the next available payment date or, within 90 day of receipt, are deposited into a Yield- restricted escrow that will be used to pay Debt Service on the next available payment date.

Under these circumstances, the non-qualified bonds are treated as re-issued as of the date of the Deliberate Action, and must remain qualifying tax-exempt bonds throughout their term.

#### **IV. Selected Examples of Deliberate Action.**

(A) Lease to a Private Person. A Deliberate Action generally occurs if the Borrower (i) leases space within the Bond-Financed Facilities to a Private Person that is not a Tax-Exempt Organization and that use, when added to any other Private Business Use, exceeds 5% of the facilities financed by the Issue so that more than 5% of the Proceeds of the Issue are considered used for a Private Business Use and (ii) receives rent under that lease that, when added to any other Private Security or Payments, exceeds 5% of the Proceeds of the Issue.

(B) Service or Research Contract. A Deliberate Action generally occurs if (i) (1) the Borrower enters into a Service Contract or a Research Contract with a Private Person that is not a Tax-Exempt Organization, (2) that Service Contract or Research Contract will be performed within the Bond-Financed Facilities, (3) that Service Contract or Research Contract is not a Qualified Service Contract or a Qualified Research Contract, respectively, as set forth in 3.2(G) and 3.2(H) of the Tax Agreement, and (4) that use, when added to any other Private Business Use of the Bond-Financed Facilities, exceeds 5% of the Proceeds of the Issue, and (ii) payments received or deemed received under that Service Contract or Research Contract that, when added to any other Private Security or Payments, exceeds 5% of the Proceeds of the Issue.

(C) Sale of Real Estate. A Deliberate Action generally occurs if the Borrower sells all or any portion of the Bond-Financed Facilities to a Private Person that is not a Tax-Exempt Organization.

(D) Loan to a Private Person. A Deliberate Action generally occurs if the Borrower loans more than \$5,000,000 of the Proceeds to a developer to assist the developer in completing a building on a hospital campus of the Borrower to be occupied by physicians with privileges at a Borrower hospital because that loan will constitute a Private Loan.

(End of Exhibit B)

**NOTE: 1.14 REQUIRES IDENTIFICATION OF RESPONSIBLE PERSON.**

**EXHIBIT C  
to Tax Certificate and Agreement**

**ARBITRAGE COMPLIANCE CHECKLIST**

The Issuer and the Borrower covenanted in the Tax Agreement to comply with the arbitrage rebate requirements of Section 148 of the Code. This checklist provides guidance for that compliance, and this checklist is intended to satisfy Section 7.2.3.4.4 of the Internal Revenue Manual. Capitalized terms not defined in this checklist have the meanings given in the Tax Agreement and in Exhibit A to that Agreement.

- 1.01 Note the Yield of the Issue, as shown on the IRS Form 8038.
- 1.02 Review the Tax Agreement to determine the Temporary Periods for the Issue, during which periods various categories of Gross Proceeds may be invested in Higher Yielding Investments.
- 1.03 Do not invest Gross Proceeds in Higher Yielding Investments following the end of the applicable Temporary Period identified in 1.02 unless Yield reduction payments may be made (see Tax Agreement).
- 1.04 Monitor expenditures of Proceeds, including Investment Proceeds, against Issuance Date expectations for satisfaction of three-year or five-year Temporary Period from Yield restriction on investment of Proceeds and to avoid “hedge bond” status.
- 1.05 Ensure that investments acquired with Gross Proceeds satisfy IRS regulatory safe harbors for establishing fair market value (e.g., through the use of bidding procedures), and maintain records to demonstrate satisfaction of such safe harbors.
- 1.06 Consult with bond counsel before engaging in credit enhancement or hedging transactions in respect of the Issue, and before creating separate funds that are reasonably expected to be used to pay Debt Service on the Issue.
- 1.07 Maintain copies of all contracts and certificates relating to credit enhancement and hedging transactions in respect of the Issue.
- 1.08 Before beginning a capital campaign that may result in gifts that are restricted to the Bond-Financed Facilities (or, in the absence of such a campaign, upon the receipt of such restricted gifts), consult bond counsel to determine whether Replacement Proceeds may result.
- 1.09 *Even after all Proceeds of the Issue have been spent, ensure that the Bond Fund meets the requirements of a Bona Fide Debt Service Fund, i.e., one used primarily to achieve a proper matching of revenues with Debt Service that is depleted at least once each Bond Year, except for a reasonable carryover amount not to exceed the greater of (i) the earnings on the fund for the immediately preceding Bond Year; or (ii) one-twelfth of the Debt Service on the Issue for the immediately preceding Bond Year. To the extent that the Bond Fund qualifies as a Bona Fide Debt Service Fund for a given Bond Year, the amounts held in that fund may be invested in Higher Yielding Investments.*

- 1.10 Ensure that amounts invested in any reasonably required debt service reserve fund do not exceed the least of: (i) 10% of the stated principal amount of the Issue (or the Sale Proceeds of the Issue if the Issue has original issue discount or original issue premium that exceeds 2% of the stated principal of the Issue plus, in the case of premium, reasonable underwriter's compensation); (ii) maximum annual Debt Service on the Issue; or (iii) 125% of average annual Debt Service on the Issue.
- 1.11 Satisfaction of rebate requirement -- see Rebate Instructions. Subject to the exceptions described below, investment earnings on Proceeds at a Yield in excess of the Bond Yield (i.e., positive arbitrage) generally must be rebated to the U.S. Treasury, even if a Temporary Period exception from Yield restriction allowed the earning of positive arbitrage.
  - 1.11.1 Ensure that rebate calculations will be timely performed and payment of Rebate Amounts, if any, will be timely made; such payments are generally due 60 days after the fifth anniversary of the Issuance Date, then in succeeding installments every five years; the final rebate payment for the Issue is due 60 days after retirement of the last bond of the Issue. Hire a rebate consultant if necessary.
  - 1.11.2 If the 6-month, 18-month, or 24-month spending exceptions from the rebate requirement (as described in the Rebate Instructions) may apply to the Issue, ensure that the spending of Proceeds is monitored prior to semi-annual spending dates for the applicable exception.
  - 1.11.3 Timely make rebate and Yield reduction payments and file IRS Form 8038-T.
  - 1.11.4 Even after all other Proceeds of the Issue have been spent, ensure compliance with rebate requirements for any debt service reserve fund and any debt service fund that is not exempt from the rebate requirement (see the Rebate Instructions).
- 1.12 The foregoing items in this checklist shall be monitored at least annually as long as there are unspent Gross Proceeds.
- 1.13 Maintain records of investments and expenditures of Proceeds, rebate exception analyses, rebate calculations, Forms 8038-T, and rebate and Yield reduction payments, and any other records relevant to compliance with the arbitrage restrictions.
- 1.14 The person(s) who hold the following title(s) shall be responsible for monitoring compliance with the arbitrage rebate requirements of Section 148 of the Code, as set forth in this checklist: [TITLE(S) OF PERSON(S) CHARGED WITH THIS RESPONSIBILITY].
- 1.15 The person(s) responsible for monitoring compliance with the arbitrage rebate requirements of Section 148 of the Code shall receive appropriate training regarding the Borrower's accounting systems and their application to the investment and expenditure of Gross Proceeds. This training shall occur when a new individual assumes the responsibilities described in this checklist. Training shall also be available to ensure current knowledge of the Borrower's existing accounting systems and exposure to any pertinent modifications that are subsequently implemented by the Borrower.



- 1.16 The records required to be kept under this checklist shall be maintained in paper or electronic format until the date three (3) years after the last bond of the applicable issue of Qualified 501(c)(3) Bonds (“Issue”) has been retired; if any portion of such Issue is refunded by a Refunding Issue, such records shall be maintained until the later of the date three (3) years after the last bond of the Issue has been retired or the date three (3) years after the last bond of the Refunding Issue has been retired.

(End of Exhibit C)

**EXHIBIT D**  
**to Tax Certificate and Agreement**

**INSTRUCTIONS FOR COMPLIANCE WITH REBATE  
REQUIREMENTS OF SECTION 148(f) OF THE CODE**

The Issuer<sup>1</sup> covenanted in the operative documents (*i.e.*, Ordinance/Resolution/Trust Agreement and Tax Agreement) to comply with the arbitrage rebate requirement of Section 148(f) of the Code. These Instructions provide guidance for that compliance, including the spending exceptions that free the Issue from all or part of the rebate requirements.

PART I. GENERAL

SECTION 1.01. REBATE GENERALLY.

The Rebate Amount with respect to the Issue must be paid (rebated) to the United States to prevent the bonds of the Issue from being arbitrage bonds, the interest on which is subject to federal income tax. In general, the Rebate Amount is the amount by which the actual earnings on Nonpurpose Investments purchased (or deemed to have been purchased) with Gross Proceeds of the Issue exceed the amount of earnings that would have been received if those Nonpurpose Investments had a Yield equal to the Yield on the Issue.<sup>2</sup> Stated differently, the Rebate Amount for the Issue as of any date is the excess of the Future Value, as of that date, of all Receipts on Nonpurpose Investments over the Future Value, as of that date, of all Payments on Nonpurpose Investments, computed using the Yield on the Issue as the Future Value rate.<sup>3</sup>

If the Issue is a Fixed Yield Issue, the Yield on the Issue generally is the Yield to maturity, taking into account mandatory redemptions prior to maturity. If the Issue is a Variable Yield Issue, the Yield on the Issue is computed separately for each Yield Period selected by the Issuer.

PART II. EXCEPTIONS TO REBATE

SECTION 2.01. SPENDING EXCEPTIONS.

The rebate requirements with respect to the Issue are deemed to have been satisfied if any one of three spending exceptions (the 6-Month, the 18-Month, or the 2-Year Spending Exception, collectively, the “Spending Exceptions”) is satisfied. The Spending Exceptions are each independent exceptions. The Issue need not meet the requirements of any other exception in order to use any one of the three exceptions. For example, a Construction Issue may qualify for the 6-Month Spending Exception or the 18-Month Spending Exception even though the Issuer makes one or more elections under the 2-Year Exception with respect to the Issue.

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<sup>1</sup> For purposes of these Instructions, the term “Issuer” includes the borrower in a conduit financing issue.

<sup>2</sup> Amounts earned on the Bona Fide Debt Service Fund for the Issue are not taken into account in determining the Rebate Amount: (1) for any Bond Year in which the gross earnings on such Fund for such Year are less than \$100,000; or (2) if the average annual Debt Service on the Issue does not exceed \$2,500,000.

<sup>3</sup> The scope of these Instructions does not permit a detailed description of the computation of the Rebate Amount with respect to the Issue. If you need assistance in computing the Rebate Amount on the Issue or want Squire Sanders (US) LLP to do the computations, please feel free to contact the Squire Sanders (US) LLP attorney with whom you normally consult to discuss engaging the Firm to provide such assistance.

The following rules apply for purposes of all of the Spending Exceptions except as otherwise noted.

Refunding Issues. The only spending exception available for a Refunding Issue<sup>4</sup> is the 6-Month Spending Exception.

Special Transferred Proceeds Rules. In applying the Spending Exceptions to a Refunding Issue, unspent Proceeds of the Prior Issue that become Transferred Proceeds of the Refunding Issue are ignored. If the Prior Issue satisfies one of the rebate Spending Exceptions, the Proceeds of the Prior Issue that are excepted from rebate under that exception are not subject to rebate either as Proceeds of the Prior Issue or as Transferred Proceeds of the Refunding Issue.

However, if the Prior Issue does not satisfy any of the Spending Exceptions and is not otherwise exempt from rebate, the Transferred Proceeds from the Prior Issue will be subject to rebate, even if the Refunding Issue satisfies the 6-Month Spending Exception. The Rebate Amount will be calculated on the Transferred Proceeds on the basis of the Yield of the Prior Issue up to each transfer date and on the basis of the Yield of the Refunding Issue after each transfer date.

Application of Spending Exceptions to a Multipurpose Issue. If the Issue is a Multipurpose Issue, the Refunding Portion and the New Money Portion are treated for purposes of the rebate Spending Exceptions as separate issues. Thus, the Refunding Portion is eligible to use only the 6-Month Spending Exception. The New Money Portion is eligible to use any of the three Spending Exceptions.

Expenditures for Governmental Purposes of the Issue. Each of the spending exceptions requires that expenditures of Gross Proceeds be for the governmental purposes of the Issue. These purposes include payment of interest (but not principal) on the Issue.

