

**POST-ISSUANCE COMPLIANCE POLICIES & PROCEDURES**  
**Town of Tolland, Connecticut**

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**I. Parties**

Compliance Coordinator:	Lisa A. Hancock, Director of Finance & Records
Bond Counsel:	Udike, Kelly & Spellacy, P.C.
Financial Advisor:	Phoenix Advisors

**II. Overview & Statement of Purpose**

The Town of Tolland, Connecticut (the “Town of Tolland” or the “Issuer”) from time to time issues tax-exempt bonds, notes or other obligations (“Obligations”), which are tax advantaged obligations that receive preferential tax treatment under federal tax law. In order for the interest on the Obligations to be and remain excluded from income of the holders of the Obligations (or for such Obligations to continue to receive preferential treatment) for federal income tax purposes, certain tax laws must be complied with. The Issuer makes certain representations and covenants in the Tax Regulatory Agreements, bond documents and certificates executed in connection with the issuance of its Obligations. These policies and procedures, dated and effective as referenced above, are intended ensure that the Issuer complies with the federal tax requirements regarding (i) the qualified use of the proceeds of its Obligations and the financed property and (ii) arbitrage yield restriction and rebate.

Securities and Exchange Commission Rule 15c2-12 (“Rule”) requires a Participating Underwriter (as defined in the Rule) to determine that an issuer has entered into an agreement to provide certain financial information and event disclosures to the market. The Issuer has entered into continuing disclosure agreements for the benefit of the beneficial owners of its Obligations (“Continuing Disclosure Agreements”), pursuant to which the Issuer agrees to provide, or cause to be provided, information in accordance with the requirements of Rule 15c2-12.

**III. Policies**

- A. Investment and Expenditure of Proceeds. The internal controls and accounting systems of the Town of Tolland will be capable of tracking the expenditure, investment and reinvestment of proceeds of Obligations issued by the Town of Tolland, and such amounts shall be tracked individually and be capable of designation in order that such amounts shall be attributable to specific issuances of Obligations. Appropriate coding

systems shall allow for the identification of facilities or property financed or refinanced by Obligations of the Issuer. It is intended that the procedures developed shall ensure that proceeds are expended for purposes authorized under applicable bond authorization documents and in compliance with Tax Regulatory Agreements of the Town of Tolland, including, without limitation, procedures to ensure that investments acquired with bond proceeds are purchased at fair market value. All investments and investment vehicles shall comply with federal and State of Connecticut laws.

- B. Financed Facilities and Property. The Issuer shall monitor the uses of facilities and property (which are financed or refinanced by Obligations of the Town of Tolland) by private persons or entities. Such uses include, but may not be limited to, arrangements for the sale, disposition, lease, management or other use of a portion of financed facilities and property. Any such non-governmental proposed uses are subject to the prior review and approval of the Director of Finance and Records of the Issuer. Bond Counsel shall be consulted as necessary. If any private use is identified, it shall be documented, and Bond Counsel shall be consulted regarding the “change in use” rules and regulations.
- C. Non-Compliance and Remedial Action. All non-compliance or potential non-compliance with federal or State of Connecticut law regarding the tax advantaged status of Obligations of the Town of Tolland shall be addressed immediately and, if appropriate, in consultation with Bond Counsel. Efforts shall be undertaken to address and remedy non-compliance.
- D. Post-Issuance Modification of Obligations. Prior to modification of the terms of any outstanding Obligations, including interest rate, maturity, etc., the Director of Finance and Records of the Town of Tolland shall consult with Bond Counsel regarding the potential effect on the tax status of such Obligations.
- E. Continuing Disclosure. Under the provisions of the Rule, Participating Underwriters (as defined in the Rule) are required to determine that issuers have entered into written Continuing Disclosure Agreements to make ongoing disclosure in connection with offerings of obligations subject to the Rule. Unless the issuer is exempt from compliance with the Rule as a result of certain permitted exemptions, the issuer will enter into a Continuing Disclosure Agreement. Notices and filings required under the Continuing Disclosure Agreements will be made by the Issuer through the Electronic Municipal Market Access (“EMMA”) System of the Municipal Securities Rulemaking Board (“MSRB”), unless otherwise prescribed by the MSRB or pursuant to a Continuing Disclosure Agreement. The disclosure requirements include (i) the filing of annual audited financial information (“Annual Financial Information”) as described in each Continuing Disclosure Agreement; (ii) the filing of notices of certain events (“Event Notices”) as listed in Rule 15c2-12(b)(5)(i)(C); or both (i) and (ii).
- F. Record Retention. All records related to Obligations of the Town of Tolland, including, but not limited to, expenditures, invoices, ledgers, bank statements, resolutions, bond authorizations, leases, management contracts and agreements, shall be maintained in compliance with State record retention requirements. Physical copies of records or electronic versions shall be maintained.

