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SUGGESTED BORROWER POST-ISSUANCE COMPLIANCE PROCEDURES OREGON FACILITIES AUTHORITY

DATE: November, 2013

The Oregon Facilities Authority (OFA) requires borrowers, as a condition of financing, to adopt and follow appropriate “post-issuance compliance procedures.” The goal of these procedures is to make sure that the borrower takes appropriate steps, after issuance of the bond, to meet tax and securities laws requirements.

OFA has worked with its Bond Counsel to develop the attached suggested Post-Issuance Compliance Procedures, and is providing these Procedures to borrowers for their adoption. Because every borrower is different, borrowers who wish to adopt OFA's suggested procedures should consult with their legal advisors to make sure that these procedures are appropriate for a borrower's particular situation.

Borrowers are not required to adopt OFA's suggested procedures. Some OFA borrowers may already have post-issuance compliance procedures in place, or may wish to develop their own procedures. In that case, OFA suggests that the borrower work closely with its bond counsel and other advisors to make sure that these procedures comply with legal requirements.

OFA will be providing training for borrowers regarding post-issuance compliance. Training dates will be available on OFA's website and available from OFA by emailing ofa@tonkon.com or calling 503-802-5710. Additional information on post-issuance compliance is also available on OFA's website:

<https://oregonfacilities.org/post-issuance-compliance/>

If you have any questions, please feel free to email the OFA Executive Director, Gwen Griffith at ofa@tonkon.com.

**POST-ISSUANCE TAX AND CONTINUING DISCLOSURE
COMPLIANCE PROCEDURES**

Purpose

_____ (the “Institution”) has adopted these procedures (the “Procedures”) effective [date] in connection with the issuance of one or more series of tax-exempt qualified §501(c)(3) bonds (the “Bonds”) by one or more qualified municipal issuers (the “Issuer”) for the benefit of the Institution. The Institution has adopted these Procedures to create internal procedures that will ensure that it complies with promises made in the Bond documents and to ensure that it complies with all applicable requirements of:

- (i) federal tax law necessary to preserve the continued tax-exempt status of interest on any Bonds issued on a federally tax-exempt basis (the “Applicable Federal Tax Law”);
- (ii) federal securities laws applicable to any Bonds sold pursuant to a public offering, including the provisions of Rule 15c2-12 of the Securities and Exchange Commission (the “Rule”) and the Securities Act of 1933 and the Securities and Exchange Act of 1934 (the “Applicable Securities Law”), and;
- (iii) any other applicable regulations (collectively, the “Applicable Regulations”) associated with the Bonds.

These Procedures describe in general terms the requirements of applicable law, but are not comprehensive in nature. The Institution will consult, as needed, or as directed by an Issuer, with counsel experienced in municipal finance (“Bond Counsel”) to ensure the Institution's ongoing understanding of its compliance obligations and continued compliance with applicable requirements.

I. GENERAL POST-ISSUANCE COMPLIANCE REQUIREMENTS

A. Officials Responsible for Compliance

1. *Tax Compliance Officer.* The Institution designates its [Title of Responsible Officer] as its “Tax Compliance Officer” with the primary responsibility to ensure compliance with Applicable Federal Tax Law relating to all Bonds. The Tax Compliance Officer will review these Procedures and the Tax Certificate annually.

2. *Disclosure Compliance Officer.* If the Bonds are subject to disclosure requirements, the Institution designates its [Title of Responsible Officer] as its “Disclosure Compliance Officer” with the primary responsibility to ensure compliance with the Applicable Securities Law and the Rule relating to the Bonds. The Disclosure Compliance Officer will review these Procedures and the Continuing Disclosure Agreement annually.

3. *Delegation of Duties.* Consistently with the procedures of the Institution, the Tax and Disclosure Compliance Officers may delegate certain duties to others. All references to the

duties of the Tax Compliance Officer and Disclosure Compliance Officer in these Procedures include actions by such person's designee.