#### SECTION 2.02. 6-MONTH SPENDING EXCEPTION.

The Issue will be treated as satisfying the rebate requirements if all of the Gross Proceeds of the Issue are allocated to expenditures for the governmental purposes of the Issue within the 6-month period beginning on the Issuance Date and the Rebate Amount, if any, with respect to earnings on amounts deposited in a reasonably required reserve or replacement fund or a Bona Fide Debt Service Fund if and to the extent that such Fund is subject to rebate (see footnote 3) is timely paid to the United States. If no bond of the Issue is a Private Activity Bond (other than a Qualified 501(c)(3) Bond) or a tax or revenue anticipation bond, the 6-month period is extended for an additional six months if the unexpended Gross Proceeds of the Issue at the end of the 6-month period do not exceed 5% of the Proceeds of the Issue.

For purposes of the 6-Month Spending Exception, Gross Proceeds required to be spent within six months do not include amounts in a reasonably required reserve or replacement fund for the Issue or in a Bona Fide Debt Service Fund for the Issue.

#### SECTION 2.03. 18-MONTH SPENDING EXCEPTION.

The Issue (or the New Money Portion if the Issue is a Multipurpose Issue) is treated as satisfying the rebate requirement if the conditions set forth in (A), (B) and (C) are satisfied.

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<sup>4</sup> For purposes of these Instructions, references to "Refunding Issue" include the Refunding Portion of a Multipurpose Issue.

(A) All of the Gross Proceeds of the Issue (excluding amounts in a reasonably required reserve or replacement fund for the Issue or in a Bona Fide Debt Service Fund for the Issue) are allocated to expenditures for the governmental purposes of the Issue in accordance with the following schedule, measured from the Issuance Date:

- (1) at least 15% within six months;
- (2) at least 60% within 12 months; and
- (3) 100% within 18 months, subject to the Reasonable Retainage exception described below.

(B) The Rebate Amount, if any, with respect to earnings on amounts deposited in a reasonably required reserve or replacement fund or in a Bona Fide Debt Service Fund for the Issue, to the extent such Fund is subject to rebate (see footnote 3), is timely paid to the United States.

(C) The Gross Proceeds of the Issue qualify for the initial 3-year Temporary Period.

If the only unspent Gross Proceeds at the end of the 18th month are Reasonable Retainage, the requirement that 100% of the Gross Proceeds be spent by the end of the 18th month is treated as met if the Reasonable Retainage, and all earnings thereon, are spent for the governmental purposes of the Issue within 30 months of the Issuance Date.

For purposes of determining whether the spend-down requirements have been met as of the end of each of the first two spending periods, the amount of Investment Proceeds that the Issuer reasonably expects as of the Issuance Date to earn on the Sale Proceeds and Investment Proceeds of the Issue during the 18-month period are included in Gross Proceeds of the Issue. The final spend-down requirement includes actual Investment Proceeds for the entire 18 months.

The 18-Month Spending Exception does not apply to the Issue (or the New Money Portion, as applicable) if any portion of the Issue (or New Money Portion) is treated as meeting the rebate requirement under the 2-Year Spending Exception discussed below. This rule prohibits use of the 18-Month Spending Exception for the Nonconstruction Portion of a Bifurcated Issue. The only Spending Exception available for the Nonconstruction Portion of a Bifurcated Issue is the 6-Month Spending Exception.

#### SECTION 2.04. 2-YEAR SPENDING EXCEPTION FOR CERTAIN CONSTRUCTION ISSUES.

(A) In general. A Construction Issue no bond of which is a Private Activity Bond (other than a Qualified 501(c)(3) Bond or a Bond that finances property to be owned by a Governmental Unit or a 501(c)(3) Organization) is treated as satisfying the rebate requirement if the Available Construction Proceeds of the Issue are allocated to expenditures for the governmental purposes of the Issue in accordance with the following schedule, measured from the Issuance Date:

- (1) at least 10% within six months;
- (2) at least 45% within one year;
- (3) at least 75% within 18 months; and

(4) 100% within two years, subject to the Reasonable Retainage exception described below.

Amounts in a Bona Fide Debt Service Fund or a reasonably required reserve or replacement fund for the Issue are not treated as Gross Proceeds for purposes of the expenditure requirements. However, unless the Issuer has elected otherwise in the Tax Agreement, earnings on amounts in a reasonably required reserve or replacement fund for the Issue are treated as Available Construction Funds during the 2-year period and therefore must be allocated to expenditures for the governmental purposes of the Issue.

If the Issuer elected in the Tax Agreement to exclude from Available Construction Proceeds the Investment Proceeds or earnings on a reasonably required reserve or replacement fund for the Issue during the 2-year spend-down period, the Rebate Amount, if any, with respect to such Investment Proceeds or earnings from the Issuance Date must be timely paid to the United States. If the election is not made, the Rebate Amount, if any, with respect to such Investment Proceeds or earnings after the earlier of the date construction is substantially completed or two years after the Issuance Date must be timely paid to the United States. The Rebate Amount, if any, with respect to earnings on amounts in a Bona Fide Debt Service Fund must be timely paid to the extent such Fund is subject to the rebate requirements (see footnote 3).

The Issue does not fail to satisfy the spending requirement for the fourth spend-down period (*i.e.*, 100% within two years of the Issuance Date) if the only unspent Available Construction Proceeds are amounts for Reasonable Retainage if such amounts (together with all earnings on such amounts) are allocated to expenditures within three years of the Issuance Date.

For purposes of determining whether the spend down requirements have been met as of the end of each of the first three spend-down periods, Available Construction Proceeds include the amount of Investment Proceeds or earnings that the Issuer reasonably expected as of the Issuance Date to earn during the 2-year period unless the Issuer elects, on or before the Issuance Date, to apply these spend down requirements on the basis of actual facts rather than reasonable expectations. For purposes of satisfying the final spend-down requirement, Available Construction Proceeds include actual Investment Proceeds or earnings from the Issuance Date through the end of the 2-year period.

Available Construction Proceeds do not include Gross Proceeds used to pay Issuance Costs financed by the Issue, but do include earnings on such Proceeds. Thus, an expenditure of Gross Proceeds to pay Issuance Costs does not count toward meeting the spend-down requirements, but expenditures of earnings on such Gross Proceeds to pay Issuance Costs do count.

(B) 1½% penalty in lieu of rebate for Construction Issues. If the Issuer elected in the Tax Agreement for a Construction Issue, or for the Construction Portion of a Bifurcated Issue, to pay a 1½% penalty in lieu of the Rebate Amount on Available Construction Proceeds in the event that the Construction Issue fails to satisfy any of the spend-down requirements, the 1½% penalty is calculated separately for each spend-down period, including each semiannual period after the end of the fourth spend-down period until all Available Construction Proceeds have been spent. The penalty is equal to 0.015 times the underexpended Proceeds as of the end of the applicable spend-down period. The fact that no arbitrage is in fact earned during such spend-down period is not relevant. The Rebate Amount with respect to Gross Proceeds other than Available Construction Proceeds (*e.g.*, amounts in a reasonably required reserve or replacement fund or in a Bona Fide Debt Service Fund, to the extent subject to rebate (see footnote 3)) must be timely paid.

### PART III. COMPUTATION AND PAYMENT

#### SECTION 3.01. COMPUTATION AND PAYMENT OF REBATE AMOUNT.

If none of the Spending Exceptions described above is satisfied (and if the 1½% penalty election for a Construction Issue or the Construction Portion of a Bifurcated Issue has not been made), then within 30 days after each Computation Date, the Issuer shall compute, or cause to be computed, the Rebate Amount as of such Computation Date. The first Computation Date is a date selected by the Issuer, but shall be not later than five years after the Issuance Date. Each subsequent Computation Date shall end five years after the previous Computation Date except that, in a Variable Yield Issue, the Issuer may select annual Yield Periods. The final Computation Date shall be the date the last obligation of the Issue matures or is finally discharged.

Within 60 days after each Computation Date (except the final Computation Date), the Issuer shall pay to the United States not less than 90% of the Rebate Amount, if any, computed as of such Computation Date. Within 60 days after the final Computation Date, the Issuer shall pay to the United States 100% of the Rebate Amount, if any, computed as of the final Computation Date. In computing the Rebate Amount, a computation credit of \$1,000 may be taken into account on the last day of each Bond Year to the Computation Date during which there are unspent Gross Proceeds that are subject to the rebate requirement, and on the final maturity date.

If the operative documents pertaining to the Issue establish a Rebate Fund and require the computation of the Rebate Amount at the end of each Bond Year, the Issuer shall calculate, or cause to be calculated, within 30 days after the end of each Bond Year the Rebate Amount, taking into account the computation credit for each Bond Year. Within 50 days after the end of each Bond Year, if the Rebate Amount is positive, the Issuer shall deposit in the Rebate Fund such amount as will cause the amount on deposit therein to equal the Rebate Amount, and may withdraw any amount on deposit in the Rebate Fund in excess of the Rebate Amount. Payments of the Rebate Amount to the Internal Revenue Service on a Computation Date shall be made first from amounts on deposit in the Rebate Fund and second from other amounts specified in the operative documents.

Each payment of the Rebate Amount or portion thereof shall be payable to the Internal Revenue Service and shall be made to the Internal Revenue Service Center, Ogden, UT 84201 by certified mail. Each payment shall be accompanied by Internal Revenue Service Form 8038-T and any other form or forms required to be submitted with such remittance.

#### SECTION 3.02. BOOKS AND RECORDS.

(A) The Issuer or Trustee, as applicable, shall keep proper books of record and accounts containing complete and correct entries of all transactions relating to the receipt, investment, disbursement, allocation and application of the Gross Proceeds of the Issue. Such records shall specify the account or fund to which each Nonpurpose Investment (or portion thereof) held by the Issuer or Trustee is to be allocated and shall set forth as to each Nonpurpose Investment (1) its purchase price, (2) identifying information, including par amount, interest rate, and payment dates, (3) the amount received at maturity or its sales price, as the case may be, including accrued interest, (4) the amounts and dates of any payments made with respect thereto, and (5) the dates of acquisition and disposition or maturity.

(B) The Issuer, Trustee, or Rebate Analyst, as applicable, shall retain the records of all calculations and payments of the Rebate Amount until six years after the retirement of the last obligation that is a part of the Issue.

### SECTION 3.03. FAIR MARKET VALUE.

(A) No Nonpurpose Investment shall be acquired for an amount in excess of its fair market value. No Nonpurpose Investment shall be sold or otherwise disposed of for an amount less than its fair market value.

(B) The fair market value of any Nonpurpose Investment shall be the price at which a willing buyer would purchase the Nonpurpose Investment from a willing seller in an arm's-length transaction. Fair market value generally is determined on the date on which a contract to purchase or sell the Nonpurpose Investment becomes binding (*i.e.*, the trade date rather than the settlement date). Except as otherwise provided in this Section, a Nonpurpose Investment that is not of a type traded on an established securities market (within the meaning of Section 1273 of the Code) is rebuttably presumed to be acquired or disposed of for a price that is not equal to its fair market value.

(C) Obligations purchased directly from the Treasury. The fair market value of a United States Treasury obligation that is purchased directly from the United States Treasury is its purchase price.

(D) Safe harbor for Guaranteed Investment Contracts. The purchase price of a Guaranteed Investment Contract shall be treated as its fair market value on the purchase date if all the following conditions are met.

(1) The Issuer or broker makes a bona fide solicitation for a specified Guaranteed Investment Contract and receives at least three bona fide bids from reasonably competitive providers (of Guaranteed Investment Contracts) that have no material financial interest in the Issue.

(2) The Issuer purchases the highest-yielding Guaranteed Investment Contract for which a qualifying bid is made (determined net of broker's fees).

(3) The Yield on the Guaranteed Investment Contract (determined net of broker's fees) is not less than the Yield then available from the provider on reasonably comparable Guaranteed Investment Contracts, if any, offered to other persons from a source of funds other than Gross Proceeds of Tax-Exempt Obligations.

(4) The determination of the terms of the Guaranteed Investment Contract takes into account as a significant factor the Issuer's reasonably expected drawdown schedule for the amounts to be invested, exclusive of amounts deposited in a Bona Fide Debt Service Fund and a reasonably required reserve or replacement fund.

(5) The terms of the Guaranteed Investment Contract, including collateral security requirements, are reasonable.

(6) The obligor on the Guaranteed Investment Contract certifies the administrative costs that it is paying (or expects to pay) to third parties in connection with the Guaranteed Investment Contract.

