

**CALIFORNIA ALTERNATIVE ENERGY AND ADVANCED TRANSPORTATION
FINANCING AUTHORITY**
Meeting Date: December 13, 2011
Post-Issuance Tax Compliance Procedures

Prepared by: *Alejandro Ruiz*

Summary. The Internal Revenue Service (IRS) recently revised a key form (known as Form 8038) the Authority executes whenever a new issue of tax-exempt bonds occurs. The IRS revisions to Form 8038 require attention to post-issuance reporting and responsibilities by issuers. California Alternative Energy and Advanced Transportation Financing Authority (“CAEATFA” or the “Authority”) staff recommends the Authority adopt the post-issuance compliance procedures attached hereto as Exhibit A to the attached Resolution.

Background. The IRS requires Form 8038 (the “Information Return for Tax-Exempt Private Activity Bond Issues”) to be completed and executed by any bond issuer in connection with a new issue of tax-exempt bonds. The IRS revised the form in April 2011, adding five additional lines (see Attachment A). The only changes directly affecting the Authority are lines 43 and 44. Line 43 states “Check the box if the issuer has established written procedures to ensure that all nonqualified bonds of this issue are remediated in accordance with the requirements of the Code and Regulations.” Line 44 states “Check the box if the issuer has established written procedures to monitor the requirements of section 148.”¹

Other variations of IRS Form 8038 are required when the Authority issues bonds such as Qualified Energy Conservation Bonds, which requires Form 8038-TC in certain instances. In order to meet post-issuance compliance requirements established by the IRS, staff recommends all Authority bond issuances follow these proposed compliance procedures.

Authority staff has internal procedures for monitoring arbitrage compliance and for responding to changes in use of bond proceeds, and bond-financed assets. However, a formal policy has not been adopted by the Board. The Treasurer’s Office prefers that conduit authorities/issuers not check a box on an IRS form in the negative. Three of the authorities (California Pollution Control Financing Authority, California Health Facilities Financing Authority and California Educational Facilities Authority) have already adopted post-issuance compliance procedures.

In consultation with Orrick, Herrington & Sutcliffe LLP, the attached written procedures were developed to permit an affirmative response to the IRS revisions to Form 8038. The procedures are fully consistent with current CAEATFA practices. The procedures address three major issues:

¹ Section 148 of the IRS code is the statute defining arbitrage and how borrowers must handle investments of bond proceeds. By definition, an arbitrage bond means “any bond issued as part of an issue any portion of the proceeds of which are reasonably expected (at the time of issuance of the bond) to be used directly or indirectly to acquire higher yielding investments or to replace funds which were used directly or indirectly to acquire higher yielding investments.”

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1. Arbitrage rebate and yield;
2. Use of bond proceeds and bond-financed or refinanced assets (including remedial action, if necessary); and
3. Record keeping requirements.

If adopted by the Board, these new procedures will specify the steps with which the Borrower in each financing has the responsibility for complying. They will be memorialized in two ways. First, the procedures will be documented in the Tax Certificate and Agreement (the "TCA"), a document which the Authority and the Borrower currently sign in connection with a new issue of tax-exempt bonds and which historically memorializes these types of activities and responsibilities for both the Authority and the Borrower. The TCA is one of many documents that needs to be executed for a bond sale to close. Second, in most cases (except where a larger Borrower has already implemented internal compliance procedures), the Borrower will sign a document evidencing its establishment of internal procedures which parallel the Authority's adopted procedures (see Attachment B for a sample).

Recommendation. Staff recommends the Authority approve a resolution authorizing the adoption of the written procedures for post bond issuance tax compliance.

**RESOLUTION OF THE
CALIFORNIA ALTERNATIVE ENERGY AND ADVANCED TRANSPORTATION
FINANCING AUTHORITY APPROVING THE POST-ISSUANCE TAX COMPLIANCE
PROCEDURES FOR TAX-EXEMPT BONDS AND TAX CREDIT BONDS**

December 13, 2011

WHEREAS, the California Alternative Energy and Advanced Transportation Financing Authority (the “Authority”), a public instrumentality of the State of California, is authorized and empowered by the provisions of the California Alternative Energy and Advanced Transportation Financing Authority Act (Division 16 (commencing with Section 26000) of the California Public Resources Code) (the “Act”) to issue bonds to finance the acquisition, construction, expansion, remodeling, renovation, improvement, furnishing, or equipping of any Project as that term is defined in Section 26003(g)(1) of the Act;