B. Resources for Designated Tax and Disclosure Officers. The Institution will make the necessary resources available to the Tax and Disclosure Compliance Officers to support their understanding of, and ability to comply with, the requirements of applicable law. These resources may include (without limitation) engagement of and consultation with Bond Counsel, hiring an arbitrage rebate consultant, and continuing education relating to tax and disclosure requirements.

The Tax and Disclosure Compliance Officers should have ready access to documents from all Bond closing transcripts and related documents, including the following:

- Loan Agreement between the Institution and the Issuer (the “Loan Agreement”);
- Tax Certificate and Agreement between the Institution and the Issuer (the “Tax Certificate”);
- Continuing Disclosure Agreement between the Institution and the Dissemination Agent (the “Disclosure Agreement”); and
- Copies of each Annual Compliance Certificate, Required Annual Filing , any Material Event Filings and any Voluntary Disclosure Filings, each as described below.

C. Record Keeping Requirements

The Tax Compliance Officer will maintain at least 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 Institution at or in connection with closing of the issue of Bonds;
- in connection with Bonds issued for multi-family housing projects, documentation evidencing that the low-income set-aside requirements set forth a regulatory agreement have been continuously satisfied;
- 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;
- records of the sale, disposition or change in use of any property or assets financed or refinanced by Bond proceeds;
- the Annual Compliance Certificate described below; 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.

D. Certifications.

The Institution will comply with all requests by an Issuer to confirm its compliance with all continuing obligations of the Institution related to the Bonds.

II. POST-ISSUANCE TAX COMPLIANCE REQUIREMENTS

A. General Matters

The Issuer and the Institution will consult with the Issuer's 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 interest on Bond will continually qualify for tax-exempt treatment. These requirements and procedures will be documented in the Tax Certificate, Loan Agreement and other documents finalized at or before issuance of the Bonds.

B. Expenditures of Bond Proceeds

1. *In General.* Upon the issuance of any issue of new money Bonds, the Institution must reasonably expect to spend at least 85% of all of the proceeds of the Bonds ("Bond Proceeds") that are expected to be used to finance capital improvements (excluding proceeds in a reserve fund or for any non-project purpose) within three years of issuance. The Institution must also have incurred or reasonably expect to incur, within six months after issuance of the Bonds, binding obligations to unrelated parties involving an expenditure of not less than 5% of such amount of Bond Proceeds, and that completion of the capital improvements and allocations of Bond Proceeds to costs proceed with due diligence. Meeting all these requirements will allow the project-related Bond Proceeds to be invested at an unrestricted investment yield for three years from the date of issue. Other limitations or adjustments may be set out in the Tax Certificate. See Section II.E. of these Procedures for rebate and rebate exceptions.

The Tax Compliance Officer must summarize the expenditures made with the Bond proceeds (the "Final Allocation"), showing the assets or portion thereof financed with Bond Proceeds and the assets or portion thereof financed with other funds. The Final Allocation must be made not later than the later of 18 months after the date of the expenditure, i.e., that date a check is written in anticipation of receipt by the payee within 5 banking days of the date the check is drawn, or 18 months after the date the facility to which the expenditure relates is completed and is operating at substantially the level for which it was designed, but in all events not later than 60 days after the end of the fifth year after issuance of the Bonds (or 60 days after none of the Bonds are outstanding, if earlier).

2. *Establishment of Calendar.* On the date of issuance of any Bond, the Tax Compliance Officer will identify for that Bond issue:

- The funds and/or accounts into which Bond Proceeds are deposited.
- The types of expenditures expected to be made with the Bond Proceeds deposited into those funds and/or accounts and any expenditures prohibited from being made from such funds and/or accounts.
- The dates by which Bond Proceeds described in Section II.B. of these Procedures must be spent or become subject to arbitrage yield limitations (“Expenditure Deadlines”) and all interim dates by which funds and/or accounts must be checked to ensure compliance with the applicable Expenditure Deadlines.

