

## **POST ISSUANCE COMPLIANCE PROCEDURES**

### **JEFFERSON COUNTY INDUSTRIAL DEVELOPMENT AGENCY Post-Issuance Tax Compliance Procedures For Conduit Tax-Exempt Bonds**

**Adopted December 4, 2014 – Reviewed October 1, 2020**

The purpose of these Post-Issuance Tax Compliance Procedures is to establish post issuance policies and procedures in connection with tax-exempt conduit bonds (the "Bonds") issued by the Jefferson County Industrial Development Agency (the "Issuer") so that all applicable post-issuance requirements of federal income tax law needed to maintain the tax-exempt status of the Bonds are met. The Bonds are qualified private activity bonds issued by the Issuer the proceeds of which are made available to companies owning or operating a qualified facility (each, a "Company" and collectively, "Companies"). The Bonds are repaid from payments on the project investment funded with Bond proceeds. The Issuer reserves the right to use its discretion as necessary and appropriate to make exceptions or request additional provisions as circumstances warrant. The Issuer also reserves the right to change these policies and procedures from time to time.

#### **General**

Inasmuch as the Issuer is a responsible conduit issuer authorizing the issuance of Bonds for Companies, the Issuer now identifies post-issuance tax compliance procedures for all Bonds authorized by the Issuer on behalf of Companies, as well as the Issuer's expectations and requirements for all such Companies of Bond proceeds concerning these procedures.

#### **Post-Issuance Compliance Requirements**

##### **A. External Advisors / Documentation**

The Issuer and the Company shall consult with bond counsel and other legal counsel and 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 shall be documented in the tax compliance agreement ("Tax Agreement") and/or other documents pertaining to the Bonds that are finalized in connection with the issuance of the Bonds. Those requirements and procedures shall address future compliance with applicable arbitrage rebate requirements, ongoing limitations on private activities at facilities financed with the Bonds during (and in some cases beyond) the period that the Bonds or any bonds refunding the Bonds are outstanding, as well as applicable remediation provisions, and all other applicable post-issuance requirements of federal tax law.

The Company 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. Such requirement shall be documented in the Tax Agreement and/or other documents pertaining to the Bonds which are executed in connection with the issuance of the Bonds.

The Issuer shall encourage or require the Company to engage expert advisors (each a "Rebate Service Provider") to assist in the calculation of arbitrage rebate payable in respect of the investment of Bond proceeds in the manner more fully set forth below.

Unless otherwise provided by the indenture or similar document 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 Company. The Company 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 Issuer if it so requests.

#### B. Arbitrage Rebate and Yield

The Company shall be responsible for compliance with all requirements under federal arbitrage laws. In particular, the Company is responsible for:

- 1) determining the likelihood of complying with an arbitrage rebate exemption;
- 2) if necessary, engaging the services of a Rebate Service Provider and, prior to each rebate calculation date, delivering or causing the trustee to deliver periodic statements concerning the investment of Bond proceeds to the Rebate Service Provider;
- 3) providing to the Rebate Service Provider additional documents and information reasonably requested by the Rebate Service Provider;
- 4) monitoring efforts of the Rebate Service Provider;
- 5) assuring payment of required rebate amounts, if any, no later than 60 days after each 5-year anniversary of the issue date of the Bonds, and no later than 60 days after the last Bond of each issue is redeemed;
- 6) during the construction period of each capital project financed in whole or in part by Bonds, monitoring the investment and expenditure of Bond proceeds and consulting with the Rebate Service Provider to determine compliance with any applicable exceptions from the arbitrage rebate requirements during each 6-month spending period up to 6 months or 18 months, as applicable, following the issue date of the Bonds;
- 7) establishing procedures to ensure all investments are made at fair market value, and
- 8) retaining copies of all arbitrage reports and investment records, and trustee statements as described below under "Record Keeping Requirements" and, upon request, providing such copies to the Issuer.

For Bonds issued after the date hereof, the Company, in the Tax Agreement 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.