(E) Safe harbor for certificates of deposit. The purchase price of a certificate of deposit shall be treated as its fair market value on the purchase date if both of the following requirements are met.

(1) The certificate of deposit has a fixed interest rate, a fixed payment schedule, and a substantial penalty for early withdrawal.

(2) The Yield on the certificate of deposit is not less than (a) the Yield on reasonably comparable direct obligations of the United States, or (b) the highest Yield that is published or posted by the provider to be currently available from the provider on reasonably comparable certificates of deposit offered to the public.

Certificates evidencing the foregoing requirements should be obtained before purchasing any Guaranteed Investment Contract or certificate of deposit.

#### SECTION 3.04. CONSTRUCTIVE SALE/PURCHASE.

(A) Nonpurpose Investments that are held by the Issuer or Trustee as of any Computation Date (or Bond Year if the computations are required to be done annually) shall be treated for purposes of computing the Rebate Amount as of such date as having been sold for their fair market value as of such date. Investment Property that becomes allocated to Gross Proceeds of the Issue on a date after such Investment Property has actually been purchased shall be treated for purposes of the rebate requirements as having been purchased by the Issuer on such date of allocation at its fair market value on such date.

(B) For purposes of constructive or deemed sales or purchases of Investment Property (other than Investment Property in the Escrow Fund or that is otherwise not invested for a Temporary Period or is not part of a reasonably required reserve or replacement fund for the Issue) must be valued at its fair market value on the date of constructive or deemed sale or purchase.

(C) Except as set forth in (B), fixed-rate Investment Property that is (1) issued with not more than 2% of original issue discount or original issue premium, (2) issued with original issue premium that is attributable exclusively to reasonable underwriters' compensation or (3) acquired with not more than 2% of market discount or market premium may be treated as having a fair market value equal to its outstanding stated principal amount plus accrued interest. Fixed-rate Investment Property also may be treated as having a fair market value equal to its present value.

#### SECTION 3.05. ADMINISTRATIVE COSTS.

(A) Administrative costs shall not be taken into account in determining the payments for or receipts from a Nonpurpose Investment unless such administrative costs are Qualified Administrative Costs. Thus, administrative costs or expenses paid, directly or indirectly, to purchase, carry, sell, or retire Nonpurpose Investments generally do not increase the Payments for, or reduce the Receipts from, Nonpurpose Investments.

(B) Qualified Administrative Costs are taken into account in determining the Payments and Receipts on Nonpurpose Investments and thus increase the Payments for, or decrease the Receipts from, Nonpurpose Investments. In the case of a Guaranteed Investment Contract, a broker's commission or similar fee paid on behalf of either the Issuer or the provider is a Qualified Administrative Cost to the extent that (1) the amount of the fee treated as a Qualified Administrative Cost does not exceed the lesser of (a) \$37,000, or such higher amount as determined and published by the Internal Revenue Service as the "cost-of-living adjustment" for the calendar year in which the Guaranteed Investment Contract is acquired and (b) 0.2% of the Computational Base or, if more, \$4,000, or such higher amount as determined and published by the Internal Revenue Service as the "cost-of-living adjustment" for the calendar year in which the Guaranteed Investment Contract is acquired and (2) the aggregate amount of broker's



commissions or similar fees with respect to all Guaranteed Investment Contracts and Nonpurpose Investments acquired for a yield-restricted defeasance escrow purchased with Gross Proceeds of the Issue treated as Qualified Administrative Costs does not exceed a cap of \$103,000, or such higher amount as determined and published by the Internal Revenue Service as the “cost-of-living adjustment” for the calendar year in which the Guaranteed Investment Contract is acquired less the portion of such cap, if any, used in prior years with respect to the Issue.

#### PART IV. COMPLIANCE AND AMENDMENT

##### SECTION 4.01. COMPLIANCE.

The Issuer, Trustee or Rebate Analyst, as applicable, shall take all necessary steps to comply with the requirements of these Instructions in order to ensure that interest on the Issue is excluded from gross income for federal income tax purposes under Section 103(a) of the Code. However, compliance shall not be required in the event and to the extent stated therein the Issuer and the Trustee receive a Bond Counsel’s Opinion that either (A) compliance with such requirement is not required to maintain the exclusion from gross income for federal income tax purposes of interest on the Issue, or (B) compliance with some other requirement in lieu of such requirement will comply with Section 148(f) of the Code, in which case compliance with the other requirement specified in the Bond Counsel’s Opinion shall constitute compliance with such requirement.

##### SECTION 4.02. LIABILITY.

If for any reason any requirement of these Instructions is not complied with, the Issuer and the Trustee, if applicable, shall take all necessary and desirable steps to correct such noncompliance within a reasonable period of time after such noncompliance is discovered or should have been discovered with the exercise of reasonable diligence. The Trustee shall have no duty or responsibility to independently verify any of the Issuer’s, or the Rebate Analyst’s, calculations with respect to the payments of the Rebate Amount due and owing to the United States. Under no circumstances whatsoever shall the Trustee be liable to the Issuer, any bondholder or any other person for any inclusion of the interest on the Issue in gross income for federal income tax purposes, or any claims, demands, damages, liabilities, losses, costs or expenses resulting therefrom or in any way connected therewith, so long as the Trustee acts only in accordance with these Instructions and the operative documents pertaining to the Issue.

(End of Exhibit D)

**EXHIBIT E**  
**Useful Life Chart**

## Governmental Facilities

### Attachment A

#### Definitions for Tax Compliance Certificate

The following terms, as used in Attachment A and in the Tax Compliance Certificate to which it is attached and in the other Attachments to the Tax Compliance Certificate, have the following meanings unless therein otherwise defined or unless a different meaning is indicated by the context in which the term is used. Capitalized terms used within these definitions that are not defined in Attachment A have the meanings ascribed to them in the Tax Compliance Certificate to which this Attachment A is attached. The word “Issue,” in lower case, refers either to the Issue or to another issue of obligations or portion thereof treated as a separate issue for the applicable purposes of Section 148, as the context requires. The word “obligation” or “obligations,” in lower case, includes any obligation, whether in the form of bonds, notes, certificates, or any other obligation that is a “bond” within the meaning of Section 150(a)(1). All capitalized terms used in this Certificate include either the singular or the plural. All terms used in this Attachment A or in the Tax Compliance Certificate to which this Attachment A is attached, including terms specifically defined, shall be interpreted in a manner consistent with Sections 103 and 141-150 and the applicable Regulations thereunder except as otherwise specified. All references to Section, unless otherwise noted, refer to the Code.

**“Advance Refunding Issue”** means any Refunding Issue that is not a Current Refunding Issue.

**“Advance Refunding Portion”** means that portion of a Multipurpose Issue that constitutes a separate governmental purpose and that would be treated as an Advance Refunding Issue if it had been issued as a separate issue.

**“Available Construction Proceeds”** means an amount equal to (a) the sum of (i) the Issue Price of an issue, (ii) Investment Proceeds on that Issue Price, (iii) earnings on any reasonably required reserve or replacement fund allocable to the issue not funded from the Issue Price, and (iv) Investment Proceeds and earnings on (ii) and (iii), (b) reduced by the portions, if any, of the Issue Price of the issue (i) attributable to Pre-Issuance Accrued Interest and earnings thereon, (ii) allocable to the underwriter’s discount, (iii) used to pay other Issuance Costs of the issue, and (iv) deposited in a reasonably required reserve or replacement fund allocable to the issue. “Available Construction Proceeds” does not include Investment Proceeds or earnings on a reasonably required reserve or replacement fund allocable to the issue for any period after the earlier of (a) the close of the 2-year period that begins on the Issuance Date or (b) the date the construction of the project financed by the issue is substantially completed, provided, however, that such Investment Proceeds or earnings shall be excluded from “Available Construction Proceeds” if the Issuer has timely elected such exclusion. If an issue is a Multipurpose Issue that includes a New Money Portion that is a Construction Issue, this definition shall be applied by substituting “New Money Portion” for “issue” each place the latter term appears. If an issue or the New Money Portion of a Multipurpose Issue, as applicable, is not a Construction Issue, and the Issuer makes the bifurcation election under Regulations §1.148-7(j)(1) and Section 148(f)(4)(C)(v) to treat the issue

or the New Money Portion as two separate issues consisting of the Construction Portion and the Nonconstruction Portion, this definition shall be applied by substituting “Construction Portion” for “issue” each place the latter term appears.

**“Available Project Proceeds”** means “available project proceeds” as defined in Section 54A(e)(4), being (A) the excess of (i) Sale Proceeds, over (ii) Issuance Costs paid with Proceeds (to the extent that such Issuance Costs do not exceed 2% of Sale Proceeds), plus (B) Proceeds actually or constructively received from any investment of such excess.

**“Bifurcated Issue”** means a New Money Issue or the New Money Portion of a Multipurpose Issue that the Issuer, pursuant to Section 148(f)(4)(C)(v) and Regulations §1.148-7(j), has elected in its Tax Compliance Certificate to bifurcate into a Construction Portion, which finances 100% of the Construction Expenditures, and a Nonconstruction Portion.

**“Bona Fide Debt Service Fund”** means a fund, including a portion of or an account in that fund (or in the case of a fund established for two or more issues, the portion of that fund properly allocable to an issue), or a combination of such funds, accounts or portions that is used primarily to achieve a proper matching of revenues with Debt Service on an issue within each Bond Year and that is depleted at least once each year except for a reasonable carryover amount not to exceed the greater of the earnings thereon for the immediately preceding Bond Year or one-twelfth of the annual Debt Service on the issue for the immediately preceding Bond Year.

**“Bond Counsel’s Opinion”** or **“Opinion of Bond Counsel”** means an opinion or opinions of a nationally recognized bond counsel firm whose opinion is given with respect to the Issue when issued, or its successors or other nationally recognized bond counsel appointed by the Issuer.

**“Bond Year”** means the annual period relevant to the application of Section 148(f) to an issue, except that the first and last Bond Years may be less than 12 months long. The last day of a Bond Year shall be the close of business on the day preceding the anniversary of the Issuance Date of an issue unless the Issuer selects another date on which to end a Bond Year in the manner permitted by the Code.

**“Build America Bond”** means any obligation described in Section 54AA(d)(1), including, where applicable, any Recovery Zone Economic Development Bond.

**“Capital Expenditures”** means costs of a type that are properly chargeable to a capital account (or would be so chargeable with a proper election) under general federal income tax principles, including capitalized interest computed taking into account the Placed in Service date.

**“Code”** means the Internal Revenue Code of 1986, the Regulations (whether temporary or final) under that Code or the statutory predecessor of that Code, and any amendments of, or successor provisions to, the foregoing and any official rulings, announcements, notices, procedures and judicial determinations regarding any of the foregoing, all as and to the extent applicable. Unless otherwise indicated, reference to a Section includes any applicable successor section or provision and such applicable Regulations, rulings, announcements, notices, procedures and determinations pertinent to that Section.

**“Commingled Fund”** means any fund or account of the Issuer that contains both Gross Proceeds of an issue and amounts in excess of \$25,000 that are not Gross Proceeds of the issue if the amounts in the fund or account are invested and accounted for collectively, without regard to the source of funds deposited in the fund or account.

**“Commingled Investment Proceeds”** means Investment Proceeds of an issue (other than Investment Proceeds held in a Refunding Escrow) that are deposited in a Commingled Fund with substantial tax or other revenues from governmental operations of the Issuer and that are reasonably expected to be spent for governmental purposes within six months from the date of deposit in the Commingled Fund, using any reasonable accounting assumptions.

**“Computation Date”** means each date on which the Rebate Amount for an issue is required to be computed under Regulations §1.148-3(e). In the case of a Fixed Yield Issue, the first Computation Date shall not be later than five years after the Issuance Date of the issue. Subsequent Computation Dates shall be not later than five years after the immediately preceding Computation Date for which an installment payment of the Rebate Amount was paid. In the case of a Variable Yield Issue, the first Computation Date shall be the last day of any Bond Year irrevocably selected by the Issuer ending on or before the fifth anniversary of the Issuance Date of such issue and subsequent Computation Dates shall be the last day of each Bond Year thereafter or each fifth Bond Year thereafter, whichever is irrevocably selected by the Issuer after the first date on which any portion of the Rebate Amount is required to be paid to the United States. The final Computation Date is the date an issue is retired.