- G. Review of Post-Issuance Compliance Policies and Procedures. These policies and procedures shall be reviewed at least annually under the direction of the Compliance Coordinator, and the date of these policies and procedures shall be modified to indicate that such review has occurred.
- H. Amendment of Post-Issuance Compliance Policies and Procedures. These policies and procedures may be modified, expanded, abridged, or otherwise amended by the Director of Finance and Records of the Town of Tolland in consultation with Bond Counsel in order to: (a) ensure efficiency of administration; (b) establish and maintain appropriate assignments of responsibility; (c) reflect changes in the Town of Tolland's system of accounting, financial controls, procurement practices, or other internal procedures and practices; (d) respond to changes in law or interpretation that may, from time to time, be reported to the Town of Tolland by Bond Counsel, its Financial Advisor or other sources; or (e) otherwise ensure compliance with the procedures in the most efficient and effective manner.
- I. Retention of Professionals. The Town of Tolland shall engage such professionals or consultants as necessary to comply with federal and State of Connecticut law to ensure the preservation of the tax advantage status of the Obligations of the Town of Tolland. Such professionals may include, without limitation, bond counsel, arbitrage rebate specialists, financial advisors and auditors.

#### **IV. Procedures**

##### **A. Expenditure and Investment of Proceeds:**

1. For each issue of Obligations, a record shall be kept of the items and amounts paid for costs of issuance and whether or not such amounts were paid with proceeds of the Obligations. The Issuer shall ensure that no more than the limit (e.g., 2%) of the proceeds is used for costs of issuance (for such Obligations which have limits on the amount of proceeds that may be used costs of issuance).
2. For each issue of Obligations of the Issuer, the Director of Finance and Records shall evaluate and identify (i) the “spending exception(s)” that pertain to such issue of Obligations (such exceptions are outlined in Exhibit A hereto) and (ii) the applicable “temporary periods” outlined in Exhibit B hereto.
3. Based on the applicable spending exceptions and temporary periods, the Director of Finance and Records shall set a calendar of dates for reviewing expenditures by project and by issue of Obligations to ensure compliance with spending targets. Upon the identification of a spending target not being met or the anticipation of a spending target not being met, the Director of Finance and Records shall consult Bond Counsel regarding options and corrective action. In the case of refunding Obligations issued to permanently finance (currently refund) temporary notes (the “Prior Notes”), the Director of Finance and Records shall determine whether all proceeds of the Prior Notes have been expended.
4. Prior to the making of a “final allocation,” expenditure information shall be tracked for each project by date, individual invoice, purchase order, and payment check, etc. Such information shall include expenditures that were reimbursed with proceeds of Obligations (or the Prior Notes/Bonds/Obligations). (Except for “preliminary expenditures,” reimbursements for expenditures for projects that were expended prior to the issue date of the Obligations must be limited to those paid subsequent to, or not more than 60 days prior to, the adoption of a Declaration of Official Intent, which is generally included in the appropriation and bond authorization resolution.) The Director of Finance and Records shall oversee such tracking.
5. A final accounting of the allocation of proceeds of the Obligations to expenditures shall be made by the Director of Finance and Records not later than 18 months after the later of the date the expenditure was made or the date the project was placed in service, but in any event, not later than 5 years after the Obligations were issued or 60 days after the Obligations are retired. A record shall be kept of other moneys (e.g., grants or general fund) that were used to finance such projects.

6. A record of the investment of proceeds shall be tracked by proceeds of each issue of Obligations (or if under an Indenture also by type of fund), including dates of deposits and withdrawals, the accounts where the proceeds are maintained, and the interest rate and earnings thereon. Such records shall be kept by the Treasurer of the Town of Tolland / Assistant Finance Director.
7. The Director of Finance and Records shall keep a record of all other costs and expenditures of each issue of Obligations, such as credit enhancement and capitalized interest.
8. A record of all payments of principal of and interest on the Obligations shall be kept by the Director of Finance and Records.
9. A record of the retirement or refunding of Obligations and any reductions or pay-downs on temporary notes shall be kept by the Director of Finance and Records.

