

TAX-EXEMPT BOND POST-ISSUANCE COMPLIANCE POLICY

This Tax-Exempt Bond Post-Issuance Compliance Policy memorializes policies and procedures to monitor ongoing compliance of revenue bonds (“*Tax-Exempt Bonds*”) issued by the Onondaga County Industrial Development Agency (the “*Issuer*”) on behalf of conduit borrowers, the interest on which is excludable from gross income of the holder for purposes of federal taxation pursuant to Section 103 and Sections 142 and 144 of the Internal Revenue Code of 1986, as amended (the “*Code*”), and the regulations promulgated thereunder (“*Treasury Regulations*”).

The Code and Treasury Regulations require ongoing compliance with certain requirements after issuance of Tax-Exempt Bonds in order for the interest on those Tax-Exempt Bonds to be and remain excludable from gross income of the holder. The Issuer is a conduit issuer which issues Tax-Exempt Bonds and makes the proceeds of those Tax-Exempt Bonds available to conduit borrowers (each a “*Borrower*”) that own or operate eligible facilities. As a responsible conduit issuer, the Issuer identifies (1) the following procedures it will employ to monitor post-issuance compliance of its Tax-Exempt Bonds with the Code and Treasury Regulations, and (2) the requirements to be imposed on, and expectations of the Issuer for, Borrowers with respect to the Agency’s Tax-Exempt Bonds. It is the policy of the Issuer to document, with the advice of Bond Counsel, in a tax compliance agreement (a “*Tax Compliance Agreement*”) to be entered into by each Borrower requirements and procedures necessary or appropriate so that interest on the Tax-Exempt Bonds will continue to qualify for tax-exempt status.

The Issuer recognizes that it is critical to assign responsibility for post-issuance compliance and implementation of this Policy to a trained staff member and to ensure that sufficient information is maintained to ensure that responsibility for monitoring post-issuance compliance in accordance with this Policy, the Code and Treasury Regulations is seamless and continues uninterrupted even when a new staff member assumes responsibility for it.

1. Responsibility for Implementation and Compliance.

(a) *Responsibility of Board of Directors and Designation of Staff Member.* The Board of Directors of the Issuer (the “*Board*”) has ultimate responsibility and oversight for determining that this Policy is complied with and for determining how to proceed in instances in which non-compliance is suspected or discovered. Nate Stevens (“*Designated Tax Compliance Officer*”) will be the Issuer staff member charged with implementing this Policy and monitoring compliance of Tax-Exempt Bonds with the post-issuance requirements of the Code and Treasury Regulations and performance and observance by Borrowers of this Policy and the respective Tax Compliance Agreement. Post-issuance requirements relate generally to the expenditure and investment of Tax-Exempt Bond proceeds, the use or sale of the project financed with Tax-Exempt Bonds and recordkeeping and reporting requirements.

(b) Consultation with Bond Counsel and Others. The Issuer maintains an ongoing relationship with Bond Counsel and other advisors to serve as a resource for education and advice regarding compliance of Tax-Exempt Bonds with the Code and Treasury Regulations. The Designated Tax Compliance Officer may consult with Bond Counsel or other professionals as he/she deems appropriate with respect to implementing this Policy and interpreting the Code and Treasury Regulations.

(c) Reporting to Board. The Designated Tax Compliance Officer will report to the Board at the August 2019 meeting on the status of implementation of this Policy and thereafter annually at the January meeting regarding compliance with this Policy. The Designated Tax Compliance Officer will advise the Board as needed upon discovery of non-compliance or a need for remedial action by a Borrower. The Designated Tax Compliance Officer will, in consultation with Bond Counsel, keep the Board informed of changes in the Code and Treasury Regulations and prudent practices that affect this Policy.