**“Computational Base”** means the amount of Gross Proceeds the Issuer or Conduit Borrower reasonably expects, as of the date a Guaranteed Investment Contract is required, to be deposited in that Guaranteed Investment Contract over its term.

**“Conduit Borrower”** means the obligor on a purpose investment.

**“Conduit Financing Issue”** means an issue the Proceeds of which are reasonably expected to be used to finance one or more Conduit Loans.

**“Conduit Loan”** means a purpose investment acquired by the Issuer with Proceeds of a Conduit Financing Issue, thereby effecting a loan to the Conduit Borrower.

**“Construction Expenditures”** means Capital Expenditures allocable to the cost of real property (including the construction or making of improvements to real property, but excluding acquisitions of interests in land or other existing real property) or constructed personal property within the meaning of Regulations §1.148-7(g).

**“Construction Issue”** means an issue at least 75% of the Available Construction Proceeds of which are to be used for Construction Expenditures with respect to property that is, or upon completion will be, owned by a Governmental Unit or a 501(c)(3) Organization. If an issue is a Multipurpose Issue that includes a New Money Portion, this definition shall be applied by substituting “New Money Portion” for “Construction Issue” each place the latter term appears. If an election under Section 148(f)(4)(C)(v) and Regulations §1.148-7(j) is made to bifurcate an issue or the New Money Portion of a Multipurpose Issue, this definition shall be applied by substituting “Construction Portion” for “Construction Issue” each place the latter term appears.

**“Construction Portion”** means that portion of an issue or the New Money Portion of a Multipurpose Issue at least 75% of the Available Construction Proceeds of which are to be used for Construction Expenditures with respect to property that is, or upon completion will be, owned by a Governmental Unit or a 501(c)(3) Organization and that finances 100% of the Construction Expenditures.

**“Controlled Group”** means a group of entities controlled directly or indirectly by the same entity or group of entities within the meaning of Regulations §1.150-1(e).

**“Current Refunding Issue”** means a Refunding Issue that is issued not more than 90 days before the last expenditure of any Proceeds of the Refunding Issue for the payment of Debt Service on the Refunded Bonds.

**“Current Refunding Portion”** means that portion of a Multipurpose Issue that constitutes a separate governmental purpose and that would be treated as a Current Refunding Issue if it had been issued as a separate issue.

**“Debt Service”** means principal of and interest and any redemption premium on an issue.

**“Excess Gross Proceeds”** means all Gross Proceeds of an Advance Refunding Issue that exceed an amount equal to 1% of the Sale Proceeds of such Advance Refunding Issue, other than Gross Proceeds allocable to: (a) payment of Debt Service on the Refunded Bonds; (b) payment of Pre-Issuance Accrued Interest on the Advance Refunding Issue and interest on the Advance Refunding Issue that accrues for a period up to the completion date of any capital project financed by the Prior Issue, plus one year; (c) a reasonably required reserve or replacement fund for the Advance Refunding Issue or Investment Proceeds of such fund; (d) payment of Issuance Costs of the Advance Refunding Issue; (e) payment of administrative costs allocable to repaying the Refunded Bonds, carrying and repaying the Advance Refunding Issue, or investments of the Advance Refunding Issue; (f) Transferred Proceeds allocable to expenditures for the governmental purpose of the Prior Issue (treating for this purpose all unspent Proceeds of the Prior Issue properly allocable to the Refunded Bonds as of the Issuance Date of the Advance Refunding Issue as Transferred Proceeds); (g) interest on purpose investments; (h) Replacement Proceeds in a sinking fund for the Advance Refunding Issue; and (i) fees for a Qualified Guarantee for the Advance Refunding Issue or the Prior Issue. If an Issue is a Multipurpose Issue that includes an Advance Refunding Portion, this definition shall be applied by substituting “Advance Refunding Portion” for “Advance Refunding Issue” each place the latter term appears.

**“Federally Guaranteed”** means that (a) the payment of Debt Service on an issue, or the payment of principal or interest with respect to any loans made from the Proceeds of the issue, is directly or indirectly guaranteed in whole or in part by the United States or by an agency or instrumentality of the United States, within the meaning of Section 149(b), or (b) more than 5% of the Proceeds of an issue will be invested directly or indirectly in federally insured deposits or accounts. The preceding sentence does not apply to (a) Proceeds invested during an initial Temporary Period until such Proceeds are needed to pay costs of the project, (b) investments of a Bona Fide Debt Service Fund, (c) direct purchases from the United States of obligations issued by

the United States Treasury, or (d) other investments permitted by Section 149(b) or Regulations §1.149(b)-1(b).

**“501(c)(3) Organization”** means an organization described in Section 501(c)(3) and exempt from tax under Section 501(a).

**“Fixed Yield Issue”** means an issue of obligations the Yield on which is fixed and determinable on the Issuance Date.

**“Future Value”** means the value of a Payment or Receipt at the end of a period determined using the economic accrual method as the value of that Payment or Receipt when it is paid or received (or treated as paid or received), plus interest assumed to be earned and compounded over the period at a rate equal to the Yield on the applicable issue, using the same compounding interval and financial conventions that were used to compute that Yield.

**“Governmental Unit”** means a state, territory or possession of the United States, the District of Columbia, or any political subdivision thereof referred to as a “State or local governmental unit” in Regulations §1.103-1(a). “Governmental Unit” does not include the United States or any agency or instrumentality of the United States.

**“Guaranteed Investment Contract”** means any Nonpurpose Investment that has specifically negotiated withdrawal or retirement provisions and a specifically negotiated interest rate and any agreement to supply investments on two or more future dates (*e.g.*, a forward supply contract).

**“Gross Proceeds”** means Proceeds and Replacement Proceeds of an issue.

**“Hedge”** means a contract entered into by the Issuer or the Conduit Borrower primarily to modify the Issuer’s or the Conduit Borrower’s risk of interest rate changes with respect to an obligation (*e.g.*, an interest rate swap, an interest rate cap, a futures contract, a forward contract or an option).

**“Higher Yielding Investments”** means any Investment Property that produces a Yield that (a) in the case of Investment Property allocable to Replacement Proceeds of an issue and Investment Property in a Refunding Escrow, is more than one thousandth of one percentage point (.00001) higher than the Yield on the applicable issue, and (b) for all other purposes is more than one-eighth of one percentage point (.00125) higher than the Yield on the issue.

**“Investment Proceeds”** means any amounts actually or constructively received from investing Proceeds of an issue in Investment Property.

**“Investment Property”** means investment property within the meaning of Sections 148(b)(2) and 148(b)(3), including any security (within the meaning of Section 165(g)(2)(A) or (B)), any obligation, any annuity contract and any other investment-type property (including certain residential rental property for family units as described in Section 148(b)(2)(E) in the case of any bond other than a Private Activity Bond). Investment Property includes a Tax-Exempt Obligation that is a “specified private activity bond” as defined in Section 57(a)(5)(C), but does not include other Tax-Exempt Obligations.

**“Issuance Costs”** means costs to the extent incurred in connection with, and allocable to, the issuance of an issue, and includes underwriter’s compensation withheld from the Issue Price, counsel fees, financial advisory fees, rating agency fees, trustee fees, paying agent fees, bond registrar, certification and authentication fees, accounting fees, printing costs for bonds and offering documents, public approval process costs, engineering and feasibility study costs, guarantee fees other than for a Qualified Guarantee and similar costs, but does not include fees charged by the Issuer.

**“Issuance Date”** means the date of physical delivery of an issue by the Issuer in exchange for the purchase price of the issue.

**“Issue Price”** means in the circumstances applicable to an issue:

(1) Public Offering. In the case of obligations actually offered to the general public in a bona fide public offering at the initial offering price for each maturity set forth in the certificate of the underwriter or placement agent attached to the Tax Compliance Certificate of the Issuer, the aggregate of the initial offering price for each maturity (including any Pre-Issuance Accrued Interest and taking into account any original issue premium and original issue discount), which price is not more than the fair market value thereof as of the Sale Date, and at which initial offering price not less than 10% of the principal amount of each maturity, as of the Sale Date, was sold or reasonably expected to be sold (other than to bond houses, brokers or other intermediaries). In the case of publicly offered obligations that are not described in the preceding sentence, Issue Price means the aggregate of the initial offering price to the public of each maturity set forth in the certificate of the underwriter or placement agent attached to the Tax Compliance Certificate of the Issuer, at which initial offering price not less than 10% of the principal amount of each maturity was sold to the public. Notwithstanding the foregoing, in no event shall the Issue Price of an issue exceed the fair market value of the issue as of the Sale Date thereof.

(2) Private Placement. In the case of obligations sold by private placement, the aggregate of the prices (including any Pre-Issuance Accrued Interest and original issue premium, but excluding any original issue discount) paid to the Issuer by the first purchaser(s) (other than bond houses, brokers or other intermediaries). Notwithstanding the foregoing, in no event shall the Issue Price of an issue exceed the fair market value of the issue as of the Sale Date thereof.

**“Minor Portion”** means an amount equal to the lesser of \$100,000 or 5% of the Sale Proceeds of an issue.

**“Multipurpose Issue”** means an issue the bonds of which are allocable to two or more separate governmental purposes within the meaning of Regulations §1.148-9(h).

**“Net Proceeds”** means the Sale Proceeds of an issue less the portion thereof, if any, deposited in a reasonably required reserve or replacement fund for the issue.



**“Net Sale Proceeds”** means the Sale Proceeds of an issue less (a) the portion thereof, if any, deposited in a reasonably required reserve or replacement fund for the issue and (b) the portion invested as a part of a Minor Portion for the issue.

**“New Money Issue”** means an issue that is not a Refunding Issue.

**“New Money Portion”** means that portion of a Multipurpose Issue other than the Refunding Portion.

**“Nonconstruction Portion”** means that portion of a New Money Issue or of the New Money Portion other than the Construction Portion.

**“Nonpurpose Investments”** means any Investment Property that is acquired with Gross Proceeds as an investment and not in carrying out any governmental purpose of an issue. “Nonpurpose Investments” does not include any investment that is not regarded as “investment property” or a “nonpurpose investment” for the particular purposes of Section 148 (such as certain investments in U.S. Treasury obligations in the State and Local Government Series and certain temporary investments), but does include any other investment that is a “nonpurpose investment” within the applicable meaning of Section 148.

**“Payment”** means payments actually or constructively made to acquire Nonpurpose Investments, as specified in Regulations §1.148-3(d)(1)(i) through (v).

**“Placed in Service”** means the date on which, based on all the facts and circumstances, a facility has reached a degree of completion that would permit its operation at substantially its design level and the facility is, in fact, in operation at such level.

**“Pre-Issuance Accrued Interest”** means interest on an obligation that accrued for a period not greater than one year before its Issuance Date and that will be paid within one year after such Issuance Date.

**“Preliminary Expenditures”** means any Capital Expenditures that are “preliminary expenditures” within the meaning of Regulations §1.150-2(f)(2), *i.e.*, architectural, engineering, surveying, soil testing, reimbursement bond issuance, and similar costs that are incurred prior to commencement of acquisition, construction, or rehabilitation of a project other than land acquisition, site preparation, and similar costs incident to commencement of construction. The aggregate amount of Preliminary Expenditures may not exceed 20% of the aggregate Issue Price of the issue or issues that financed or are reasonably expected to finance the project for which such Preliminary Expenditures are or were incurred.

**“Prior Issue”** means an issue of obligations all or a portion of the Debt Service on which is paid or provided for with Proceeds of a Refunding Issue. The Prior Issue may be a Refunding Issue.

**“Private Activity Bond”** means (a) obligations of an issue more than 10% of the Proceeds of which, directly or indirectly, are or are to be used for a Private Business Use and more than 10% of the Debt Service on which, directly or indirectly, is or is to be paid from or secured by payments with respect to property, or secured by property, used for a Private Business Use, or (b)

obligations of an issue, the Proceeds of which are or are to be used to make or finance loans to any Private Person that, in the aggregate, exceed the lesser of 5% of such Proceeds or \$5,000,000. In the event of Unrelated or Disproportionate Use, the tests in (a) shall be applied by substituting 5% for 10% each place the latter term is used.

**“Private Business Use”** means use (directly or indirectly) in a trade or business carried on by any Private Person other than use as a member of, and on the same basis as, the general public. Any activity carried on by a Private Person (other than a natural person) shall be treated as a trade or business. In the case of a Qualified 501(c)(3) Bond, Private Business Use excludes use by a 501(c)(3) Organization that is not an unrelated trade or business activity by such 501(c)(3) Organization within the meaning of Section 513(a).