3. *Expenditure Failures.* If the Tax Compliance Officer discovers that an Expenditure Deadline has not been met, he or she will consult with the Issuer to determine the appropriate course of action with respect to such unspent Bond Proceeds. The Institution will cooperate fully with the Issuer in taking actions needed with respect to unspent Bond Proceeds, including yield restriction, redemption of Bonds, or other action.

4. *Final Allocation.* The Tax Compliance Officer will timely make the Final Allocation in a manner consistent with allocations made to determine compliance with arbitrage yield restriction and rebate requirements (See Section II.E. of these Procedures).

In addition, the Tax Compliance Officer will confirm that all expenditure allocations are consistent with the description of the projects and their location as described in the published TEFRA notice.

5. *Records of Expenditures.* The Tax Compliance Officer will maintain records related to the expenditure of Bond Proceeds, including records:

- Identifying all of the assets or portion of assets financed with Bond Proceeds.
- Relating to requests for Bond Proceeds, construction contracts, purchase orders, invoices, and payment records.
- Relating to costs reimbursed with Bond Proceeds.
- Relating to any action taken as a result of a failure to meet the Expenditure Deadlines.
- The Final Allocation and all supporting documentation.

The Tax Compliance Officer will ensure that these records will be retained for the life of the Bonds, plus any refunding bonds, plus three years and may be in the form of documents or electronic copies of documents, appropriately indexed to specific Bond issues and compliance functions. If the Institution maintains electronic records, it will have a document migration policy in place.

C. Project Use Requirements

1. *In General.* The Institution must own all of the property financed by the Bonds. At least 95% of the “net proceeds” of the Bonds must be used in a manner which is related to the exempt purpose(s) of the Institution. Accordingly, no more than the lesser of 5% or \$15 million of the net proceeds of the Bonds may be used for a Private Business Use (as hereinafter defined) or an unrelated trade or business use of the Institution as further provided in the Tax Certificate.

For this purpose, “net proceeds” means the sale proceeds of the Bonds less amounts deposited in a reasonably required reserve fund. Importantly, cost of issuance paid with proceeds of the Bonds (as further described in below) are included as part of the 5% permissible “bad money” portion of the Bonds; in the case of refunding bonds, only costs of issuance paid with proceeds of the refunding bonds (and not the original bonds) are treated as bad money. Costs of issuance includes underwriter’s discount, rating agency fees, bond counsel fees, institution counsel, trustees fees and similar costs incurred in connection with the issuance of the Bonds. Under applicable tax law, costs of issuance may be financed with up to 2% of the proceeds of the Bonds. Accordingly, after the payment of costs of issuance with proceeds of the Bonds, the remaining permissible bad money portion of the Bonds is often no more than 3%.

For this purpose “Private Business Use” generally means use of the assets financed with Bond Proceeds (“Bond-financed Assets”) in a trade or business by a business entity (e.g., a corporation or partnership) or the Federal government (a “Private User”). Private Business Use will also arise if the Bond-financed Assets are used in an unrelated trade or business by the Institution or another Section 501(c)(3) organization. Private Business Use will arise from the lease or sale of the Bond-financed Assets to a Private User. Private Business Use will generally arise through a contract whereby a Private User manages, operates or provides services with respect to Bond-financed Assets (a “Management Contract”). Private use may also arise as a result of the Institution entering an agreement (a “Research Agreement”) to engage in research in bond-financed space, if such research is sponsored by a Private User. However, certain exceptions exist to these rules, which exceptions are best interpreted and applied by Bond Counsel.

2. *Monitoring of Private Business Use.* For each Bond-financed Asset, the Tax Compliance Officer will determine the expected use of such asset and whether such Bond-financed Asset is or will be subject to any contracts that may give rise to Private Business Use.

The Tax Compliance Officer will inform the persons responsible for the management and operation of the Bond-financed Asset (“Asset Managers”) of the Private Business Use and private loan restrictions relating to the Bond-financed Asset. The Tax Compliance Officer will meet at least annually with Asset Managers to identify and discuss any existing or planned use of Bond-Financed Assets that may give rise to Private Business Use.