(d) Responsibility of Borrowers. The Issuer recognizes that principal responsibility for post-issuance compliance rests with the conduit borrowers. The Tax Compliance Agreement will establish the duties and responsibility of the Borrower for ongoing compliance with the Code and Treasury Regulations, including, without limitation, arbitrage, rebate and change in use of Tax-Exempt Bond-financed facilities. The Borrower will identify an employee responsible for monitoring compliance in the Tax Compliance Agreement. Promptly following the issuance of Tax-Exempt Bonds, the Borrower will covenant in the Tax Compliance Agreement that the governing body of each Borrower will adopt policies and procedures with respect to monitoring compliance with the Tax Compliance Agreement and the requirements of the Code and Treasury Regulations throughout the entire period that the Tax-Exempt Bonds remain outstanding, including, without limitation, the requirements under Code Sections 141 (if applicable) and 142 (eligible use) and 148 (arbitrage and rebate) and if applicable, Treasury Regulation Section 1.141-12 (change in use). The Borrower will furnish to the Issuer a copy of the post-issuance compliance policies and procedures approved by the Borrower's governing body and will promptly notify the Issuer in writing of any instances of non-compliance of the Tax Compliance Agreement or the requirements of the Code and Treasury Regulations.

2. Closing Documents.

a. Tax Document Review. The Designated Tax Compliance Officer will review the form of tax compliance agreement with Bond Counsel and ensure that the agreement contains covenants that require Borrowers to comply with this Policy, including engagement of a rebate analyst. No changes to the foregoing covenants are permitted without prior approval of the Designated Tax Compliance Officer.

b. Assembly of Tax Documents. The Designated Tax Compliance Officer will maintain a CD or bound volume of the Transcript of Proceedings for all Tax-Exempt Bonds and will keep all post-closing documentation as a supplement to the Transcript for each issuance.

(c) **Form 8038 Filing.** The Designated Tax Compliance Officer will confirm filing of the Form 8038 by Bond Counsel no later than the fifteenth day of the second calendar month after the close of the calendar quarter during which the Tax-Exempt Bonds were issued.

(d) **Retention.** All documentation relating to the Tax-Exempt Bonds assembled pursuant to the above requirements will be subject to the General Recordkeeping and Record Retention Requirements set forth below.

(e) **Coordination with Bond Trustee and State Reporting.** The Designated Tax Compliance Officer will coordinate, as necessary, recordkeeping and reporting under this Policy with the reporting by the Bond Trustee, if any, of the Tax-Exempt Bonds and with any reporting requirements of the State of New York.

3. Responsibilities of Designated Tax Compliance Officer.

a. **Adoption by Borrower of Post-Issuance Compliance Policy.** The Designated Tax Compliance Officer will ensure that the Borrower timely adopts and submits its Post-Issuance Compliance Policy in accordance with this Policy and the applicable Tax Compliance Agreement. The Designated Tax Compliance Officer will review the Borrower's policy and as necessary consult with the Borrower and Bond Counsel to address any deficiencies or questions.

b. **Arbitrage, Rebate and Use of Tax-Exempt Bond Proceeds.** The Designated Tax Compliance Officer will establish a calendar of due dates for the completion date, each rebate calculation date and annual certifications, if any, to track the Borrower's delivery of the required forms and reports. To the extent that the Issuer discovers that any applicable tax requirements regarding arbitrage and rebate or use of Tax-Exempt Bond proceeds will or may be violated, the Issuer will promptly consult with Bond Counsel and other legal counsel and advisers to determine a course of action.

c. **Change in Use of Tax-Exempt Bond-Financed Facility.** To the extent that the Issuer discovers that any applicable tax restrictions regarding use of Tax-Exempt Bond proceeds and Tax-Exempt Bond-financed or refinanced assets will or may be violated, the Issuer will promptly consult with Bond Counsel and other legal counsel and advisers to determine a course of action to remediate all nonqualified bonds, if such counsel advises that a remedial action is necessary.

4. Compliance Obligations of Borrowers.

a. **Arbitrage, Rebate and Yield.** It is the Issuer's policy that each Borrower will be responsible for compliance with all requirements under Section 148 of the Code and the Treasury Regulations relating to arbitrage, rebate and yield restriction on investment of proceeds with respect to the Tax-Exempt Bonds issued on behalf of that Borrower. Such responsibilities will be set forth in the Tax Compliance Agreement and will include, without limitation:

- preparing or causing the Bond Trustee to prepare regular, periodic statements regarding the investments and transactions involving bond proceeds, retaining these statements in accordance with the General Recordkeeping and Record Retention Requirements set forth below and furnishing copies of these statements when requested by the Issuer;
- identifying the funds and accounts into which Tax-Exempt Bond proceeds are deposited and the types of expenditures permitted and expected to be made from such funds and account and any prohibited expenditures from any fund or account;
- determining the dates by which Tax-Exempt Bond proceeds must be spent or become subject to arbitrage yield restrictions and all interim dates by which funds and/or accounts must be checked to ensure compliance with the applicable expenditure deadlines;
- engaging the services of a rebate analyst and, prior to each rebate calculation date, causing the Bond Trustee to deliver periodic statements concerning the investment of Tax-Exempt Bond proceeds to the rebate analyst, providing to the rebate analyst additional documents and information reasonably requested by the rebate analyst, and monitoring efforts of the rebate analyst;
- not later than 30 days after each rebate calculation date, delivering to the Issuer (with a copy to Bond Counsel) (A) all Investment Records (as defined below) for the immediately preceding rebate calculation period, and (B) a copy of an arbitrage rebate analysis prepared by the rebate analyst. If the Borrower determines that no rebate installment is payable to the United States, it will advise the Issuer in writing of its determination. If the Borrower determines that a rebate installment is payable to the United States, the Borrower will, at the time it delivers the Investment Records and rebate analysis, deliver to the Issuer a properly completed IRS form 8038-T, and a check or money order, payable to “United States Treasury” in the amount of the rebate installment (and any interest and penalty due thereon);
- during the construction period of each project financed in whole or in part by Tax-Exempt Bonds, monitoring the investment and expenditure of Tax-Exempt Bond proceeds and consulting with the rebate analyst to determine compliance with any applicable exceptions from the arbitrage rebate requirements during each six (6) month spending period up to six (6) months, eighteen (18) months or two (2) years, as applicable, following the issue date of the Tax-Exempt Bonds;

- retaining copies of all arbitrage reports and trustee statements as described below under “General Recordkeeping and Record Retention Requirements” and, upon request, providing such copies to the Issuer;
- consulting with the Designated Tax Compliance Officer from time to time and as necessary with respect to any questions or instances of non-compliance.

b. *Use of Tax-Exempt Bond Proceeds.* It is the Issuer’s policy that each Borrower will be responsible for compliance with all requirements under the Code and the Treasury Regulations relating to use of proceeds with respect to the Tax-Exempt Bonds issued on behalf of that Borrower. Such responsibilities will be set forth in the Tax Compliance Agreement and will include, without limitation:

- monitoring the use of Tax-Exempt Bond proceeds (including investment earnings and including reimbursement of expenditures made before Tax-Exempt Bond issuance) and the use of Tax-Exempt Bond-financed or refinanced assets (*e.g.*, facilities, furnishings or equipment) throughout the term of the Tax-Exempt Bonds to ensure compliance with covenants and restrictions set forth in the Tax Compliance Agreement relating to the Tax-Exempt Bonds;
- maintaining records identifying the assets or portion of assets that are financed or refinanced with proceeds of each issue of Tax-Exempt Bonds (including investment earnings and including reimbursement of expenditures made before Tax-Exempt Bond issuance), including a final allocation of Tax-Exempt Bond proceeds as described below under “General Recordkeeping and Record Retention Requirements”;
- to the extent that Tax-Exempt Bond proceeds were used to acquire an existing building, confirming that qualified rehabilitation expenditures in an amount equal to at least fifteen percent (15%) of the amount of such proceeds were made no later than twenty-four (24) months after the later of (i) the date of issuance of the Tax-Exempt Bonds, or (ii) the date of acquisition of the building;
- confirming that less than twenty-five percent (25%) of Tax-Exempt Bond proceeds were used to acquire land;
- with respect to exempt facilities described in Section 142 of the Code, confirming that not less than 95% of the net proceeds of the Tax-Exempt Bonds were used to provide such facility as more fully described in the applicable Tax Compliance Agreement; and

- no later than twelve (12) months after the date the bond-financed facilities are placed in service or, if earlier, six (6) months after the date of the last draw of Tax-Exempt Bond proceeds in the project or construction fund, providing to the Issuer a certificate of actual qualified costs and use of proceeds.