**“Private Person”** means any natural person or any artificial person, including a corporation, partnership, trust or other entity, other than a Governmental Unit. “Private Person” includes the United States and any agency or instrumentality of the United States.

**“Private Security or Payments”** means (i) any interest in property used or to be used for a Private Business Use, or in payments in respect of such property, that directly or indirectly secures any payment of principal of, or interest on, an issue, or (ii) payments (whether or not to the Issuer) in respect of property, or borrowed money, used or to be used for a Private Business Use from which payments of principal of, or interest on, an issue are directly or indirectly derived, all as determined and measured in accordance with Treasury Regulations Section 1.141-4.

**“Proceeds”** means any Sale Proceeds, Investment Proceeds and Transferred Proceeds of an issue. “Proceeds” does not include Replacement Proceeds.

**“Qualified Administrative Costs”** means the reasonable, direct administrative costs, other than carrying costs, of purchasing or selling Nonpurpose Investments such as separately stated brokerage or selling commissions. Qualified Administrative Costs do not include legal and accounting fees, recordkeeping, custody and similar costs, general overhead costs and similar indirect costs of the Issuer such as employee salaries and office expenses and costs associated with computing the Rebate Amount. In general, Qualified Administrative Costs are not reasonable unless they are comparable to administrative costs that would be charged for the same investment or a reasonably comparable investment if acquired with a source of funds other than Gross Proceeds of Tax-Exempt Obligations.

**“Qualified 501(c)(3) Bonds”** means an issue of obligations that satisfies the requirements of Section 145(a).

**“Qualified Guarantee”** means any guarantee of an obligation that constitutes a “qualified guarantee” within the meaning of Regulations §1.148-4(f).

**“Qualified Hedge”** means a Hedge that is a “qualified hedge” within the meaning of Regulations §1.148-4(h)(2).

**“Reasonable Retainage”** means an amount, with respect to an issue, not to exceed 5% of the Net Sale Proceeds of the issue, that is retained for reasonable business purposes relating to the property financed with Proceeds of the issue. For example, Reasonable Retainage may

include a retention to ensure or promote compliance with a construction contract in circumstances in which the retained amount is not yet payable, or in which the Issuer reasonably determines that a dispute exists regarding completion or payment.

**“Rebate Amount”** means the excess of the future value, as of any date, of all receipts on Nonpurpose Investments acquired with Gross Proceeds of an issue over the future value, as of that date, of all payments on those Nonpurpose Investments, computed in accordance with Section 148(f) and Regulations §1.148-3.

**“Rebate Analyst”** means an independent individual, firm or entity experienced in the computation of the Rebate Amount pursuant to Section 148(f).

**“Receipt”** means amounts actually or constructively received from Nonpurpose Investments as specified in Regulations §1.148-3(d)(2)(i) through (iii).

**“Recovery Zone Economic Development Bond”** means any Build America Bond described in Section 1400U-2(b)(1).

**“Refunded Bonds”** means obligations of a Prior Issue the Debt Service on which is or is to be paid from Proceeds of a Refunding Issue.

**“Refunding Bonds”** means obligations of a Refunding Issue.

**“Refunding Escrow”** means one or more funds established as part of a single transaction, or a series of related transactions, containing Proceeds of a Refunding Issue and any other amounts to be used to pay Debt Service on Refunded Bonds of one or more issues.

**“Refunding Issue”** means an issue the Proceeds of which are or are to be used to pay Debt Service on Refunded Bonds and includes Issuance Costs, Pre-Issuance Accrued Interest or permitted capitalized interest, a reasonably required reserve or replacement fund and similar costs of the Refunding Issue.

**“Refunding Portion”** means that portion of a Multipurpose Issue the Proceeds of which are, or are to be, used to pay Debt Service on Refunded Bonds and includes Issuance Costs, Pre-Issuance Accrued Interest or permitted capitalized interest, a reasonably required reserve or replacement fund and similar costs properly allocable to the Refunding Portion.

**“Regulations”** or **“Reg.”** means Treasury Regulations.

**“Reimbursement Allocation”** means an allocation of the Proceeds of an issue for the reimbursement of Capital Expenditures paid prior to the Issuance Date of such issue that: (a) is evidenced on the books or records of the Issuer maintained with respect to the issue, (b) identifies either actual prior Capital Expenditures or the fund or account from which the prior Capital Expenditures were paid, (c) evidences the Issuer’s use of Proceeds of the issue to reimburse a Capital Expenditure for a governmental purpose that was originally paid from a source other than the Proceeds of the issue and (d) satisfies the following requirements: except for Preliminary Expenditures, (i) the Issuer adopted an official intent for the Capital Expenditure that satisfies Regulations §1.150-2(e) prior to, or within 60 days after, payment of the Capital Expenditure, and

(ii) the allocation in reimbursement of that Capital Expenditure occurs or will occur within 18 months after the later of the date the Capital Expenditure was paid or the date the project resulting from such Capital Expenditure was Placed in Service or abandoned, but in no event more than three years after the Capital Expenditure was paid.

**“Related Party”** means, in reference to a Governmental Unit or 501(c)(3) Organization, any member of the same Controlled Group and, in reference to any person that is not a Governmental Unit or 501(c)(3) Organization, a “related person” as defined in Section 144(a)(3).

**“Replacement Proceeds”** means, with respect to an issue, amounts (including any investment income, but excluding any Proceeds of any issue) replaced by Proceeds of that issue within the meaning of Section 148(a)(2). “Replacement Proceeds” includes amounts, other than Proceeds, held in a sinking fund, pledged fund or reserve or replacement fund for an issue.

**“Sale Date”** means, with respect to an issue, the first date on which there is a binding contract in writing with the Issuer for the sale and purchase of an issue (or of respective obligations of the issue if sold by the Issuer on different dates) on specific terms that are not later modified or adjusted in any material respect.

**“Sale Proceeds”** means that portion of the Issue Price actually or constructively received by the Issuer upon the sale or other disposition of an issue, including any underwriter’s compensation withheld from the Issue Price, but excluding Pre-Issuance Accrued Interest.

**“Spensible Proceeds”** means the Net Sale Proceeds of an issue.

**“Tax-Exempt Obligation”** means any obligation or issue of obligations (including bonds, notes and lease obligations treated for federal income tax purposes as evidence of indebtedness) the interest on which is excluded from gross income for federal income tax purposes within the meaning of Section 150, and includes any obligation or any investment treated as a “tax-exempt bond” for the applicable purpose of Section 148.

**“Tax-Exempt Organization”** means a Governmental Unit or a 501(c)(3) Organization.

**“Temporary Period”** means the period of time, as set forth in the Tax Compliance Certificate, applicable to particular categories of Gross Proceeds of an issue during which such category of Gross Proceeds may be invested in Higher Yielding Investments without the issue being treated as arbitrage bonds under Section 148.

**“Transferred Proceeds”** means that portion of the Proceeds of an issue (including any Transferred Proceeds of that issue) that remains unexpended at the time that any portion of the principal of the Refunded Bonds of that issue is discharged with the Proceeds of a Refunding Issue and that thereupon becomes Proceeds of the Refunding Issue as provided in Regulations §1.148-9(b). “Transferred Proceeds” does not include any Replacement Proceeds.

**“Unrelated or Disproportionate Use”** means Private Business Use that is not related to or is disproportionate to use by a Governmental Unit within the meaning of Section 141(b)(3) and Regulations §1.141-9.

**“Variable Yield Issue”** means any Issue that is not a Fixed Yield Issue.

**“Working Capital Expenditures”** means any costs of a type that do not constitute Capital Expenditures, including current operating expenses.

**“Yield”** has the meaning assigned to it for purposes of Section 148, and means that discount rate (stated as an annual percentage) that, when used in computing the present worth of all applicable unconditionally payable payments of Debt Service, all payments for a Qualified Guarantee, if any, and payments and receipts with respect to a Qualified Hedge, if any, as required by the Regulations, paid and to be paid with respect to an obligation (paid and to be paid during and attributable to the Yield Period in the case of a Variable Yield Issue), reduced by the credit, if any, allowed by Section 6431, produces an amount equal to (a) the Issue Price in the case of a Fixed Yield Issue or the present value of the Issue Price at the commencement of the applicable Yield Period in the case of a Variable Yield Issue, or (b) the purchase price for yield purposes in the case of Investment Property, all subject to the applicable methods of computation provided for under Section 148, including variations from the foregoing. The Yield on Investment Property in which Proceeds or Replacement Proceeds of an issue are invested is computed on a basis consistent with the computation of Yield on that issue, including the same compounding interval of not more than one year selected by the Issuer.

**“Yield Period”** means, in the case of the first Yield Period, the period that commences on the Issuance Date and ends at the close of business on the first Computation Date and, in the case of each succeeding Yield Period, the period that begins immediately after the end of the immediately preceding Yield Period and ends at the close of business on the next succeeding Computation Date.

The terms “bond,” “obligation,” “reasonably required reserve or replacement fund,” “reserve or replacement fund,” “loan,” “sinking fund,” “purpose investment,” “same plan of financing,” “other replacement proceeds” and other terms relating to Code provisions used but not defined in this Certificate shall have the meanings given to them for purposes of Sections 103 and 141 to 150 unless the context indicates another meaning.

(End of Attachment A)

**NOTE: 1.14 REQUIRES IDENTIFICATION OF RESPONSIBLE PERSON.**

**Attachment C-1  
to Tax Compliance Certificate**

**ARBITRAGE COMPLIANCE CHECKLIST  
(Governmental Use Bonds)**

The Issuer certifies in the Tax Compliance Certificate (“Certificate”) that it will comply with the arbitrage rebate requirements of Section 148(f) of the Code. This checklist provides guidance for that compliance, and this checklist is intended to satisfy Section 7.2.3.4.4 of the Internal Revenue Manual. Capitalized terms not defined in this checklist have the meanings given in the Certificate and in Attachment A to that Certificate.

- 1.1 Note the Yield of the Issue, as shown on the IRS Form 8038-G.
- 1.2 Review the Certificate to determine the Temporary Periods for the Issue, during which periods various categories of Gross Proceeds may be invested in Higher Yielding Investments.
- 1.3 Do not invest Gross Proceeds in Higher Yielding Investments following the end of the applicable Temporary Period identified in 1.2 unless Yield reduction payments may be made (see Certificate).
- 1.4 Monitor expenditures of Proceeds, including Investment Proceeds, against Issuance Date expectations for satisfaction of 13-month (Working Capital financings), three-year (most Capital Expenditure financings) or five-year (long-term Capital Expenditure financings) Temporary Period from Yield restriction on investment of Proceeds and to avoid “hedge bond” status.
- 1.5 Ensure that Proceeds are spent for Capital Expenditures or, if spent for Working Capital Expenditures, ensure either that the Proceeds-spent-last rule is satisfied or that an exception to this rule applies (see Certificate).
- 1.6 Ensure that investments acquired with Gross Proceeds satisfy Internal Revenue Service (“IRS”) regulatory safe harbors for establishing fair market value (e.g., through the use of bidding procedures), and maintain records to demonstrate satisfaction of those safe harbors.
- 1.7 Consult with Bond Counsel before engaging in credit enhancement or hedging transactions in respect of the Issue, and before creating separate funds that are reasonably expected to be used to pay Debt Service on the Issue.
- 1.8 Maintain copies of all contracts and certificates relating to credit enhancement and hedging transactions relating to the Issue
- 1.9 *Even after all Proceeds of the Issue have been spent*, ensure that the Bond Fund meets the requirements of a Bona Fide Debt Service Fund, i.e., a fund used primarily to achieve a proper matching of revenues with Debt Service that is depleted at least once each Bond Year, except for a reasonable carryover amount not to exceed the greater of: (i) the earnings on the fund for the immediately

preceding Bond Year; or (ii) one-twelfth of the Debt Service on the Issue for the immediately preceding Bond Year. *To the extent that the Bond Fund qualifies as a Bona Fide Debt Service Fund for a given Bond Year, the amounts held in that fund may be invested in Higher Yielding Investments.*