B. Financed Facilities and Property:

1. No sale, lease, management contract, research contract, special legal entitlement arrangement or other use arrangement shall be entered into for any facility or property financed with Obligations of the Town of Tolland unless such arrangement is reviewed and approved by the Director of Finance and Records. The Director of Finance and Records shall consult with Bond Counsel to solicit advice concerning the arrangement and its potential effect on the tax status of the Obligations.
2. Procedures shall be established with the procurement department, the board of education, or any other department that may negotiate or enter into arrangements with non-governmental/private parties (including 501(c)(3) entities) to ensure that the Director of Finance and Records has the opportunity to review such arrangements prior to their execution. No such arrangements shall be entered into without the prior approval of the Director of Finance and Records.
3. On an annual basis, the Director of Finance and Records shall analyze the private business use of financed facilities and property to determine whether the limitation (generally 5%, unless related business use) on private business use of proceeds has been exceeded.

C. Non-Compliance and Remedial Action:

1. Upon identification or determination of any non-compliance with, or violation of, the tax laws, the Compliance Coordinator shall review (with the assistance of other professionals as needed) such evaluation to ensure it was properly conducted.
2. Upon determination that non-compliance has occurred, the Compliance Coordinator shall consult with Bond Counsel, as necessary, regarding a course of

corrective action regarding the ability to remedy the non-compliance under the Internal Revenue Code and Treasury Regulations or the need to utilize the Voluntary Closing Agreement Program (VCAP).

D. Post-Issuance Modification of Obligations:

1. The Compliance Coordinator shall identify any potential plan to modify the terms of the Issuer's outstanding obligations and consult with Bond Counsel regarding the impact of such modifications and whether such modifications trigger a reissuance.
2. The Compliance Coordinator shall monitor Obligations of the Issuer and identify modifications, or potential modifications, including, but not limited to:
  - a. Change in annual yield. Generally, a change in the annual yield of a tax advantaged obligation by more than the greater of  $\frac{1}{4}$  of one percent or 5% of the annual yield of the unmodified instrument will trigger a reissuance.
  - b. Change in timing of payments. Depending on the circumstances, a reissuance may occur if there is a change in the timing of the payments due under the tax-exempt-bond such as an extension of the final maturity or a deferral of payments prior to maturity.
  - c. Substitution of a new obligor or the addition or deletion of a co-obligor. If there is a change in payment expectations, the addition or deletion of a co-obligor on a tax advantaged obligation may cause a reissuance. The substitution of a new obligor on tax advantaged obligations is not a significant modification if the new obligor is related to the issuer and the collateral for the bonds includes the original collateral.
  - d. Change in security or credit enhancement. If there is a change in payment expectations, the substitution of new collateral for existing collateral of a tax advantaged obligation may cause a reissuance. Generally, however, the substitution of a similar commercially available credit enhancement contract on a nonrecourse tax advantaged obligation will not cause a reissuance.
  - e. Change in priority of an obligation. If there is a change in payment expectations, the subordination of a tax advantaged obligation to another obligation may cause a reissuance.
  - f. Change in payment expectations. Depending on the circumstances, a change in payment expectations may cause a reissuance. A change in payment expectations may occur if there is a substantial enhancement or substantial impairment of an issuer's capacity to meet its payment obligations. An issuer's payment capacity for a bond issue includes all of its sources of payment on the bonds, including collateral, guarantees, or other credit enhancement.

E. Continuing Disclosure:

In order to ensure compliance by the Issuer with its Continuing Disclosure Agreements, the Compliance Coordinator will, if and as required by such Continuing Disclosure Agreements:

1. Maintain in the transcript for each issue of obligations, a Continuing Disclosure Agreement.
2. Prepare or review the Annual Financial Information (which may include a Comprehensive Annual Financial Report or other operating data) of the Issuer to ensure that the Annual Financial Information is in the form required by the respective Continuing Disclosure Agreements.
3. Maintain a calendar, with appropriate reminder notifications, listing the filing due date relating to dissemination of Annual Financial Information, which annual due date for the Issuer under its Continuing Disclosure Agreement is generally no later than 8 months following the end of the Issuer's fiscal year (June 30) (the "Due Date"), as provided in the related Continuing Disclosure Agreements.
4. Ensure timely dissemination of the Annual Financial Information by the Due Date, in the format and manner provided in the related Continuing Disclosure Agreements, which currently includes transmitting such filings to the MSRB through the EMMA System at <http://emma.msrb.org> in the format (currently word-searchable pdf) prescribed by the MSRB. The Compliance Coordinator files, or supervises the filing of, the Annual Financial Information.
5. Monitor the occurrence of any "Listed Event" (as defined in the Continuing Disclosure Agreements) or "Material Event" (as described in Continuing Disclosure Agreements effective before December 10, 2010 ("Prior CDAs")) and timely file an Event Notice of the occurrence of any such event at <http://emma.msrb.org> (or in the manner provided under the Continuing Disclosure Agreements). To be timely filed, an Event Notice must be filed not in excess of 10 business days (or such other time period as set forth in the Prior CDAs) of the occurrence of such event.
6. Ensure the timely filing of notice of any failure to perform under a Continuing Disclosure Agreement, if and as required by the Continuing Disclosure Agreements. Such notice shall be filed on EMMA at <http://emma.msrb.org>.
7. Respond to requests, or ensure that the Issuer contact (as specified in the Continuing Disclosure Agreements, and generally is the Town Manager) responds to requests, for information under the Rule, as provided in the Continuing Disclosure Agreements.