WHEREAS, federal income tax law requires that issuers of tax-exempt bonds (the “Bonds”) comply with certain post-issuance requirements set forth in the Internal Revenue Code;

WHEREAS, for the purpose of maximizing the likelihood that certain applicable post-issuance requirements of federal income tax law needed to preserve the tax-exempt status of the Bonds are met, the Authority desires to adopt the Post-Issuance Tax Compliance Procedures for Tax-Exempt Bonds, attached hereto as **Exhibit A**;

NOW, THEREFORE, BE IT RESOLVED by the California Alternative Energy and Advanced Transportation Financing Authority, as follows:

Section 1. The California Alternative Energy and Advanced Transportation Financing Authority Post-Issuance Tax Compliance Procedures for Tax-Exempt Bonds attached hereto as Exhibit A are hereby approved.

Section 2. This resolution shall take effect from and after its adoption.

Section 3. The provisions of the resolution of the Authority entitled “Resolution of the California Alternative Energy and Advanced Transportation Financing Authority Delegating Certain Powers and Authorizing Certain Actions Related to Bond Financings” adopted by the Authority on December 15, 2010, apply to the documents and actions approved in this Resolution, and the provisions of such resolution are incorporated herein by reference.

Section 4. The Authority hereby delegates to the Executive Director, in consultation with bond counsel, the power to amend the Post-Issuance Tax Compliance Procedure for Tax-Exempt Bonds (Exhibit A) and the Borrower Post-Issuance Tax Compliance Procedures for Tax-Exempt Bonds (Attachment B), on a case by case basis, as deemed necessary.

Exhibit A

**California Alternative Energy and Advanced Transportation Financing Authority
Post-Issuance Tax Compliance Procedures
For Tax-Exempt Bonds and Tax Credit Bonds**

December 13, 2011

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

General

Inasmuch as the Authority is a responsible conduit issuer authorizing the issuance of Bonds for borrowers that (1) own and/or operate certain “exempt facilities” as defined in Section 142 of Title 26 of the United States Code (the “Code”) , (2) use the proceeds of the bonds for one or more “qualified conservation purposes” as defined in Section 54D of the Code, or (3) used for a “qualified renewable energy facility” as defined in Sections 54C(d) and 45(d) of the Code.

Post-Issuance Compliance Requirements

External Advisors / Documentation

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

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

The Authority shall encourage or require the Borrower to engage expert advisors (each a “Rebate Service Provider”) to assist in the calculation of arbitrage rebate payable in respect of the investment of Bond proceeds in the manner more fully set forth in the Model Borrower Procedures (Attachment B).

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

Arbitrage Rebate and Yield

It is the Authority’s policy that the Borrower shall be responsible for compliance with all requirements under Federal arbitrage regulations. As more fully set forth in the Model Borrower Procedures, the Borrower is responsible for:

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

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

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

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

- monitoring the use of Bond proceeds (including investment earnings and including reimbursement of expenditures made before bond issuance) and the use of Bond-financed or refinanced assets (e.g., facilities, furnishings or equipment) throughout the term of the Bonds to ensure compliance with covenants and restrictions set forth in the Tax Certificate relating to the Bonds;
- maintaining records identifying the assets or portion of assets that are financed or refinanced with proceeds of each issue of Bonds (including investment earnings and including reimbursement of expenditures made before bond issuance), including a final allocation of Bond proceeds as described below under "Record Keeping Requirements";
- consulting with bond counsel and other legal counsel and advisers in the review of any change in use of Bond-financed or refinanced assets to ensure compliance with all covenants and restrictions set forth in the Tax Certificate relating to the Bonds;
- conferring at least annually with personnel responsible for Bond-financed or refinanced assets to identify and discussing any existing or planned use of Bond-financed or refinanced assets, to ensure that those uses are consistent with all covenants and restrictions set forth in the Tax Certificate relating to the Bonds;
- to the extent that the Borrower discovers that any applicable tax restrictions regarding use of Bond proceeds and Bond-financed or refinanced assets will or may be violated, consulting promptly with bond counsel and other legal counsel and advisers to determine a course of action to remediate all nonqualified bonds, if such counsel advises that a remedial action is necessary;
- 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 15% of the amount of such proceeds were made no later than 24 months after the later of (1) the date of issuance of the Bonds, or (2) the date of acquisition of the building;
- confirming that less than 25% of any tax exempt Bond proceeds were used to acquire land;
- with respect to facilities that convert biomass solid waste into energy through a thermal, chemical, or other process, determining annually whether solid waste (as identified or described at the time of issuance of the Bonds) constitutes at least 65 percent, by weight or volume, of the total materials introduced into the reconstituting, converting or recycling process. This provision is subject to amendment or deletion depending on the content of any new regulations promulgated by the United States Treasury regarding the definition of solid waste disposal facilities;