The Tax Compliance Officer will require Asset Managers to submit any Management Contract or Research Agreement with respect to any portion of Bond-financed Assets for his or

her review prior to entering such agreement. The Tax Compliance Officer will consult with Bond Counsel or other capable advisors to determine whether such Management Contract or Research Agreement constitutes Private Use.

3. *Sale, Transfer or Lease.* The Tax Compliance Officer will ensure that no Bond-financed Asset will be sold, leased or transferred without prior approval by Bond Counsel.

4. *Identification and Correction of Violations.* If the Tax Compliance Officer determines that the use of Bond Proceeds or Bond-financed Assets is different from the covenants and representations set forth in the Tax Certificate, he or she will contact the Issuer and Bond Counsel in a timely manner. The Institution will cooperate fully with the Issuer and its advisors regarding various remedies available to prevent an adverse effect on the Bonds.

5. *Record Keeping Requirements.* The Tax Compliance Officer will keep copies of all Management Contracts, Research Agreements, and other arrangements involving the lease, management, sale, operation, service or other use of all Bond-financed Assets. Such records will be retained for the life of the Bonds, plus any refunding bonds, plus three years and may be in the form of documents or electronic copies of documents, appropriately indexed to specific Bond issues and compliance functions.

D. Investment of Proceeds

On the date of issue of any Bond, the Tax Compliance Officer will identify for that obligation:

- All of the funds and/or accounts into which Bond Proceeds are deposited and the applicable yields at or below which such funds and/or accounts must be invested.
- Any funds and/or accounts that are not directly funded with Bond Proceeds which must be invested at or below the yield on the obligations.

The Tax Compliance Officer will ensure that the investment of Proceeds is in compliance with the applicable yield restrictions contained in the Applicable Regulations.

The Tax Compliance Officer will obtain regular, periodic (monthly) statements regarding the investments and transactions involving Bond Proceeds.

The Tax Compliance Officer will keep all records with respect to investments, including:

- United States Treasury Securities-State and Local Government Series subscription information.
- The solicitation and all responses received from the bidding of any government obligations.

- Records of investment activity sufficient to permit calculation of arbitrage rebate or demonstration that no rebate is due.

E. Arbitrage Yield and Rebate

The Tax Compliance Officer will be responsible for the prompt calculation of rebate. The Institution may engage the services of an arbitrage rebate services provider, and in that event, the Tax Compliance Officer will timely provide to the provider statements regarding investments and transactions involving Bond Proceeds and all other requested documents and information.

The Tax Compliance Officer will assure prompt compliance with required rebate payments, if any, or, if a rebate service provided is engaged, monitor the arbitrage rebate service provider to assure compliance with required rebate payments, if any.

During the construction period of a capital project, the Tax Compliance Officer will monitor the investment and expenditure of Bond Proceeds, and, if applicable, consult with the arbitrage rebate service provider or Bond Counsel to determine whether the Institution is meeting any spending exception.

In the event that a rebate payment is due, the Tax Compliance Officer will ensure that such rebate payment is accompanied by a Form 8038-T.

The Tax Compliance Officer will retain copies of all arbitrage reports, related return filings with the Internal Revenue Service, and copies of cancelled checks with respect to any rebate payments and information statements. Such records will be retained for the life of the Bonds, plus any refunding bonds, plus three years and may be in the form of documents or electronic copies of documents, appropriately indexed to specific Bond issues and compliance functions.

III. POST-ISSUANCE DISCLOSURE COMPLIANCE REQUIREMENTS

A. In General.

The Official Statement is designed to disclose to potential purchasers of Bonds all facts about the Bonds, the Institution and the Issuer that are material to their investment decision. The analysis of “materiality” involves questions of both fact and law. In the context of the sale of securities and providing post-issuance disclosure, a fact is considered to be “material” if there is a substantial likelihood that a reasonable investor would consider it to be important in determining whether to purchase or to continue to own the securities.