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

The Company shall be responsible for:

- 1) monitoring the use of Bond proceeds (including investment earnings and including 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 Agreement relating to the Bonds;

- 2) 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";
- 3) consulting with bond counsel and other legal counsel and advisers 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 Agreement relating to the Bonds;
- 4) conferring at least annually with personnel responsible for the management, administration or use of Bond-financed or refinanced assets to identify and discuss any existing or planned use of Bond-financed or refinanced assets, so as to ensure that those uses are consistent with all covenants and restrictions set forth in the Tax Agreement relating to the Bonds;
- 5) to the extent that the Company 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 advisers to determine a course of action to avoid or prevent this violation or to undertake a remedial action, pursuant to the applicable section(s) of the Treasury Regulations (i.e., Sections 1.141-12, 1.142-2, 1.144-2 and 1.145-2), if such counsel advises that such action is necessary to preserve the tax-exempt status of the Bonds;
- 6) with respect to facilities financed with exempt facility bonds or qualified small issue manufacturing bonds, adopting any such procedures that bond counsel deems appropriate to periodically assess whether such facility continues to qualify as an exempt facility or a qualified manufacturing facility, as applicable; and
- 7) with respect to facilities financed with qualified small issue manufacturing bonds, track all capital expenditures paid or incurred with respect to the bond-financed facility and all other facilities in the same incorporated municipality during the six-year period commencing three (3) years prior to the date of issue of the Bonds and ending three (3) years after such date, to ensure that such expenditures do not exceed \$20,000,000, in accordance with Section 144(a)(4) of the Internal Revenue Code.

For Bonds issued after the date hereof, the Company, in the Tax Agreement 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.

#### D. Reporting Requirement of the Company

Following the adoption of these procedures, the Issuer will require all Companies to file a certificate that identifies all assets financed with the bond issue (the "Completion Certificate") with the Issuer within six months after all Bond proceeds deposited in the Construction Fund, Project Fund or similar fund or otherwise to be advanced to pay the capital costs of the facilities being financed and all investment earnings thereon but in no event later than on the third anniversary date of issuance of the Bonds. The form of the Completion Certificate to be provided by the Companies is attached hereto as **Schedule I**. The Completion Certificate identifies total

proceeds spent (including investment earnings) and allocates those funds to expenditures for capital assets.

In respect to Bonds issued after the adoption of these procedures, after filing the Completion Certificate, the Company shall file an annual update with the Issuer that either identifies any changes to the Completion Certificate or certifies that nothing has changed (assets sold, new contract, etc.) (the "Annual Certificate"). The form of the Annual Certificate to be filed by the Companies is attached hereto as **Schedule II**. In the event that such report indicates a new private use, it shall be accompanied by either (a) a certification of the Company that such use, together with other private uses, will not result in private use in excess of five percent (5%) of the proceeds of the Bonds; or (b) an opinion of bond counsel that such use will not cause the Bonds financing such project to become taxable or appropriate remedial action has been taken to preserve the bonds status as tax-exempt bonds.

In respect to Bonds issued after the adoption of these procedures, the Company shall supply the Issuer with all reports establishing that the proceeds have satisfied a spending exception to rebate and all reports prepared by the Rebate Servicer Provider that calculate rebate liability. Such reports shall include Evidence of Rebate Calculation and payment (copy of check, if payment required).

#### E. Recordkeeping Requirement

The Company 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:

- 1) a copy of the Bond closing transcript(s) and other relevant documentation delivered to the Company at or in connection with closing of the issue of Bonds;
- 2) 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 and the Final Completion Report filed pursuant to the Lease Agreement, Leaseback Agreement, Installment Sale Agreement, or similar agreement; and
- 3) 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.

#### F. Issuer Requirements

The Issuer shall:

- 1) cause bond counsel to prepare the initial Form 8038 to be filed in connection with the issuance of the Bonds and shall cause such Form to be duly filed;
- 2) retain a copy of the Bond closing transcript; and
- 3) retain a copy of all certificates and other documents supplied to the Issuer by the Company in connection with the Bonds.

The Issuer shall be responsible for the maintenance of such records for the term of each issue of Bonds (including refunding Bonds, if any) plus at least three years.