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- with respect to Qualified Energy Conservation Bonds and Clean Renewable Energy Bonds, confirming that 100% of available project proceeds are spent within three years of issue date of Bonds;
- with respect to facilities financed by Qualified Energy Conservation Bonds, confirming that such facilities continue to be used for a qualified conservation purpose for the life of the Bonds;
- with respect to facilities financed by Clean Renewable Energy Bonds, confirming that such facilities continue to be used as qualified renewable energy facilities for the life of the Bonds; and.
- with respect to other types of exempt facilities, adopting any such procedures that bond counsel deems appropriate to periodically assess whether such facility continues to qualify as an exempt facility.

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

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

Record Keeping Requirement

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

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

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

Attachment A

Form **8038**
(Rev. April 2011)
Department of the Treasury
Internal Revenue Service

**Information Return for Tax-Exempt
Private Activity Bond Issues**
(Under Internal Revenue Code section 149(e))
▶ See separate instructions.

OMB No. 1545-0720

Part I Reporting Authority		Check if Amended Return <input type="checkbox"/>
1 Issuer's name		2 Issuer's employer identification number
3a Name of person (other than issuer) with whom the IRS may communicate about this return (see instructions)		3b Telephone number of other person shown on 3a
4 Number and street (or P.O. box if mail is not delivered to street address)	Room/suite	5 Report number (For IRS Use Only) 1 <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>
6 City, town, or post office, state, and ZIP code		7 Date of issue (MM/DD/YYYY)
8 Name of issue		9 CUSIP number
10a Name and title of officer or other employee of the issuer whom the IRS may call for more information		10b Telephone number of officer or other employee shown on 10a

Part II Type of Issue (Enter the issue price.)	Issue Price
11 Exempt facility bond:	
a Airport (sections 142(a)(1) and 142(c))	11a
b Docks and wharves (sections 142(a)(2) and 142(c))	11b
c Water furnishing facilities (sections 142(a)(4) and 142(e))	11c
d Sewage facilities (section 142(a)(5))	11d
e Solid waste disposal facilities (section 142(a)(6))	11e
f Qualified residential rental projects (sections 142(a)(7) and 142(d)) (see instructions)	11f
Meeting 20–50 test (section 142(d)(1)(A)) <input type="checkbox"/>	
Meeting 40–60 test (section 142(d)(1)(B)) <input type="checkbox"/>	
Meeting 25–60 test (NYC only) (section 142(d)(6)) <input type="checkbox"/>	
Has an election been made for deep rent skewing (section 142(d)(4)(B))? <input type="checkbox"/> Yes <input type="checkbox"/> No	
g Facilities for the local furnishing of electric energy or gas (sections 142(a)(8) and 142(f))	11g
h Facilities allowed under a transitional rule of the Tax Reform Act of 1986 (see instructions)	11h
Facility type _____	
1986 Act section _____	
i Qualified enterprise zone facility bonds (section 1394) (see instructions)	11i
j Qualified empowerment zone facility bonds (section 1394(f)) (see instructions)	11j
k District of Columbia Enterprise Zone facility bonds (section 1400A)	11k
l Qualified public educational facility bonds (sections 142(a)(13) and 142(k))	11l
m Qualified green building and sustainable design projects (sections 142(a)(14) and 142(l))	11m
n Qualified highway or surface freight transfer facilities (sections 142(a)(15) and 142(m))	11n
o Other (see instructions)	
p Qualified New York Liberty Zone bonds (section 1400L(d))	11p
q Other (see instructions)	11q
12a Qualified mortgage bond (section 143(a))	12a
b Other (see instructions)	12b
13 Qualified veterans' mortgage bond (section 143(b)) (see instructions) ▶	13
Check the box if you elect to rebate arbitrage profits to the United States <input type="checkbox"/>	
14 Qualified small issue bond (section 144(a)) (see instructions) ▶	14
Check the box for \$10 million small issue exemption <input type="checkbox"/>	
15 Qualified student loan bond (section 144(b))	15
16 Qualified redevelopment bond (section 144(c))	16
17 Qualified hospital bond (section 145(c)) (attach schedule—see instructions)	17
18 Qualified 501(c)(3) nonhospital bond (section 145(b)) (attach schedule—see instructions)	18
Check box if 95% or more of net proceeds will be used only for capital expenditures ▶ <input type="checkbox"/>	
19 Nongovernmental output property bond (treated as private activity bond) (section 141(d))	19
20a Other (see instructions)	
b New York Liberty Zone advance refunding bond (section 1400L(e)) (see instructions)	20b
c Other. Describe (see instructions) ▶	20c