The Securities and Exchange Commission (the “SEC”) has promulgated Rule 15c2-12, which obligates the Institution and certain other parties to provide ongoing information to investors in connection with publicly offered tax-exempt Bond issues. Pursuant to the Rule, the Institution will enter into a Disclosure Agreement for the benefit of bondholders pursuant to which the Institution agrees to provide certain updated information to the Municipal Securities Rulemaking Board (“MSRB”) on an ongoing basis.

The Disclosure Agreement will require the Institution to annually file a copy of its audited financial statements and certain other financial and operating information about the Institution (collectively, the “Annual Financial Information”), with the MSRB by a date specified in the Disclosure Agreement.

As part of the Bond issuance process, the Issuer and the Institution will consult with the Issuer’s Bond Counsel and other legal counsel and advisors as needed to identify material information from the Official Statement to be included as part of the Annual Financial Information required under the Disclosure Agreement and to establish procedures necessary or appropriate with respect to making the required post-issuance disclosure filings. The post-issuance disclosure filing requirements will be documented in the Disclosure Agreement that is including in the Official Statement and executed and delivered by the Institution in connection with the issuance of the Bonds.

B. Continuing Disclosure and Certification Requirements

1. *Securities Laws and Anti-Fraud Provisions.* The Disclosure Compliance Officer will consult with Bond Counsel and/or the Institution’s legal counsel and advisors, as necessary, to ensure that all Applicable Securities Laws as set forth in the Rule, the Disclosure Agreement, other documents relating to the Bonds, and requirements of the Issuer or bondholders, are met. This will include, without limitation, consultation in connection with any potential changes in ratings of the Bonds or changes in the name or operations of the Institution.

The Disclosure Compliance Officer will actively participate in the preparation of all primary disclosure materials. The Disclosure Compliance Officer, will review and prepare all post-issuance disclosure materials, which includes, without limitation the materials for all Required Annual Filings and Material Event Filings, and any other voluntary or required disclosure to the market.

The Disclosure Compliance Officer will review all primary and post-issuance disclosure materials and consult with all officers, employees, directors, agents and officials of the Institution as necessary to ensure that such materials do not contain materially false information or omit material information that investors would want to know in making an informed investment decision about the Bonds.

2. *Required Annual Filings.* Each year, on or prior to the date specified in the Disclosure Agreement, the Disclosure Compliance Officer will file with the MSRB via its Electronic Municipal Market Access website (“EMMA”), the Annual Financial Information as defined in the Rule and in the Disclosure Agreement (the “Required Annual Filing”). The

Disclosure Compliance Officer will coordinate the preparation of the Required Annual Filing materials, and will prepare the necessary information at the time and in the manner consistent with the annual financial audit and other financial information review as is regularly undertaken by the Institution. The Disclosure Compliance Officer will review the Required Annual Filing prior to submission of the filing.

If the audited financial statements of the Institution are not available by the required time, then the unaudited financial statements of the Institution shall be filed as required under the Disclosure Agreement and the audited statements of Institution shall be filed as soon as they are available.

The Disclosure Compliance Officer will ensure that the Issuer and the Trustee receive copies of all Required Annual Filings.

3. *Material Event Disclosure.* Certain “material events” are defined in the Rule and required to be disclosed by the Institution to investors through the filing of a material event notice via EMMA (a “Material Event Filing”). These “material events” are listed on Exhibit A to these procedures (the “Events”) and are also included in the Disclosure Agreement. The Disclosure Compliance Officer will make all required Material Event Filings via EMMA, consistent with the requirements of the Rule and the provisions of the Disclosure Agreement.

The occurrence of certain Events, including payment defaults, requires a Material Event Filing without the need for a materiality determination (i.e. they are deemed material under the Rule). Other Events, such as non-payment related defaults, must be analyzed to determine if the Event is material and if so, a Material Event Filing is required. The Disclosure Compliance Officer will consult with Bond Counsel regarding any questions as to whether an Event has occurred and what filings are required.