8. Identify dissemination agents other than the Compliance Coordinator (e.g., financial advisor) and regularly monitor the performance of any dissemination agents engaged by the Issuer to assist in the performance of any obligation under the Continuing Disclosure Agreements

F. Record Retention:

1. Records shall be maintained in compliance with State record retention requirements.
2. The Compliance Coordinator shall ensure that systems are developed for the maintenance and safekeeping of the records, including, but not limited to:
  - a. Transcripts (closing binders or CD ROMs or other electronic means) and closing documents, and any amendments thereto, for each issue of Obligations.
  - b. All accountings of proceeds of the Obligations to expenditures, such as invoices, requisitions, payments, canceled checks, ledgers, contracts and correspondence.
  - c. Copies of all management contracts, research agreements, construction contracts, purchase and sale agreements, leases or easements, other arrangements involving “special legal entitlements” (such as naming rights) or any other records pertaining to the facilities and property financed by Obligations of the Issuer.
  - d. All accountings of investments of proceeds of the Obligations, such as bank statements, general ledgers, investment contracts and escrow accounts. Copies of Swaps and Guaranteed Investment Contracts and documentation related thereto.
  - e. All correspondence with the Internal Revenue Service.
  - f. Rebate computations and filings with the Internal Revenue Service, including IRS Form 8038-G filed upon the issuance of Obligations.
  - g. Copies of and receipts for filings on EMMA.

G. Review and Amendment of Post-Issuance Compliance Policies and Procedures:

1. At least annually, and at the time of issuance of each issue of Obligations, the Compliance Coordinator shall conduct or cause to be conducted a review these Post-Issuance Compliance Policies and Procedures to ensure that they are accurate and comprehensive.
2. Each time the Post-Issuance Compliance Policies and Procedures are reviewed or amended, such review date or amendment date and revision number shall be noted on the Post-Issuance Compliance Policies and Procedures. Amendments to the Post-Issuance Compliance Policies and Procedures shall be in consultation with Bond Counsel.



3. Upon completion of review or amendment of the Post-Issuance Compliance Policies and Procedures, the Compliance Coordinator shall send a copy to Bond Counsel and affected officers or employees of the Town of Tolland.
4. As part of the annual review, the Compliance Coordinator shall identify training needs and engage appropriate resources to conduct training. For example, for new employees, the Compliance Coordinator will review these procedures and any specific job description tasks required to be performed by such employee. As another example, the Compliance Coordinator may ask Bond Counsel or the Financial Advisor to provide training on specific topics.

H. Retention of Professionals:

1. If the Town of Tolland determines that any of its outstanding Obligations are not exempt from rebate, the Town of Tolland will engage an arbitrage rebate analyst as its arbitrage rebate computation agent.
2. The Compliance Coordinator shall ensure that the arbitrage rebate analyst timely prepares returns for the payment of arbitrage rebate (IRS Form 8038-T) and that such payments are made in accordance with the tax laws.

I. General Matters:

1. For each Issue of Obligations, Bond Counsel shall prepare and file in a timely manner on behalf of the Issuer IRS Form 8038-G (or other applicable form). A copy of such filed 8038-G shall be placed in transcript of proceedings for each Issue.
2. The Compliance Coordinator shall place a transcript of proceedings for each issue of Obligations in the Office of the Director of Finance and Records.
3. The Director of Finance and Records shall perform an annual review of the Tax Regulatory Agreement to ensure compliance therewith.