c. *Private Use and Change in Use of Tax-Exempt Bond-Financed Facility.*

It is the Agency’s policy that each Borrower will be responsible for compliance with all applicable requirements under Sections 142 and 144 of the Code and the Treasury Regulations relating to private use and change in use of facilities financed with proceeds of the Tax-Exempt Bonds issued on behalf of that Borrower. Such responsibilities will be set forth in the Tax Compliance Agreement and will include, without limitation:

- consulting with the Designated Tax Compliance Officer in the review of any change in use of Tax-Exempt Bond-financed or refinanced assets to ensure compliance with all covenants and restrictions set forth in the Tax Compliance Agreement relating to the Tax-Exempt Bonds;
- conferring at least annually with personnel responsible for Tax-Exempt Bond-financed or refinanced assets to identify and discuss any existing or planned use of Tax-Exempt Bond-financed or refinanced assets to ensure that those uses are consistent with all covenants and restrictions set forth in the Tax Compliance Agreement relating to the Tax-Exempt Bonds; and
- with respect to residential rental projects, filing the annual statements required by Section 142(d)(7) of the Code (currently IRS Form 8703), the annual certification provided to New York State Housing and Community Renewal (“HCR”) pursuant to 9 NYCRR § 2040.7 (certifying the Borrower’s compliance with Section 42 of the Code), if applicable, and any additional statements or certifications required by State or federal law and providing copies to the Issuer in a timely manner. Delivering to the Issuer a copy of any notification of non-compliance issued to it by HCR within five (5) business days of receipt thereof, together with its written proposal to correct such non-compliance; obtaining and maintaining on file an income certification from each qualifying tenant residing in the project, in the form and manner required by Treasury Regulation Section 1.42-5(b)(1) of the Code (the “*Eligibility Certification*”); and retaining the services of an independent monitor who or which is qualified to review the Eligibility Certifications and to verify the satisfaction of the occupancy restrictions applicable to the project (the “*Monitor*”). On or before the first day of the qualified project period (and within one calendar month after the anniversary date of such first day of the qualified project period),

submitting to the Issuer a Certification of Continuing Program Compliance executed by the Borrower stating the percentage of residential units of the bond-financed project which were occupied by qualifying tenants, and identifying the qualifying tenants.

5. General Recordkeeping and Record Retention Requirements.

The Borrower and, to the extent received by the Issuer, the Issuer will maintain records to support the representations, certifications and expectations set forth in the Tax Compliance Agreement until six (6) years after the last of the Tax-Exempt Bonds has been retired, and if any of the Tax-Exempt Bonds are refunded by the Issuer with proceeds of tax-exempt obligations other than the Tax-Exempt Bonds (the “*Refunding Obligations*”) until the later of six (6) years after the last of the Tax-Exempt Bonds has been retired or the date that is six (6) years after the last of the Refunding Obligations has been retired. The records that must be retained include, but are not limited to:

- a. the Transcript of Proceedings for the issuance of the Borrower’s Tax-Exempt Bonds;
- b. documentation evidencing compliance with this Policy and the Tax Compliance Agreement;
- c. documentation evidencing expenditure of the Tax-Exempt Bond Proceeds, including, without limitation, construction contracts, purchase orders, invoices, trustee requisitions and payment records, as well as documents relating to costs reimbursed with Tax-Exempt Bond proceeds and records identifying the assets or portion of assets that are financed or refinanced with Tax-Exempt Bond proceeds, including a final allocation of Tax-Exempt Bond proceeds;
- d. documentation evidencing the use of the bond-financed facilities by public and private entities (*e.g.*, management contracts, research agreements, leases, etc.);
- e. documentation evidencing the timing and allocation of expenditures of the Tax-Exempt Bond Proceeds;
- f. documentation evidencing all sources of payment or security for the Tax-Exempt Bonds;
- g. documentation pertaining to any investment of Tax-Exempt Bond Proceeds (“*Investment Records*”), including Bond Trustee statements and records of the purchase and sale of securities, SLG subscriptions, yield calculations for each class of investments, actual investment income received from the investment of Proceeds and rebate calculations;
- h. rebate calculations, rebate analyst reports, records of all amounts paid to the United States and any elections or revocations of elections and Forms 8038T; and

- i. with respect to residential rental projects, copies of the Forms 8703, Eligibility Certifications and Certifications of Continuing Program Compliance.

Adopted at the August 20, 2019
Meeting of the County of Onondaga IDA