Part III Description of Bonds (Complete for the entire issue for which this form is being filed.)

	(a) Final maturity date	(b) Issue price	(c) Stated redemption price at maturity	(d) Weighted average maturity	(e) Yield
21		\$	\$	years	%

Part IV Uses of Proceeds of Issue (including underwriters' discount)

	Amount
22 Proceeds used for accrued interest	22
23 Issue price of entire issue (enter amount from line 21, column (b))	23
24 Proceeds used for bond issuance costs (including underwriters' discount)	24
25 Proceeds used for credit enhancement	25
26 Proceeds allocated to reasonably required reserve or replacement fund	26
27 Proceeds used to currently refund prior issue (complete Part VI)	27
28 Proceeds used to advance refund prior issue (complete Part VI)	28
29 Add lines 24 through 28	29
30 Nonrefunding proceeds of the issue (subtract line 29 from line 23 and enter amount here)	30

Part V Description of Property Financed by Nonrefunding Proceeds

Caution: The total of lines 31a through e below must equal line 30 above. Do not complete for qualified student loan bonds, qualified mortgage bonds, or qualified veterans' mortgage bonds.

31 Type of Property Financed by Nonrefunding Proceeds:	Amount
a Land	31a
b Buildings and structures	31b
c Equipment with recovery period of more than 5 years	31c
d Equipment with recovery period of 5 years or less	31d
e Other. Describe (see instructions)	31e

32 North American Industry Classification System (NAICS) of the projects financed by nonrefunding proceeds.

a	NAICS Code	Amount of nonrefunding proceeds	c	NAICS Code	Amount of nonrefunding proceeds
		\$			\$
b		\$	d		\$

Part VI Description of Refunded Bonds (Complete this part only for refunding bonds.)

33 Enter the remaining weighted average maturity of the bonds to be currently refunded	years
34 Enter the remaining weighted average maturity of the bonds to be advance refunded	years
35 Enter the last date on which the refunded bonds will be called	/ /
36 Enter the date(s) the refunded bonds were issued	

Part VII Miscellaneous

- 37 Name of governmental unit(s) approving issue (see the instructions) ▶
- 38 Check the box if you have designated any issue under section 265(b)(3)(B)(i)(III) ▶
- 39 Check the box if you have elected to pay a penalty in lieu of arbitrage rebate ▶
- 40a Check the box if you have identified a hedge and enter the following information ▶
- b Name of hedge provider
- c Type of hedge ▶
- d Term of hedge ▶
- 41 Check the box if the hedge is superintegrated ▶
- 42a Enter the amount of gross proceeds invested or to be invested in a guaranteed investment contract (GIC) ▶
- b Enter the final maturity date of the GIC ▶ / /
- c Enter the name of the GIC provider ▶
- 43 Check the box if the issuer has established written procedures to ensure that all nonqualified bonds of this issue are remediated in accordance with the requirements under the Code and Regulations (see instructions) ▶
- 44 Check the box if the issuer has established written procedures to monitor the requirements of section 148 ▶
- 45a Enter the amount of reimbursement if some portion of the proceeds was used to reimburse expenditures . ▶
- b Enter the date the official intent was adopted ▶ / /
- 46 Check the box if the issue is comprised of qualified redevelopment, qualified small issue, or exempt facilities bonds and provide name and EIN of the primary private user ▶
- Name ▶ EIN