- 1.10 Ensure that amounts held in any reasonably required debt service reserve fund that are invested in Higher Yielding Investments do not exceed the least of: (i) 10% of the stated principal amount of the Issue (or 10% of the Sale Proceeds of the Issue if the Issue has original issue discount or original issue premium that exceeds 2% of the stated principal amount of the Issue plus, in the case of premium, reasonable underwriter's compensation); (ii) maximum annual Debt Service on the Issue; or (iii) 125% of average annual Debt Service on the Issue.
- 1.11 *Compliance with rebate requirement, if applicable -- see Article IV of the Tax Compliance Certificate and, if the small issuer exception to rebate is not satisfied, the Rebate Instructions (which will be attached as Attachment C-2 to the Certificate if the small issuer exception is not met) for possible exceptions from the rebate requirement. Subject to the possible exceptions, including those mentioned below, earnings on Proceeds, to the extent invested at a Yield in excess of the Bond Yield (i.e., positive arbitrage), generally must be rebated to the U.S. Treasury, even if a Temporary Period exception from Yield restriction allowed the earning of that positive arbitrage.*
  - 1.11.1. Ensure that rebate calculations will be timely performed and payment of Rebate Amounts, if any, will be timely made; such payments are generally due 60 days after the fifth anniversary of the Issuance Date, and then in succeeding installments every five years; the final rebate payment for the Issue is due 60 days after retirement of the last bond of the Issue. A rebate consultant generally should be hired.
  - 1.11.2. Review the rebate section of the Certificate to determine whether the "small issuer" rebate exception applies to the Issue.
  - 1.11.3. If the 6-month, 18-month, or 24-month spending exception from the rebate requirement (as described in the Rebate Instructions) may apply to the Issue, ensure that the spending of Proceeds is monitored prior to the semi-annual spending dates for the applicable exception.
  - 1.11.4. *Timely make rebate and Yield reduction payments and file IRS Form 8038-T.*
  - 1.11.5. Even after all other Proceeds of the Issue have been spent, ensure compliance with rebate requirements for any debt service reserve fund and any debt service fund that is not exempt from the rebate requirement (see the Rebate Instructions).
  - 1.11.6. See the Rebate Instructions for more detail regarding the rebate requirement.
- 1.12 The foregoing items in this checklist shall be monitored at least annually as long as there are unspent Gross Proceeds.
- 1.13 Maintain records of investments and expenditures of Proceeds, rebate exception analyses, rebate calculations, Forms 8038-T, and rebate and Yield reduction

payments, and any other records relevant to compliance with the arbitrage restrictions.

- 1.14 The person(s) who hold the following title(s) shall be responsible for monitoring compliance with the arbitrage rebate requirements of Section 148 of the Code, as set forth in this checklist: **[INSERT TITLE]**
- 1.15 The person(s) responsible for monitoring compliance with the arbitrage rebate requirements of Section 148 of the Code shall receive appropriate training regarding the Issuer's accounting systems and their application to the investment and expenditure of Gross Proceeds. This training shall occur when a new individual assumes the responsibilities described in this checklist. Training shall also be available to ensure current knowledge of the Issuer's existing accounting systems and exposure to any pertinent modifications that are subsequently implemented by the Issuer.
- 1.16 The records required to be kept under this checklist shall be maintained in paper or electronic format until the date three (3) years after the last bond of the applicable issue of Tax-Exempt Obligations ("Issue") has been retired; if any portion of such Issue is refunded by a Refunding Issue, such records shall be maintained until the later of the date three (3) years after the last bond of the Issue has been retired or the date three (3) years after the last bond of the Refunding Issue has been retired.

(End of Attachment C-1)



**Attachment C-2  
to Tax Compliance Certificate**

**INSTRUCTIONS FOR COMPLIANCE WITH REBATE  
REQUIREMENTS OF SECTION 148(f) OF THE CODE  
(Governmental Use Bonds)**

The Issuer<sup>1</sup> covenanted in the operative documents (*i.e.*, Ordinance/Resolution/Trust Indenture/Tax Compliance Certificate) to comply with the arbitrage rebate requirement of Section 148(f) of the Code. These Instructions provide guidance for that compliance, including the spending exceptions that free the Issue from all or part of the rebate requirements. Capitalized terms that are not defined in these Rebate Instructions are defined in Attachment A to the Tax Compliance Certificate.

GENERAL

REBATE GENERALLY.

The Rebate Amount with respect to the Issue must be paid (rebated) to the United States to prevent the bonds of the Issue from being arbitrage bonds, the interest on which is subject to federal income tax. In general, the Rebate Amount is the amount by which the actual earnings on Nonpurpose Investments purchased (or deemed to have been purchased) with Gross Proceeds of the Issue exceed the amount of earnings that would have been received if those Nonpurpose Investments had a Yield equal to the Yield on the Issue.<sup>2</sup> Stated differently, the Rebate Amount for the Issue as of any date is the excess of the Future Value, as of that date, of all Receipts on Nonpurpose Investments over the Future Value, as of that date, of all Payments on Nonpurpose Investments, computed using the Yield on the Issue as the Future Value rate.<sup>3</sup>

If the Issue is a Fixed Yield Issue, the Yield on the Issue generally is the Yield to maturity, taking into account mandatory redemptions prior to maturity. If the Issue is a Variable Yield Issue, the Yield on the Issue is computed separately for each Yield Period selected by the Issuer.

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<sup>1</sup> For purposes of these Instructions, the term “Issuer” includes the borrower in a conduit financing issue.

<sup>2</sup> Amounts earned on the Bona Fide Debt Service Fund for the Issue are not taken into account in determining the Rebate Amount: (1) for any Bond Year in which the gross earnings on such Fund for such Year are less than \$100,000; (2) if the average annual Debt Service on the Issue does not exceed \$2,500,000; or (3) if none of the obligations of the Issue are Private Activity Bonds, the rates of interest on the Issue do not vary and the average maturity of the Issue is at least five years.

<sup>3</sup> The scope of these Instructions does not permit a detailed description of the computation of the Rebate Amount with respect to the Issue. If you need assistance in computing the Rebate Amount on the Issue or want Squire Sanders (US) LLP to do the computations, please feel free to contact the Squire Sanders (US) LLP attorney with whom you normally consult to discuss engaging the Firm to provide such assistance.

## EXCEPTIONS TO REBATE

### SPENDING EXCEPTIONS.

The rebate requirements with respect to the Issue are deemed to have been satisfied if any one of three spending exceptions (the 6-Month, the 18-Month, or the 2-Year Spending Exception, collectively, the “Spending Exceptions”) is satisfied. The Spending Exceptions are each independent exceptions. The Issue need not meet the requirements of any other exception in order to use any one of the three exceptions. For example, a Construction Issue may qualify for the 6-Month Spending Exception or the 18-Month Spending Exception even though the Issuer makes one or more elections under the 2-Year Exception with respect to the Issue.

The following rules apply for purposes of all of the Spending Exceptions except as otherwise noted.

Refunding Issues. The only spending exception available for a Refunding Issue<sup>4</sup> is the 6-Month Spending Exception.

Special Transferred Proceeds Rules. In applying the Spending Exceptions to a Refunding Issue, unspent Proceeds of the Prior Issue that become Transferred Proceeds of the Refunding Issue are ignored. If the Prior Issue satisfies one of the rebate Spending Exceptions, the Proceeds of the Prior Issue that are excepted from rebate under that exception are not subject to rebate either as Proceeds of the Prior Issue or as Transferred Proceeds of the Refunding Issue.

However, if the Prior Issue does not satisfy any of the Spending Exceptions and is not otherwise exempt from rebate, the Transferred Proceeds from the Prior Issue will be subject to rebate, even if the Refunding Issue satisfies the 6-Month Spending Exception. The Rebate Amount will be calculated on the Transferred Proceeds on the basis of the Yield of the Prior Issue up to each transfer date and on the basis of the Yield of the Refunding Issue after each transfer date.

Application of Spending Exceptions to a Multipurpose Issue. If the Issue is a Multipurpose Issue, the Refunding Portion and the New Money Portion are treated for purposes of the rebate Spending Exceptions as separate issues. Thus, the Refunding Portion is eligible to use only the 6-Month Spending Exception. The New Money Portion is eligible to use any of the three Spending Exceptions.

Expenditures for Governmental Purposes of the Issue. Each of the spending exceptions requires that expenditures of Gross Proceeds be for the governmental purposes of the Issue. These purposes include payment of interest (but not principal) on the Issue.

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<sup>4</sup> For purposes of these Instructions, references to “Refunding Issue” include the Refunding Portion of a Multipurpose Issue.

### 6-MONTH SPENDING EXCEPTION.

The Issue will be treated as satisfying the rebate requirements if all of the Gross Proceeds of the Issue are allocated to expenditures for the governmental purposes of the Issue within the 6-month period beginning on the Issuance Date and the Rebate Amount, if any, with respect to earnings on amounts deposited in a reasonably required reserve or replacement fund or a Bona Fide Debt Service Fund if and to the extent that such Fund is subject to rebate (see footnote 3) is timely paid to the United States. If no bond of the Issue is a Private Activity Bond (other than a Qualified 501(c)(3) Bond) or a tax or revenue anticipation bond, the 6-month period is extended for an additional six months if the unexpended Gross Proceeds of the Issue at the end of the 6-month period do not exceed 5% of the Proceeds of the Issue.

For purposes of the 6-Month Spending Exception, Gross Proceeds required to be spent within six months do not include amounts in a reasonably required reserve or replacement fund for the Issue or in a Bona Fide Debt Service Fund for the Issue.

### 18-MONTH SPENDING EXCEPTION.

The Issue (or the New Money Portion if the Issue is a Multipurpose Issue) is treated as satisfying the rebate requirement if the conditions set forth in (A), (B) and (C) are satisfied.

All of the Gross Proceeds of the Issue (excluding amounts in a reasonably required reserve or replacement fund for the Issue or in a Bona Fide Debt Service Fund for the Issue) are allocated to expenditures for the governmental purposes of the Issue in accordance with the following schedule, measured from the Issuance Date:

at least 15% within six months;

at least 60% within 12 months; and

100% within 18 months, subject to the Reasonable Retainage exception described below.

The Rebate Amount, if any, with respect to earnings on amounts deposited in a reasonably required reserve or replacement fund or in a Bona Fide Debt Service Fund for the Issue, to the extent such Fund is subject to rebate (see footnote 3), is timely paid to the United States.

The Gross Proceeds of the Issue qualify for the initial 3-year Temporary Period.

If the only unspent Gross Proceeds at the end of the 18th month are Reasonable Retainage, the requirement that 100% of the Gross Proceeds be spent by the end of the 18th month is treated as met if the Reasonable Retainage, and all earnings thereon, are spent for the governmental purposes of the Issue within 30 months of the Issuance Date.

For purposes of determining whether the spend-down requirements have been met as of the end of each of the first two spending periods, the amount of Investment Proceeds that

the Issuer reasonably expects as of the Issuance Date to earn on the Sale Proceeds and Investment Proceeds of the Issue during the 18-month period are included in Gross Proceeds of the Issue. The final spend-down requirement includes actual Investment Proceeds for the entire 18 months.

The 18-Month Spending Exception does not apply to the Issue (or the New Money Portion, as applicable) if any portion of the Issue (or New Money Portion) is treated as meeting the rebate requirement under the 2-Year Spending Exception discussed below. This rule prohibits use of the 18-Month Spending Exception for the Nonconstruction Portion of a Bifurcated Issue. The only Spending Exception available for the Nonconstruction Portion of a Bifurcated Issue is the 6-Month Spending Exception.

#### 2-YEAR SPENDING EXCEPTION FOR CERTAIN CONSTRUCTION ISSUES.

In general. A Construction Issue no bond of which is a Private Activity Bond (other than a Qualified 501(c)(3) Bond or a Bond that finances property to be owned by a Governmental Unit or a 501(c)(3) Organization) is treated as satisfying the rebate requirement if the Available Construction Proceeds of the Issue are allocated to expenditures for the governmental purposes of the Issue in accordance with the following schedule, measured from the Issuance Date:

at least 10% within six months;

at least 45% within one year;

at least 75% within 18 months; and

100% within two years, subject to the Reasonable Retainage exception described below.

Amounts in a Bona Fide Debt Service Fund or a reasonably required reserve or replacement fund for the Issue are not treated as Gross Proceeds for purposes of the expenditure requirements. However, unless the Issuer has elected otherwise in the Tax Compliance Certificate, earnings on amounts in a reasonably required reserve or replacement fund for the Issue are treated as Available Construction Funds during the 2-year period and therefore must be allocated to expenditures for the governmental purposes of the Issue.