## **EXHIBIT A**

### **REBATE OF ARBITRAGE**

*Subject to certain exceptions, earnings on “nonpurpose investments” allocable to gross proceeds must be rebated to the United States in an amount equal to the difference between the amount actually earned and the amount that would have been earned if those investments had a yield equal to the yield on the issue.*

*“Nonpurpose investments” for this purpose do not include investments in other tax-exempt bonds (excluding specified private activity bonds as described in Section 57(a)(5)(c) of the Code) or investments in certain regulated tax-exempt bond funds. Investments are allocated to proceeds deposited in a commingled fund generally on the basis of a ratable allocation. The rebate requirement also excludes amounts earned on a bona fide debt service fund in the case of fixed rate governmental bonds with a weighted average maturity in excess of five years.*

*The rebate rules apply to the actual facts experienced by the issuer, without regard to its reasonable expectations. However, expectations are still applicable, since they can be used to enable the issuer to determine whether a “spending exception” applies to avoid part or all of the rebate requirement.*

*There are three expenditure exceptions: (i) a six month spending exception which applies if at least 95 percent of the proceeds are spent within six months of the issue date and 100 percent is spent within one year, (ii) an 18 month spending exception which applies if the proceeds are eligible for investment during a temporary period applicable to capital projects and are spent such that not less than 15 percent is spent within six months, 60 percent is spent within one year and 100 percent is spent within 18 months (except for a reasonable retainage and except for an amount not exceeding the lesser of 3 percent of the issue price or \$250,000), and (iii) a construction bond spending exception (also known as the two year spending exception) which applies if 75 percent of the proceeds are to be used for a construction project and a spending schedule specified in the Regulations is followed (subject to de minimis exceptions).*

#### **Rebate of Arbitrage.**

**Rebate Requirement.** The Code requires the payment to the United States of the excess of the amount earned on Nonpurpose Investments over the amount that would have been earned on such Nonpurpose Investments had the amount so invested been invested at a rate equal to the Yield on the Bonds. Except for the application of the exceptions provided below, all of the Gross Proceeds of the Bonds are subject to this requirement. Except as provided in the previous sentence, in order to meet the rebate requirement, the Issuer agrees and covenants to take the actions prescribed in Attachment A-1 hereof.

**Construction Bond Spending Exception.** Notwithstanding anything in Section 5.1 to the contrary, if the New Money Bonds constitute a Construction Issue, and if at least 10 percent of the Available Construction Proceeds of the New Money Bonds are expended for the purposes of the Project within six months, 45 percent within one year, 75 percent within 18 months and 100 percent within two years (or 95 percent within two years and 100 percent within three years if

the unexpended 5 percent represents Reasonable Retainage), then the Issuer shall not be subject to the rebate requirement referred to above with respect to the Gross Proceeds of the New Money Bonds. The failure to satisfy the two year spending requirement is disregarded if the unexpended amount as of such date does not exceed the lesser of 3 percent of the Issue Price of the New Money Bonds or \$250,000.

For purposes of determining compliance with the Construction Bond Spending Exception, the Issuer hereby elects to use actual facts, including the amount of actual earnings on the Available Construction Proceeds of the New Money Bonds, pursuant to Section 1.148-7(f)(2) of the Regulations.

18 Month Spending Exception. Notwithstanding anything described above to the contrary, if at least 15 percent of the Gross Proceeds of the New Money Bonds are expended for the purposes of the Project within six months, 60 percent within 12 months and 100 percent within 18 months (or 95 percent within 18 months and 100 percent within 30 months if the unexpended 5 percent represents Reasonable Retainage), then the Issuer shall not be subject to the rebate requirement referred to in Section 5.1 with respect to the Gross Proceeds of the New Money Bonds. The failure to satisfy the 18 month Spending Exception is disregarded if the unexpended amount as of such date does not exceed the lesser of 3 percent of the Issue Price of the New Money Bonds or \$250,000.

For purposes of determining compliance with the 18 Month Spending Exception, “Gross Proceeds” excludes amounts in a Bona Fide Debt Service Fund and a Reasonably Required Reserve or Replacement Fund as defined in Section 1.148-7(b)(5) of the Regulations, unexpected Gross Proceeds as of the Issue Date arising 18 months after the Issue Date and Gross Proceeds representing Sale Proceeds or Investment Proceeds of a purpose investment or a repayment of a Grant.

Six Month Spending Exception. Notwithstanding anything described above to the contrary, if at least 95 percent of the Gross Proceeds of the New Money Bonds or Refunding Bonds are expended for the purposes of the Project within six months and 100 percent within one year, then the Issuer shall not be subject to the rebate requirement referred to above with respect to the Gross Proceeds of the New Money Bonds or the Refunding Bonds, respectively.