Part VIII	Volume Caps	Amount
47	Amount of state volume cap allocated to the issuer. Attach copy of state certification	47
48	Amount of issue subject to the unified state volume cap	48
49	Amount of issue not subject to the unified state volume cap or other volume limitations:	49
a	Of bonds for governmentally owned solid waste facilities, airports, docks, wharves, environmental enhancements of hydroelectric generating facilities, or high-speed intercity rail facilities	49a
b	Under a carryforward election. Attach a copy of Form 8328 to this return	49b
c	Under transitional rules of the Tax Reform Act of 1986. Enter Act section ▶	49c
d	Under the exception for current refunding (section 146(j) and section 1313(a) of the Tax Reform Act of 1986)	49d
50a	Amount of issue of qualified veterans' mortgage bonds	50a
b	Enter the state limit on qualified veterans' mortgage bonds	50b
51a	Amount of section 1394(f) volume cap allocated to issuer. Attach copy of local government certification	51a
b	Name of empowerment zone ▶	
52	Amount of section 142(k)(5) volume cap allocated to issuer. Attach copy of state certification	52

Signature and Consent	Under penalties of perjury, I declare that I have examined this return, and accompanying schedules and statements, and to the best of my knowledge and belief, they are true, correct, and complete. I further declare that I consent to the IRS's disclosure of the issuer's return information, as necessary to process this return, to the person(s) that I have authorized above.			
	Signature of issuer's authorized representative	Date	Type or print name and title	
Paid Preparer Use Only	Print/Type preparer's name	Preparer's signature	Date	Check <input type="checkbox"/> if self-employed
	Firm's name ▶			Firm's EIN ▶
	Firm's address ▶			Phone no.

Attachment B

SAMPLE

**California Alternative Energy and Advanced Transportation
Financing Authority
Borrower Post-Issuance Tax Compliance Procedures
For Tax-Exempt Bonds and Tax Credit Bonds**

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

General

The Borrower now identifies post-issuance tax compliance procedures for all Bonds issued on its behalf.

Post-Issuance Compliance Requirements

External Advisors / Documentation

The Borrower shall consult with bond counsel and other legal counsel and advisors, as needed, throughout the Bond issuance process to identify requirements and to establish procedures necessary or appropriate so that the Bonds will continue to qualify for tax-exempt status or tax credit status, as applicable. The Borrower also shall consult with bond counsel and other legal counsel and advisors, as needed, following issuance of the Bonds to ensure that all applicable post-issuance requirements in fact are met. This shall include, without limitation, consultation in connection with any potential changes in use of Bond-financed or refinanced assets. This requirement shall be documented in the Tax Certificate and/or other documents finalized at or before issuance of the Bonds.

The Borrower shall be responsible to determine (or obtain expert advice to determine) whether arbitrage rebate calculations have to be made for the Bond issue. If it is determined that such calculations are or are likely to be required, the Borrower shall engage expert advisors (each a “Rebate Service Provider”) to assist in the calculation of arbitrage rebate payable in respect of the investment of Bond proceeds, or else shall ensure that it has adequate financial, accounting and legal resources of its own to make such calculations. Borrowers shall make any rebate payments required on a timely basis.

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

Arbitrage Rebate and Yield

[TITLE OF EMPLOYEE/OFFICER OF BORROWER] shall be responsible for overseeing compliance with arbitrage rebate requirements under federal tax regulations:

- 1) If at the time of Bond Issuance, based on reasonable expectations set forth in the Tax Certificate and Agreement, it appears likely that the Bond issue will qualify for an exemption from the rebate requirement, the Borrower may defer taking any of the actions set forth in the subsection (2). Not later than the time of completion of construction or acquisition of the Project, and depletion of all funds from the Project Fund, the Borrower shall make a determination if expenditure of the bond proceeds qualified for exemption from the rebate requirements based on spending within 6 month or 18 month period after issuance. If rebate exemption is determined to be applicable, Borrower shall prepare and keep in the permanent records of the Bond Issue a memorandum evidencing this conclusion together with records of expenditure to support such conclusion. If the transaction does not qualify for rebate exemption, Borrower shall initiate the steps set forth in (2) below.
- 2) If at the time of Bond Issuance it appears likely that arbitrage rebate calculations will be required, or upon determination that calculations are required pursuant to (1) above, Borrower shall:
 - engage the services of a Rebate Service Provider and, prior to each rebate calculation date, cause the trustee or other financial institution investing bond proceeds to deliver periodic statements concerning the investment of Bond proceeds to the Rebate Service Provider;
 - provide to the Rebate Service Provider additional documents and information reasonably requested by the Rebate Service Provider;
 - monitor efforts of the Rebate Service Provider;
 - assure payment of required rebate amounts, if any, no later than 60 days after each 5-year anniversary of the issue date of the Bonds, and no later than 60 days after the last Bond of each issue is redeemed;
 - during the construction period of each capital project financed in whole or in part by Bonds, monitor the investment and expenditure of Bond proceeds and consult with the Rebate Service Provider to determine compliance with any applicable exceptions from the arbitrage rebate requirements during each 6-month spending