**Schedule I**

**PROJECT COMPLETION CERTIFICATE**

(To be filed 3 years after issuance and updated annually thereafter)

Name of Bonds: \_\_\_\_\_  
 Company: \_\_\_\_\_  
 Closing Date: \_\_\_\_\_  
 Project Description: \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

I am a representative of the above-named Company and I hereby certify to the Jefferson County Industrial Development Agency (the "Issuer") that all of the proceeds of the above-named Bonds have been expended and the Construction Fund/Project Fund should be closed.

I have attached Exhibit A hereto to identify the various assets paid for or constructed with proceeds of the Bonds and the investment earnings thereon ("Bond-Financed Assets"). All invoices representing costs of the Project should be retained by the Company in accordance with the retention policy attached as Schedule II hereto.

In addition, I hereby certify as follows:

\_\_\_\_\_ Bond Proceeds were the only source of funds used in the Project; OR

\_\_\_\_\_ Other sources of funds were contributed to Project Costs. Describe what other funds were utilized, what portion of the Project those other funds financed and what allocation method was used.

If a qualified 501(c)(3) bond issue:

\_\_\_\_\_ 100% of the Project is utilized by a governmental entity or a qualified 501(c)(3) organization in furtherance of its exempt purposes (i.e., no leases or non-qualifying management agreements, etc.); OR

\_\_\_\_\_ A portion of the Project is leased to, managed or used by a non-exempt person (a "mixed-use project"). If true, identify user and its actual use on attachment hereto.

If a governmental bond issue:

\_\_\_\_\_ 100% of the Project is utilized by a governmental entity organization in furtherance of its exempt purposes (i.e., no leases or non-qualifying management agreements, etc.); OR

\_\_\_\_\_ A portion of the Project is leased to, managed or used by a non-governmental entity (a mixed-use project). If true, identify user and its actual use on attachment hereto.

If an exempt facility issue or qualified small issue manufacturing issue:

\_\_\_\_\_ 100% of the Project is in use for its intended purpose; OR

\_\_\_\_\_ A portion of the Project is not in use for the intended purpose. If true, please describe.

If a qualified small issue manufacturing issue, provide a listing of all capital expenditures paid or incurred with respect to the bond-financed facility (listed by principal user and related person) and all other facilities in the same incorporated municipality during the six-year period commencing three (3) years prior to the date of issue of the Bonds and ending three (3) years after such date. Refer to the Schedule of Small Issue Capital Expenditures contained in the Tax Compliance Agreement.

**Schedule II**

**ANNUAL PROJECT COMPLIANCE CERTIFICATE**

Name of Bonds: \_\_\_\_\_  
 Company: \_\_\_\_\_  
 Closing Date: \_\_\_\_\_  
 Project Description: \_\_\_\_\_  
 \_\_\_\_\_

I am a representative of the above-named Company and I hereby certify to the Jefferson County Industrial Development Agency (the "Issuer") that the following information in respect of the above-named Bonds is true.

A. All of the assets identified on the Project Completion Certificate previously filed with the Issuer are still in service, are still used by the Company in compliance with the terms of the Tax Agreement and have not otherwise been disposed of, otherwise any changes are reflected in the attached Exhibit A.

B. If a qualified 501(c)(3) issue:  
 \_\_\_\_\_ 100% of the Project is utilized by a governmental entity or a qualified 501(c)(3) organization in furtherance of its exempt purposes (no leases, non-qualifying management agreements, etc.) since Project completion; OR

\_\_\_\_\_ A portion of the Project is leased to, managed or used by a non-exempt person (a "mixed-use project") for any period of time since the last certificate filed with the Issuer. If true, identify user and its actual use on attachment hereto.

C. If a governmental issue:  
 \_\_\_\_\_ 100% of the Project is utilized by a governmental entity (no leases, non-qualifying management agreements, etc.) since Project completion; OR

\_\_\_\_\_ A portion of the Project is leased to, managed or used by a non-governmental entity (a "mixed-use project") for any period of time since the last certificate filed with the Issuer. If true, identify user and its actual use on attachment hereto.

If an exempt facility issue or qualified small issue manufacturing issue:

\_\_\_\_\_ 100% of the Project is in use for its intended purpose; OR

\_\_\_\_\_ A portion of the Project has been sold or been taken out of service. If true, please describe.