For purposes of determining compliance with the Six Month Spending Exception, “Gross Proceeds” excludes amounts in a Bona Fide Debt Service Fund and a Reasonably Required Reserve or Replacement Fund as defined in Section 1.148-7(b)(5) of the Regulations, unexpected Gross Proceeds as of the Issue Date arising six months after the Issue Date and Gross Proceeds representing sale or investment Proceeds of a purpose investment or a repayment of a Grant.

Small Issuer Exception. Notwithstanding anything described above to the contrary, the Issuer shall not be subject to the rebate requirement referred to above with respect to the New Money Bonds pursuant to Section 148(f)(4)(D) of the Code, and makes the following representations with respect thereto: (i) it is a Governmental Unit with general taxing powers; (ii) the Bonds are not private activity bonds as defined in Section 141 of the Code; (iii) 95

percent or more of the Net Proceeds of the Bonds are to be used for the local governmental activities of the Issuer (or of a Governmental Unit the jurisdiction of which is entirely within the jurisdiction of the Issuer); and (iv) it reasonably expects that the aggregate face amount of all obligations of the Issuer (including members of the Issuer's Controlled Group) the interest on which is not includable in gross income (other than private activity bonds as defined in Section 141 of the Code) issued during the current calendar year will not exceed \$5,000,000 plus an amount not to exceed an additional \$10,000,000 attributable to financing Construction Expenditures for public school facilities, excluding refunding obligations which will be issued to refund (other than advance refund) any obligation to the extent the outstanding amount of the refunding obligation does not exceed the amount of the refunded obligation.

Bona Fide Debt Service Fund Exception. Notwithstanding anything described above to the contrary, the Issuer shall not be subject to the rebate requirement and shall not be obligated to take the actions prescribed in Attachment A-1 hereof with respect to any earnings on any Proceeds of the Bonds meeting the requirements of a Bona Fide Debt Service Fund if the conditions of Section 1.1(h) of Attachment A-1 hereof are satisfied.

## **ATTACHMENT A-1 TO EXHIBIT A**

### **ARBITRAGE REBATE**

Section 148 of the Internal Revenue Code of 1986, as amended (the “Code”), contains provisions that impose requirements as a condition to the exemption from federal income taxation of interest on the Bonds. The requirements have been further explained in final regulations issued by the Department of the Treasury on June 18, 1993, T.D. 8476, (the “Final Regulations”). Compliance with the procedures set forth herein is necessary to meet those requirements. The Issuer has covenanted to comply with all requirements of the Final Regulations, as well as any other temporary, proposed or final Treasury Regulations applicable to the Bonds.

Section 1.1 Calculation of Rebate Amount. The Code requires the payment to the United States of the excess of the amount earned on the investment of Gross Proceeds in Nonpurpose Investments over the amount that would have been earned on such investments had the amount so invested been invested at a rate equal to the Yield on the Bonds (the “Rebate Amount”). The Rebate Amount with respect to the Bonds as of any Computation Date is the excess of: (a) the Future Value of all receipts on Nonpurpose Investments allocated to the Bonds after application of the Universal Cap over (b) the Future Value of all payments made on such Nonpurpose Investments determined using the Yield on the Bonds as of the discount rate. In order to meet the rebate requirement of the Code, the Issuer agrees to the following:

(a) Determine Gross Proceeds of the Bonds. The Issuer will record the date of receipt, amount and source of any Gross Proceeds of the Bonds and the date and amount of all expenditures of Gross Proceeds, including Rebate Payments (defined herein), other than expenditures to acquire Nonpurpose Investments.

(b) Record Investment of Gross Proceeds. For each Nonpurpose Investment acquired with or allocated to Gross Proceeds of the Bonds, the Issuer will record the purchase date or allocation date of such Nonpurpose Investment, its purchase price (including applicable Qualified Administrative Costs separately stated) or, if not acquired directly with Gross Proceeds, its Fair Market Value on the date the Nonpurpose Investment is allocated to Gross Proceeds, accrued interest due on its purchase date or allocation date, its face amount, its coupon rate, its Yield, the frequency of its interest payment, its disposition price (including applicable Qualified Administrative Costs separately stated), the accrued interest due on its disposition date and its disposition date. The Issuer will also determine the application of the Universal Cap to the Bonds and if applicable, calculate the Universal Cap as of the required dates.