The Disclosure Compliance Officer is to be immediately notified by all employees, officers, directors, agents and officials of the Institution, of the occurrence of any listed Event so that he or she may determine whether a Material Event Filing is required pursuant to the Rule and the Disclosure Agreement. As soon as the Disclosure Compliance Officer learns of the occurrence of an Event that is either deemed material or that knowledge of such an Event would be material under Applicable Securities Law, the Disclosure Compliance Officer will prepare and file, in a timely manner not in excess of ten business days of the occurrence, a Material Event Filing via EMMA. The Disclosure Compliance Officer will ensure that the Issuer and the Trustee receive copies of all Material Event Filings.

The Disclosure Compliance Officer will review Exhibit A not less often than annually, and consult with Bond Counsel or other advisors, as necessary, to update the list of Events under the Rule.

4. *Failure to File.* In the event the Disclosure Compliance Officer fails to make any Required Annual Filing or Material Event Filing, the Disclosure Compliance Officer shall immediately notify the Issuer of such failure to file and will cooperate fully with an Issuer's request or requirement that the Institution engage a Dissemination Agent to ensure future filings are made on a timely basis.

5. *Voluntary Disclosure.* Nothing in a Disclosure Agreement prevents the Institution or the Issuer from making a voluntary filing with the MSRB of other material information in addition to the Events that give rise to a Material Event Filing under the Rule and the Disclosure Agreement.

If the Disclosure Compliance Officer determines to file any material information in addition to that which is specifically required by the Rule and the Disclosure Agreement, there is no obligation to update such information on an annual basis or to otherwise include such additional, voluntary information in any future Annual Required Filing or Material Event Filing.

If the Disclosure Compliance Officer files any voluntary disclosure notice, in addition to the Required Annual Filing and any Material Event Filing, the Disclosure Compliance Officer will provide a copy to the Issuer and the Trustee.

C. Correspondence from Securities and Exchange Commission

Upon receipt of any correspondence from the SEC, the Disclosure Compliance Officer will immediately notify the Issuer and provide the Issuer with a copy of such correspondence.

In connection with any SEC inquiry, the Institution will consult with and provide the Issuer and the Trustee, including the Issuer's Bond Counsel and counsel to the Trustee, with a reasonable opportunity to review all responses to the SEC prior to submission to the SEC. As provided in the Loan Agreement, the Institution is obligated to pay the costs of the Issuer and the Trustee, including legal fees of Issuer's Bond Counsel, in connection with any SEC inquiry, proceeding or other SEC action related to the Bonds.

Exhibit A
Material Events Requiring Disclosure
Last Updated: May 15, 2013
(pursuant to Code of Federal Regulations, §240.15c2-12 (Rule 15c2-12)
Municipal Securities Disclosure)

In a timely manner not in excess of ten business days after the occurrence of the event, notice of any of the following events with respect to the securities being offered in the offering, if material:

- (1) Principal and interest payment delinquencies;
- (2) Non-payment related defaults, if material;
- (3) Unscheduled draws on debt service reserves reflecting financial difficulties;
- (4) Unscheduled draws on credit enhancements reflecting financial difficulties;
- (5) Substitution of credit or liquidity providers, or their failure to perform;
- (6) Adverse tax opinions, the issuance by the Internal Revenue Service of proposed or final determinations of taxability, Notices of Proposed Issue (IRS Form 5701 TEB) or other material notices or determinations with respect to the tax status of the security, or other material events affecting the tax-exempt status of the security;
- (7) Modifications to rights of security holders, if material;
- (8) Bond calls, if material, and tender offers;
- (9) Defeasances;
- (10) Release, substitution, or sale of property securing repayment of the securities, if material;
- (11) Rating changes;
- (12) Bankruptcy, insolvency, receivership or similar event of the obligated person;
- (13) The consummation of a merger, consolidation, or acquisition involving an obligated person or the sale of all or substantially all of the assets of the obligated person, other than in the ordinary course of business, the entry into a definitive agreement to undertake such an action or the termination of a definitive agreement relating to any such actions, other than pursuant to its terms, if material; and
- (14) Appointment of a successor or additional trustee or the change of name of a trustee, if material.