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period up to 6 months or 18 months, as applicable, following the issue date of the Bonds; and

- retain copies of all arbitrage reports and trustee statements as described below under “Record Keeping Requirements” and, upon request, providing such copies to the bond issuer.
- in lieu of engaging an outside Rebate Service Provider, the Borrower may make a determination that it has sufficient capabilities using its own personnel, supported by its regular accounting and legal advisers, to be able to make the required rebate calculations. Such determination shall be evidenced in writing with specific reference to the personnel and advisers to carry out the calculations, and such written determination shall be maintained in the records of the bond transaction.

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

[TITLE OF EMPLOYEE/OFFICER OF BORROWER] shall be responsible for:

- monitoring the use of Bond proceeds (including investment earnings and including reimbursement of expenditures made before bond issuance) and the use of Bond-financed or refinanced assets (e.g., facilities, furnishings or equipment) throughout the term of the Bonds to ensure compliance with covenants and restrictions set forth in the Tax Certificate relating to the Bonds;
- maintaining records identifying the assets or portion of assets that are financed or refinanced with proceeds of each issue of Bonds (including investment earnings and including reimbursement of expenditures made before bond issuance), including a final allocation of Bond proceeds as described below under “Record Keeping Requirements”;
- consulting with bond counsel and other legal counsel and advisers in the review of any change in use of Bond-financed or refinanced assets to ensure compliance with all covenants and restrictions set forth in the Tax Certificate relating to the Bonds;
- conferring at least annually with personnel responsible for Bond-financed or refinanced assets to identify and discussing any existing or planned use of Bond-financed or refinanced assets, to ensure that those uses are consistent with all covenants and restrictions set forth in the Tax Certificate relating to the Bonds;
- to the extent that the Borrower discovers that any applicable tax restrictions regarding use of Bond proceeds and Bond-financed or refinanced assets will or may be violated, consulting promptly with bond counsel and other legal counsel and advisers to determine a course of action to remediate all nonqualified bonds, if such counsel advises that a remedial action is necessary;
- 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 15%

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of the amount of such proceeds were made no later than 24 months after the later of (1) the date of issuance of the Bonds, or (2) the date of acquisition of the building;

- confirming that less than 25% of any tax exempt Bond proceeds were used to acquire land; and
- with respect to facilities that convert biomass solid waste into energy through a thermal, chemical, or other process, determining annually whether solid waste (as identified or described at the time of issuance of the Bonds) constitutes at least 65 percent, by weight or volume, of the total materials introduced into the reconstituting, converting or recycling process. This provision is subject to amendment or deletion depending on the content of any new regulations promulgated by the United States Treasury regarding the definition of solid waste disposal facilities;
- with respect to Qualified Energy Conservation Bonds and Clean Renewable Energy Bonds, confirming that 100% of available project proceeds are spent within three years of issue date of Bonds;
- with respect to facilities financed by Qualified Energy Conservation Bonds, confirming that such facilities continue to be used for a qualified conservation purpose for the life of the Bonds;
- with respect to facilities financed by Clean Renewable Energy Bonds, confirming that such facilities continue to be used as qualified renewable energy facilities for the life of the Bonds; and
- with respect to other types of exempt facilities, adopting any such procedures that bond counsel deems appropriate to periodically assess whether such facility continues to qualify as an exempt facility.

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

Record Keeping Requirement

[TITLE OF EMPLOYEE/OFFICER OF BORROWER] shall be responsible for maintaining the following documents for the term of each issue of Bonds (including refunding Bonds, if any) plus at least three years:

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

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are financed or refinanced with Bond proceeds, including a final allocation of Bond proceeds and the Final Completion Report filed pursuant to the Loan Agreement; 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.

DATED: _____

[BORROWER]

By _____
[Title]