(c) Calculate Yield on the Bonds. For each Computation Period, the Issuer shall determine if the Yield on the Bonds needs to be recalculated and if so, recalculate such Yield.

(d) Computation of Rebate Amount. Subject to the special rules set forth in paragraphs (e) through (h) of this Section, the Issuer will determine the Rebate Amount on the Computation Dates as described below. The Rebate Amount as of each Computation Date is the excess of the Future Value of all receipts with respect to Nonpurpose Investments over the Future Value of all payments with respect to the purchase or allocation of Nonpurpose

Investments to the Gross Proceeds of the Bonds. To the extent amounts received from Nonpurpose Investments are reinvested, these amounts may be netted against each other and not taken into account in the computation of the Rebate Amount. The Issuer shall determine receipts and payments with respect to Nonpurpose Investments as described below.

(i) Receipts. Receipts with respect to Nonpurpose Investments include (A) actual receipts, which are amounts actually or constructively received with respect to Nonpurpose Investments, reduced by Qualified Administrative Costs; (B) disposition receipts, which are the Value of Nonpurpose Investments deemed to be sold on the date the Nonpurpose Investment ceases to be allocated to the Bonds; (C) computation date receipts, which are the Value of all Nonpurpose Investments allocated to the Bonds at the close of business on a Computation Date; and (D) rebate receipts, which are any recovery of an overpayment of rebate.

(ii) Payments. Payments with respect to Nonpurpose Investments include (A) direct payments, which are the amount of Gross Proceeds of the Bonds directly used to purchase the Nonpurpose Investment, including Qualified Administrative Costs; (B) constructive payments, which are the Value of Nonpurpose Investments allocated to (but not directly purchased with) Gross Proceeds on the date so allocated; (C) payments allocated at the end of the preceding Computation Period; (D) Rebate Payments; (E) Computation Date Credits; and (F) Yield Reduction Payments on Nonpurpose Investments.

(e) Six Month Spending Exception. Notwithstanding anything in this Section 1.1 to the contrary, if all of the Gross Proceeds (as defined in Section 5 of the Tax Regulatory Agreement) of the New Money Bonds or the Refunding Bonds have been expended for the governmental purpose of the issue in accordance with the expenditure requirements of the Six Month Spending Exception prescribed in Section 5 of the Tax Regulatory Agreement, then the rebate requirement is deemed satisfied with respect to the Gross Proceeds of the New Money Bonds or the Refunding Bonds.

(f) 18 Month Spending Exception. Notwithstanding anything in this Section 1.1 to the contrary, if all of the Gross Proceeds (as defined in Section 5 of the Tax Regulatory Agreement) of the New Money Bonds have been expended for the governmental purpose of the issue in accordance with the expenditure requirements of the 18 Month Spending Exception prescribed in Section 5 of the Tax Regulatory Agreement, then the rebate requirement is deemed satisfied with respect to such portion of the Gross Proceeds of the New Money Bonds.

(g) Construction Bond Spending Exception. Notwithstanding anything in this Section 1.1 to the contrary, if any portion of the New Money Bonds constitutes a Construction Issue, and if all of the Available Construction Proceeds of such New Money Bonds have been expended for the governmental purpose of the issue in accordance with expenditure requirements of the Construction Bond Spending Exception prescribed in Section 5 of the Tax Regulatory Agreement, then the rebate requirement is deemed satisfied with respect to such portion of the Gross Proceeds of the New Money Bonds.

(h) Bona Fide Debt Service Fund Earnings Exception. Notwithstanding anything in this Section 1.1 to the contrary, if (i) the average maturity of the Bonds is at least 5 years and the

rates of interest on the Bonds do not vary during their term or (ii) if the Bonds or any portion thereof is a Construction Issue and the Construction Bond Spending Exception set forth in Section 1.1(g) is met, then any amount earned on a Bona Fide Debt Service Fund (other than amounts representing accrued interest or capitalized interest) shall not be taken into account in determining the Rebate Amount. If the gross earnings from the Nonpurpose Investments held in a Bona Fide Debt Service Fund for the Bond Year in question are less than \$100,000 or the annual debt service on the Bonds is not in excess of \$2,500,000, then any amount earned on such Bona Fide Debt Service Fund shall not be taken into account in determining the Rebate Amount. For purposes of this paragraph (h), the term “gross earnings” means the aggregate amount earned on the Nonpurpose Investments of the Gross Proceeds deposited to such Bona Fide Debt Service Fund, including amounts earned on such amounts if allocated to such Bona Fide Debt Service Fund.