If the Issuer elected in the Tax Compliance Certificate to exclude from Available Construction Proceeds the Investment Proceeds or earnings on a reasonably required reserve or replacement fund for the Issue during the 2-year spend-down period, the Rebate Amount, if any, with respect to such Investment Proceeds or earnings from the Issuance Date must be timely paid to the United States. If the election is not made, the Rebate Amount, if any, with respect to such Investment Proceeds or earnings after the earlier of the date construction is substantially completed or two years after the Issuance Date must be timely paid to the United States. The Rebate Amount, if any, with respect to earnings on amounts in a Bona Fide Debt Service Fund must be timely paid to the extent such Fund is subject to the rebate requirements (see footnote 3).

The Issue does not fail to satisfy the spending requirement for the fourth spend-down period (*i.e.*, 100% within two years of the Issuance Date) if the only unspent Available Construction Proceeds are amounts for Reasonable Retainage if such amounts (together with all earnings on such amounts) are allocated to expenditures within three years of the Issuance Date.

For purposes of determining whether the spend down requirements have been met as of the end of each of the first three spend-down periods, Available Construction Proceeds include the amount of Investment Proceeds or earnings that the Issuer reasonably expected as of the Issuance Date to earn during the 2-year period unless the Issuer elects, on or before the Issuance Date, to apply these spend-down requirements on the basis of actual facts rather than reasonable expectations. For purposes of satisfying the final spend-down requirement, Available Construction Proceeds include actual Investment Proceeds or earnings from the Issuance Date through the end of the 2-year period.

Available Construction Proceeds do not include Gross Proceeds used to pay Issuance Costs financed by the Issue, but do include earnings on such Proceeds. Thus, an expenditure of Gross Proceeds to pay Issuance Costs does not count toward meeting the spend-down requirements, but expenditures of earnings on such Gross Proceeds to pay Issuance Costs do count.

1½% penalty in lieu of rebate for Construction Issues. If the Issuer elected in the Tax Compliance Certificate for a Construction Issue, or for the Construction Portion of a Bifurcated Issue, to pay a 1½% penalty in lieu of the Rebate Amount on Available Construction Proceeds in the event that the Construction Issue fails to satisfy any of the spend-down requirements, the 1½% penalty is calculated separately for each spend-down period, including each semiannual period after the end of the fourth spend-down period until all Available Construction Proceeds have been spent. The penalty is equal to 0.015 times the underexpended Proceeds as of the end of the applicable spend-down period. The fact that no arbitrage is in fact earned during such spend-down period is not relevant. The Rebate Amount with respect to Gross Proceeds other than Available Construction Proceeds (*e.g.*, amounts in a reasonably required reserve or replacement fund or in a Bona Fide Debt Service Fund, to the extent subject to rebate (see footnote 3)) must be timely paid.

## COMPUTATION AND PAYMENT

### COMPUTATION AND PAYMENT OF REBATE AMOUNT.

If none of the Spending Exceptions described above is satisfied (and if the 1½% penalty election for a Construction Issue or the Construction Portion of a Bifurcated Issue has not been made), then within 45 days after each Computation Date the Issuer shall compute, or cause to be computed, the Rebate Amount as of such Computation Date. The first Computation Date is a date selected by the Issuer, but shall be not later than five years after the Issuance Date. Each subsequent Computation Date shall end five years after the previous Computation Date except that, in a Variable Yield Issue, the Issuer may select annual Yield Periods. The final Computation Date shall be the date the last obligation of the Issue matures or is finally discharged.

Within 60 days after each Computation Date (except the final Computation Date), the Issuer shall pay to the United States not less than 90% of the Rebate Amount, if any, computed as of such Computation Date. Within 60 days after the final Computation Date, the Issuer shall pay to the United States 100% of the Rebate Amount, if any, computed as of the final Computation Date. In computing the Rebate Amount, a computation credit may be taken into account on the last day of each Bond Year to the Computation Date during which there are unspent Gross Proceeds that are subject to the rebate requirement, and on the final maturity date.

If the operative documents pertaining to the Issue establish a Rebate Fund and require the computation of the Rebate Amount at the end of each Bond Year, the Issuer shall calculate, or cause to be calculated, within 45 days after the end of each Bond Year the Rebate Amount, taking into account the computation credit for each Bond Year. Within 50 days after the end of each Bond Year, if the Rebate Amount is positive, the Issuer shall deposit in the Rebate Fund such amount as will cause the amount on deposit therein to equal the Rebate Amount, and may withdraw any amount on deposit in the Rebate Fund in excess of the Rebate Amount. Payments of the Rebate Amount to the Internal Revenue Service on a Computation Date shall be made first from amounts on deposit in the Rebate Fund and second from other amounts specified in the operative documents.

Each payment of the Rebate Amount or portion thereof shall be payable to the Internal Revenue Service and shall be made to the Internal Revenue Service Center, Ogden, UT 84201 by certified mail. Each payment shall be accompanied by Internal Revenue Service Form 8038-T and any other form or forms required to be submitted with such remittance.

#### BOOKS AND RECORDS.

The Issuer or Trustee, as applicable, shall keep proper books of record and accounts containing complete and correct entries of all transactions relating to the receipt, investment, disbursement, allocation and application of the Gross Proceeds of the Issue. Such records shall specify the account or fund to which each Nonpurpose Investment (or portion thereof) held by the Issuer or Trustee is to be allocated and shall set forth as to each Nonpurpose Investment (1) its purchase price, (2) identifying information, including par amount, interest rate, and payment dates, (3) the amount received at maturity or its sales price, as the case may be, including accrued interest, (4) the amounts and dates of any payments made with respect thereto, and (5) the dates of acquisition and disposition or maturity.

The Issuer, Trustee, or Rebate Analyst, as applicable, shall retain the records of all calculations and payments of the Rebate Amount until three years after the retirement of the last obligation that is a part of the Issue.

#### FAIR MARKET VALUE.

No Nonpurpose Investment shall be acquired for an amount in excess of its fair market value. No Nonpurpose Investment shall be sold or otherwise disposed of for an amount less than its fair market value.

The fair market value of any Nonpurpose Investment shall be the price at which a willing buyer would purchase the Nonpurpose Investment from a willing seller in an arm's-

length transaction. Fair market value generally is determined on the date on which a contract to purchase or sell the Nonpurpose Investment becomes binding (*i.e.*, the trade date rather than the settlement date). Except as otherwise provided in this Section, a Nonpurpose Investment that is not of a type traded on an established securities market (within the meaning of Section 1273 of the Code) is rebuttably presumed to be acquired or disposed of for a price that is not equal to its fair market value.

Obligations purchased directly from the Treasury. The fair market value of a United States Treasury obligation that is purchased directly from the United States Treasury is its purchase price.

Safe harbor for Guaranteed Investment Contracts. The purchase price of a Guaranteed Investment Contract shall be treated as its fair market value on the purchase date if all the following conditions are met.

The Issuer or broker makes a bona fide solicitation for a specified Guaranteed Investment Contract and receives at least three bona fide bids from reasonably competitive providers (of Guaranteed Investment Contracts) that have no material financial interest in the Issue.

The Issuer purchases the highest-yielding Guaranteed Investment Contract for which a qualifying bid is made (determined net of broker's fees).

The Yield on the Guaranteed Investment Contract (determined net of broker's fees) is not less than the Yield then available from the provider on reasonably comparable Guaranteed Investment Contracts, if any, offered to other persons from a source of funds other than Gross Proceeds of Tax-Exempt Obligations.

The determination of the terms of the Guaranteed Investment Contract takes into account as a significant factor the Issuer's reasonably expected drawdown schedule for the amounts to be invested, exclusive of amounts deposited in a Bona Fide Debt Service Fund and a reasonably required reserve or replacement fund.

The terms of the Guaranteed Investment Contract, including collateral security requirements, are reasonable.

The obligor on the Guaranteed Investment Contract certifies the administrative costs that it is paying (or expects to pay) to third parties in connection with the Guaranteed Investment Contract.

Safe harbor for certificates of deposit. The purchase price of a certificate of deposit shall be treated as its fair market value on the purchase date if all of the following requirements are met.

The certificate of deposit has a fixed interest rate, a fixed payment schedule, and a substantial penalty for early withdrawal.

The Yield on the certificate of deposit is not less than (a) the Yield on reasonably comparable direct obligations of the United States, or (b) the highest Yield that is published or posted by the provider to be currently available from the provider on reasonably comparable certificates of deposit offered to the public.

Certificates evidencing the foregoing requirements should be obtained before purchasing any Guaranteed Investment Contract or certificate of deposit.

#### CONSTRUCTIVE SALE/PURCHASE.

Nonpurpose Investments that are held by the Issuer or Trustee as of any Computation Date (or Bond Year if the computations are required to be done annually) shall be treated for purposes of computing the Rebate Amount as of such date as having been sold for their fair market value as of such date. Investment Property that becomes allocated to Gross Proceeds of the Issue on a date after such Investment Property has actually been purchased shall be treated for purposes of the rebate requirements as having been purchased by the Issuer on such date of allocation at its fair market value on such date.

For purposes of constructive or deemed sales or purchases of Investment Property (other than Investment Property in the Escrow Fund or that is otherwise not invested for a Temporary Period or is not part of a reasonably required reserve or replacement fund for the Issue) must be valued at its fair market value on the date of constructive or deemed sale or purchase.

Except as set forth in (B), fixed-rate Investment Property that is (1) issued with not more than 2% of original issue discount or original issue premium, (2) issued with original issue premium that is attributable exclusively to reasonable underwriters' compensation or (3) acquired with not more than 2% of market discount or market premium may be treated as having a fair market value equal to its outstanding stated principal amount plus accrued interest. Fixed-rate Investment Property also may be treated as having a fair market value equal to its present value.

#### ADMINISTRATIVE COSTS.

Administrative costs shall not be taken into account in determining the payments for or receipts from a Nonpurpose Investment unless such administrative costs are Qualified Administrative Costs. Thus, administrative costs or expenses paid, directly or indirectly, to purchase, carry, sell, or retire Nonpurpose Investments generally do not increase the Payments for, or reduce the Receipts from, Nonpurpose Investments.

Qualified Administrative Costs are taken into account in determining the Payments and Receipts on Nonpurpose Investments and thus increase the Payments for, or decrease the Receipts from, Nonpurpose Investments. In the case of a Guaranteed Investment Contract, a broker's commission or similar fee paid on behalf of either the Issuer or the provider is a Qualified Administrative Cost to the extent that (1) the amount of the fee treated as a Qualified Administrative Cost does not exceed the lesser of (a) \$37,000, or such higher amount as determined and published by the Internal Revenue Service as the "cost of living adjustment" for the calendar year in which the Guaranteed Investment Contract is acquired and (b) 0.2% of



the Computational Base or, if more, \$4,000, or such higher amount as determined and published by the Internal Revenue Service as the “cost of living adjustment” for the calendar year in which the Guaranteed Investment Contract is acquired and (2) the aggregate amount of broker’s commissions or similar fees with respect to all Guaranteed Investment Contracts and Nonpurpose Investments acquired for a yield-restricted defeasance escrow purchased with Gross Proceeds of the Issue treated as Qualified Administrative Costs does not exceed a cap of \$103,000, or such higher amount as determined and published by the Internal Revenue Service as the “cost-of-living adjustment” for the calendar year in which the Guaranteed Investment Contract is acquired less the portion of such cap, if any, used in prior years with respect to the Issue.

## COMPLIANCE AND AMENDMENT

### COMPLIANCE.

The Issuer, Trustee or Rebate Analyst, as applicable, shall take all necessary steps to comply with the requirements of these Instructions in order to ensure that interest on the Issue is excluded from gross income for federal income tax purposes under Section 103(a) of the Code. However, compliance shall not be required in the event and to the extent stated therein the Issuer and the Trustee receive a Bond Counsel’s Opinion that either (A) compliance with such requirement is not required to maintain the exclusion from gross income for federal income tax purposes of interest on the Issue or (B) compliance with some other requirement in lieu of such requirement will comply with Section 148(f) of the Code, in which case compliance with the other requirement specified in the Bond Counsel’s Opinion shall constitute compliance with such requirement.

### LIABILITY.

If for any reason any requirement of these Instructions is not complied with, the Issuer and the Trustee, if applicable, shall take all necessary and desirable steps to correct such noncompliance within a reasonable period of time after such noncompliance is discovered or should have been discovered with the exercise of reasonable diligence. The Trustee shall have no duty or responsibility to independently verify any of the Issuer’s, or the Rebate Analyst’s, calculations with respect to the payments of the Rebate Amount due and owing to the United States. Under no circumstances whatsoever shall the Trustee be liable to the Issuer, any bondholder or any other person for any inclusion of the interest on the Issue in gross income for federal income tax purposes, or any claims, demands, damages, liabilities, losses, costs or expenses resulting therefrom or in any way connected therewith, so long as the Trustee acts only in accordance with these Instructions and the operative documents pertaining to the Issue.