Section 1.2 Payment to United States.

(a) The Issuer will pay to the Internal Revenue Service an amount (“Rebate Payment”) with respect to each Computation Date other than the Final Computation Date, which when added to the Future Value of all previous Rebate Payments made with respect to the Bonds using the Yield on the Bonds as the discount rate, is at least 90 percent of the sum of all previous Rebate Amounts calculated under Section 1.1 with respect to the Bonds, and with respect to the Final Computation Date, is an amount, which when added to the Future Value of all previous Rebate Payments made with respect to the Bonds using the Yield on the Bonds as the discount rate, is 100 percent of the sum of all previous Rebate Amounts calculated under Section 1.1 with respect to the Bonds. Rebate Payments shall be made no later than the date 60 days after the applicable Computation Date or the Final Computation Date.

(b) If a Rebate Payment is not made within the time prescribed in Section 1.2(a) above, a penalty pursuant to Section 1.148-3(h)(1) of the Regulations equal to 100 percent of the Rebate Payment overdue may be imposed and interest may be added to the Rebate Amount and such penalty at the underpayment rate determined pursuant to Section 6621 of the Code in effect during the period of time beginning on the date the Rebate Amount was due and ending on the date 10 days before it is paid.

(c) Each Rebate Payment shall be made to the Internal Revenue Service Center, Ogden, Utah 84201, or such other address designated by the Internal Revenue Service, and shall be accompanied by Internal Revenue Service Form 8038-T and any other form or statement necessary in order to ensure that the interest on the Bonds is excluded from gross income for federal income tax purposes.

Section 1.3 Recordkeeping. In connection with the rebate requirement, the Issuer will maintain the following records:

(a) records of the determinations made pursuant to Section 1.1 until six years after the retirement of the last Bond of the issue, including any refunding Bond; and

(b) a record of all amounts paid to the Internal Revenue Service pursuant to Section 1.2.

Section 1.4 Fair Market Value.

(a) The Issuer will not acquire Nonpurpose Investments at other than an arm's length Fair Market Value price, nor will the Issuer enter into any Prohibited Payment Transaction.

(b) If the Issuer invests any of the Gross Proceeds in certificates of deposit or in a guaranteed investment contract, it will obtain certifications from the provider to establish the Fair Market Value of such investment.



## **EXHIBIT B**

### **TEMPORARY PERIODS AND YIELD RESTRICTION**

*Proceeds invested at a yield in excess of the yield on the bonds for permitted temporary periods do not cause an issue to be “arbitrage bonds.” There are specific requirements for particular temporary periods with respect to particular types of proceeds. The following sections are intended to set forth facts evidencing the conclusions that all amounts will only be invested during temporary periods or they will be invested under yield restrictions when not invested during a temporary period.*

#### **Temporary Periods.**

The Issuer has incurred, or will incur by [6 months after date of issue], a substantial binding obligation in connection with the Project to spend an amount equal to not less than 5 percent of the Sale Proceeds of the New Money Bonds.

Not less than 85 percent of Sale Proceeds of the New Money Bonds is expected to be used, needed and fully expended for payment of the cost of the Project no later than [3 years after date of issue].

Work on the Project and the allocation of Sale Proceeds of the New Money Bonds to expenditures will proceed with due diligence.

The Proceeds of the Refunding Bonds will be used to refund the Prior Notes not more than 90 days after the Issue Date of the Refunding Bonds.

The periods from (i) with respect to the Proceeds of the New Money Bonds, the Issue Date of the New Money Bonds to [3 years after date of issue], (ii) with respect to the Proceeds of the Refunding Bonds, the Issue Date of the Refunding Bonds to the date such Proceeds are used to refund the Prior Notes, (iii) with respect to the Transferred Proceeds of the Refunding Bonds, the Issue Date of the Prior Notes to the date three years thereafter, (iv) with respect to earnings on the Proceeds of the Bonds, the one year period after the date of receipt and (v) with respect to Proceeds contributed to a Bona Fide Debt Service Fund applicable to the Bonds, the 13 month period after the date of such contribution, are hereinafter referred to as “Temporary Periods”.

**Yield Restrictions.** The Issuer represents and covenants that, except for the investment and reinvestment of Gross Proceeds of the Bonds during the Temporary Periods referred to above, it will not use any portion of the Gross Proceeds of the Bonds to acquire Investment Property, or to replace funds which were used directly or indirectly to acquire Investment Property, which has a Yield which exceeds the Yield on the Bonds by more than 0.125 percent.