(End of Attachment C-2)

**NOTE: 3.1 REQUIRES IDENTIFICATION OF RESPONSIBLE PERSON.**

**Attachment C-3  
to Tax Compliance Certificate**

**USE OF PROCEEDS CHECKLIST AND  
REMEDIAL ACTION INSTRUCTIONS FOR NONQUALIFIED BONDS  
(Governmental Use Bonds)**

The Issuer certifies in the Tax Compliance Certificate (“Certificate”) that it will spend the Gross Proceeds of the Issue and use the facilities financed with those Gross Proceeds (“Bond-Financed Facilities”) in a manner that complies with the restrictions and requirements imposed by the Code and Regulations on Tax-Exempt Bonds. The Issuer further certifies in the Certificate that it will comply with the remedial action requirements, if necessary, set forth in Regulations §1.141-12. These Instructions provide guidance for that compliance, and they are intended to satisfy Section 7.2.3.4.4 of the Internal Revenue Manual. Capitalized terms not defined in these Instructions have the meanings given in the Certificate or in Attachment A to that Certificate.

**PART I– USE OF PROCEEDS CHECKLIST**

**Use of Proceeds**

- Ensure there exists a clearly established accounting procedure for tracking investment and expenditures of Proceeds, including Investment Proceeds.
- At or shortly after issuance of the Issue, allocate Proceeds to reimbursement of prior expenditures, as appropriate.
- Ensure that a final allocation of Proceeds (including Investment Proceeds) to qualifying expenditures is made if Proceeds are to be allocated to Project expenditures on a basis other than “direct tracing” (direct tracing means treating the Proceeds as spent as shown in the accounting records for Proceeds draws and Project expenditures). An allocation other than on the basis of “direct tracing” is often made to reduce the Private Business Use (see Section 2, below) of Proceeds that would otherwise result from “direct tracing” of Proceeds to Project expenditures. This allocation must be made within 18 months after the later of the date the expenditure was made or the date the Project was placed in service, but not later than five years and 60 days after the Issuance Date of the Issue or 60 days after the Issue is retired. Bond counsel can assist with the final allocation of Proceeds to Project costs.
- Maintain careful records of all Bond-Financed Facilities and other costs (e.g., Issuance Costs, credit enhancement and capitalized interest) and uses (e.g., deposit to reserve fund) for which Proceeds were spent or used. These records should be maintained separately for each issue of Tax-Exempt Bonds.
- On at least an annual basis, identify all current and contemplated uses of Bond-Financed Facilities and confer as necessary with Bond Counsel to ensure that the use of the

Bond-Financed Facilities complies with the covenants and restrictions set forth in the Certificate.

### **Monitoring Private Business Use**

Before entering into any new management, service, or research agreements described in 2.3.3 and 2.3.4, below, engage Bond Counsel to review the agreements to determine whether they result in Private Business Use.

Analyze at least annually any Private Business Use of Bond-Financed Facilities to determine whether the 5% or 10% limitation, as applicable, on Private Business Use of Proceeds is exceeded. Contact Bond Counsel if this limit is exceeded.

Maintain copies of all of the following contracts or arrangements (or, if no written contract exists, maintain detailed records of the following contracts or arrangements) with a Private Person:

Sales of Bond-Financed Facilities.

Leases of Bond-Financed Facilities.

Management or service contracts relating to Bond-Financed Facilities.

Research contracts under which a Private Person sponsors research in Bond-Financed Facilities.

Any other contracts involving “special legal entitlements” (such as naming rights or exclusive provider arrangements) granted to a Private Person with respect to Bond-Financed Facilities.

Each of the foregoing contracts or arrangements may result in Private Business Use of the Bond-Financed Facilities. Consult with Bond Counsel to undertake any necessary remedial actions, discussed below, in respect of “nonqualified bonds” of the Issue. If a remedial action is not available, consult with Bond Counsel regarding the potential application of the voluntary closing agreement program maintained by the Internal Revenue Service.

### **3. Responsible Person, Training and Record Retention**

3.1 The person(s) who hold the following title(s) shall be responsible for monitoring the use of Proceeds and the existence of any Private Business Use of Bond-Financed Facilities, as set forth in these Instructions: **[INSERT TITLE]**

3.2 The person(s) responsible for monitoring the use of Proceeds and the existence of any Private Business Use of Bond-Financed Facilities shall receive appropriate training regarding the Issuer’s accounting systems (including entries for the expenditure of Proceeds on Bond-Financed Facilities), contract intake system, facilities management and other systems that track the expenditure and use of Proceeds.

3.2.1 This training shall occur when a new individual assumes the responsibilities described in these Instructions.

3.2.2 Training shall be available to ensure current knowledge of the Issuer’s existing accounting, contract, facilities management and other systems that involve Tax-Exempt Obligations and exposure to any pertinent additional systems that are subsequently implemented by the Issuer.

- 3.3 The records required to be kept under these Instructions shall be maintained in paper or electronic format until the date three (3) years after the last bond of the applicable issue of Tax-Exempt Obligations (“Issue”) has been retired; if any portion of such Issue is refunded by a Refunding Issue, such records shall be maintained until the later of the date three (3) years after the last bond of the Issue has been retired or the date three (3) years after the last bond of the Refunding Issue has been retired.

## **PART II – REMEDIAL ACTION**

1. **Deliberate Action.** A “deliberate action” (“Deliberate Action”) is any action taken after the Issuance Date by the Issuer that is within the Issuer’s control and that causes:

more than 5% or 10%, as applicable, of the Proceeds to be used for a Private Business Use (the “Private Business Use Limit”), and more than 5% or 10%, as applicable, of either the principal of or interest on the Issue to be secured by or derived, directly or indirectly, from Private Security or Payments (collectively with the Private Business Use Limit, the “Private Business Limits”); or  
the amount of Proceeds that are to be used to make or finance loans to any Private Person, in the aggregate, to exceed the lesser of 5% of such Proceeds or \$5,000,000 (“Private Loan Limit”).

An action by the Issuer is not a Deliberate Action if the action was (i) the result of an involuntary conversion of all or a portion of the Project, or (ii) an action that was taken in response to a regulatory directive made by the federal government (see Regulations §1.141-2(d)(3)(ii)).

**Timely Reallocation.** If a Deliberate Action occurs, the Issuer may reallocate the Proceeds that had been allocated to the Project or portion thereof as to which the Deliberate Action occurred to other permitted uses not later than 18 months after the later of (i) the date of the expenditure to which the Proceeds were originally allocated or (ii) the placed in service date of the Project or portion thereof to which such Proceeds were originally allocated, but not later than 60 days after the fifth anniversary of the Issuance Date or the retirement of the Issue, if earlier (see Regulations §§1.141-6(a) and 1.148-6(d)(1)(iii)).

### **Remedial Action.**

Effect. A “remedial action” cures the use of Proceeds that caused the Private Business Use limit or the Private Loan Limit to be exceeded. A remedial action will not impact the amount of Private Security or Payments.

Ability to Use. In order to achieve either or both of the effects set forth in 3.1, five conditions must be satisfied (see 3.3) and one of three alternative remedial actions must be taken (see 3.4).

Conditions. The Issuer may use a “remedial action” only if the following five conditions are satisfied:

On the Issuance Date, the Issuer did not reasonably expect either the Private Business Limits or the Private Loan Limit to be exceeded at any time while any portion of the Issue was outstanding.

On the Issuance Date, the weighted average maturity of the Issue did not exceed 120% of the weighted average of the reasonably expected economic lives of the assets comprising the Project.

Unless the Project is being used for an alternative use (as described in 3.4.3 below), the new user of all or any portion of the Project must have paid fair market value therefor.

The Issuer must treat any “disposition proceeds,” which are all proceeds received from the sale, transfer or other disposition of all or a portion of the Project, as Gross Proceeds for arbitrage (Section 148) purposes.

Prior to the Deliberate Action, the Proceeds were used for a governmental purpose unless the remedial action to be taken is described in 3.4.1.

#### Types of Remedial Action.

*Redemption of Non-Qualified Bonds.* The “non-qualified bonds” are the portion of the Issue allocable to the Deliberate Action that causes the Issue to exceed the Private Business Limits or the Private Loan Limit. In general, within 90 days after the Deliberate Action, either the non-qualified bonds must be redeemed or an escrow that defeases the non-qualified bonds to their earliest redemption date must be established. A defeasance escrow may not be used, however, if the period between the Issuance Date and the earliest redemption date of the non-qualified bonds is more than 10.5 years; in such case, a closing agreement with the Internal Revenue Service (“IRS”) may be necessary. If a defeasance escrow is established, the Issuer must notify the IRS within 90 days of its establishment. Notwithstanding the general requirement stated above that all non-qualified bonds must be redeemed or defeased, if the disposition proceeds consist exclusively of cash, it is sufficient that the disposition proceeds be used to redeem or defease a pro rata portion of the non-qualified bonds.

*Alternative Use of Disposition Proceeds.* The Issue satisfies the requirements of this remedial action if:

- all disposition proceeds consist exclusively of cash;
- the Issuer reasonably expects to spend the disposition proceeds within two years after the date of the Deliberate Action;
- the disposition proceeds are treated as Proceeds for purposes of the Private Business Limits and the Private Loan Limit, the use of the disposition proceeds does not cause the Issue to exceed these Limits, and the Issuer does not take a subsequent Deliberate Action that causes either of these Limits to be exceeded;
- any unspent disposition proceeds must be used to redeem all or a portion of the Issue; and
- if the disposition proceeds are to be used by a 501(c)(3) Organization, from the date of the Deliberate Action, the non-qualified bonds must constitute Qualified 501(c)(3) Bonds and be treated as reissued for that purpose.

*Alternative Use of Project.* The Issuer satisfies the requirements of this remedial action if:

the portion of the Project that is transferred or disposed of could have been financed by another type of Tax-Exempt Bond;

the Deliberate Action taken by the Issuer did not involve a purchase financed by another issue of Tax-Exempt Bonds; and

any disposition proceeds resulting from the Deliberate Action (other than those related to the provision of services) are used to pay Debt Service on the Issue on the next available payment date or, within 90 days of receipt, are deposited into a Yield-restricted escrow to be used to pay Debt Service on the next available payment date.

Under these circumstances, the non-qualified bonds are treated as re-issued as of the date of the Deliberate Action, and must remain qualifying Tax-Exempt Bonds throughout their term.

### **Examples of Deliberate Action.**

Lease to a Private Person. A Deliberate Action generally occurs if the Issuer (i) leases space within the Project to a Private Person and that use, when added to any other Private Business Use, exceeds 5% or 10%, as applicable, of the Bond-Financed Facilities so that more than 5% or 10%, as applicable, of the Proceeds of the Issue are considered used for a Private Business Use and (ii) receives rent under that lease that, when added to any other Private Security or Payments, exceeds 5% or 10%, as applicable, of the Proceeds.

Service Contract. A Deliberate Action generally occurs if (i) (1) the Issuer enters into a “service contract” (defined below) with a Private Person, (2) that Service Contract will be performed (or will be deemed to be performed) within the Project, (3) that Service Contract does not satisfy the requirements set forth in Revenue Procedure 97-13 (or its successor), and (4) that use, when added to any other Private Business Use of the Project, exceeds 5% or 10%, as applicable, of the Proceeds, and (ii) payments received or deemed received with respect to the Project in which the Service Contract is performed, when added to any other Private Security or Payments, exceed 5% or 10%, as applicable, of the Proceeds. A service contract is an arrangement under which services are to be provided by a Private Person involving the use of all or any portion of, or any function of, the Bond-Financed Facilities (for example, management services for an entire facility or a specific department of a facility).

Sale of Project. A Deliberate Action generally occurs if the Issuer sells all or more than 5% or 10%, as applicable, of the Bond-Financed Facilities to a Private Person, which results in Private Business Use, and receives commensurate disposition proceeds for that sale.

Loan to a Private Person. A Deliberate Action generally occurs if the Issuer loans more than \$5,000,000 of the Proceeds to a Private Person because that loan will cause the Issue to exceed the Private Loan Limit.

(End of Attachment C-3)