

**ST. LAWRENCE COUNTY INDUSTRIAL DEVELOPMENT AGENCY  
CIVIC DEVELOPMENT CORPORATION  
Post-Issuance Tax Compliance Procedures  
For Conduit Tax-Exempt Bonds**

**May 18, 2017**

The purpose of these Post-Issuance Tax Compliance Procedures is to establish post-issuance policies and procedures in connection with tax-exempt conduit bonds (the “Bonds”) issued by the ST. LAWRENCE COUNTY INDUSTRIAL DEVELOPMENT AGENCY CIVIC DEVELOPMENT CORPORATION (the “Issuer”) so that all applicable post-issuance requirements of federal income tax law need to maintain the tax-exempt status of the Bonds are met. The Bonds are qualified private activity bonds issued by the Issuer the proceeds which are lent to borrowers owning or operating a qualified facility (each, a “Borrower” and collectively, “Borrowers”). The Bonds are repaid from payments on the loan funded with Bond proceeds. The Issuer reserves the right to use its discretion as necessary and appropriate to make exceptions or request additional provisions as circumstances warrant. The Issuer also reserves the right to change these policies and procedures from time to time.

**General**

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

**Post Issuance Compliance Requirements**

1. External Auditors/Documentation

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

The 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. Such requirement shall

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

The Issuer shall encourage or require the 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 below.

Unless otherwise provided by the indenture or similar document relating to the Bonds, unexpended Bond proceeds shall be held by a trustee or other financial institution, and the investment of Bond proceeds shall be managed by the 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 Issuer if it so requests.

## 2. Arbitrage Rebate and Yield

The Borrower shall be responsible for compliance with all requirements under federal arbitrage laws. In particular, 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, delivering or 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 issuer date of the Bond, 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 under Internal Revenue Code (the “Code”) § 148(f) during each spending period up to 6 months, 18 months or 24 months, as applicable, (and in compliance with Treasury Regulations (“Treas. Regs.”) § 1.148-7) following the issue date of the Bonds;
- establishing procedures to ensure all investments are made at fair market value; and

- retaining copies of all arbitrage reports and investment records, and trustee statements as described below under “Recordkeeping Requirements” and, upon request, providing such copies to the Issuer.

### 3. Use of Bond Proceeds and Bond-Finance or Refinanced Assets

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 Agreement 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 expenditure made before bond issuance), including a final allocation of Bond proceeds as described below under “Recordkeeping 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 Agreement relating to the Bonds;
- conferring at least annually with personnel responsible for the management, administration or use of Bond-financed or refinanced assets to identify and discuss any existing or planned use of Bond-financed or refinanced assets, so as to ensure that those uses are consistent with all covenants and restrictions set forth in the Tax Agreement relating to the Bonds;
- to the extent that the Borrower discovers that any applicable tax restrictions regarding the use of Bond proceeds and Bond-financed or refinanced assets will or may be violated, consulting promptly with bond counsel and other legal counsel and advisers to determine a course of action to avoid this violation or to undertake a remedial action, pursuant to the applicable section(s) of the Treas. Regs. (including, but not limited to §§ 1.141-12, 1.142-2, 1.144-2 and 1.145-2), if such counsel advises that such action is necessary to preserve the tax-exempt status of the Bonds;
- with respect to facilities financed with exempt facility bonds or qualified small issue manufacturing bonds, adopting any such procedures that bond counsel deems appropriate to periodically assess whether such facility continues to qualify as an exempt facility or qualified manufacturing facility, as applicable; and
- with respect to facilities financed with qualified small issue manufacturing bonds, track all capital expenditures paid or incurred with respect to the bond-financed facility and all other facilities in the same incorporated municipality during the six-

year period commencing three (3) years prior to the date of issue of the Bonds and ending three (3) years after such date, to ensure that such expenditures do not exceed \$10,000,000, in accordance with Code § 144(a)(4).

For Bonds issued after the date hereof, the Borrower, in the Tax Agreement relating to the Bonds and/or other documents finalized at or before the issuance of the Bonds, shall identify an employee and/or officer to undertake the tasks listed above.

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

#### 4. Reporting Requirement of the Borrower

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

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

In respect to Bonds issued after the adoption of these procedures, the Borrower shall supply with all reports prepared by the Rebate Service Provider that calculate rebate liability. Such reports shall include Evidence of Rebate Calculation and payment (copy of check, if payment required).

#### 5. Recordkeeping Requirements

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.

#### 6. Issuer Requirements

The Issuer shall:

- cause bond counsel to prepare the initial Internal Revenue Service Form 8038, 8038-G, 8038-GC, 8038-B or 8038-TC (where applicable) to be filed in connection with the issuance of the Bonds and shall cause the respective Form to be duly filed;
- retain a copy of the Bond closing transcript; and
- retain a copy of all certificates and other documents supplied to the Issuer by the Borrower in connection with the Bonds.

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

**SCHEDULE A**  
**FORM OF COMPLETION CERTIFICATE**

## **FORM OF COMPLETION CERTIFICATE**

Bond Issue: [Formal Name of Bond Issue] (the “Bonds”)

This Completion Certificate sets forth the allocation of proceeds of the Bonds to expenditures and projects and is delivered pursuant to the section of the Bond Trust Indenture for the Bonds relating to the Project Fund, Construction Fund or other fund. The Borrower will maintain this Completion Certificate in its books and records for the Bonds to establish compliance with federal tax requirements applicable to the Bonds.

This Completion Certificate makes allocations of only “new money” proceeds of the Bonds and any unspent net proceeds of any bonds that were refunded by the Bonds. The allocation of proceeds of refunded bonds is otherwise set forth in the certificates for the respective refunded bond issue. This Project Completion Certificate does, however, set forth certain summary information for the entire issue of the Bonds.

### **I. Summary Information Relating to the Bonds**

Issue Date:	[Date of Issuance]
Sale Proceeds:	[\$[New Money Sale Proceeds]
New Money Investment Earnings:	[\$[Actual New Money Investment Earnings]
New Money Proceeds :	[\$[New Money Sale Proceeds plus Actual New Money]
Total Bond Issue Sale Proceeds:	[\$[Total Bond Issue Sale Proceeds]
Total Bond Issue Proceeds:	[\$[Total Bond Issue Proceeds]
Weighted Average Bond Maturity:	[Weighted Average Maturity] years
Applicable Nonqualified Use Limit:	[Percentage Limit]%

### **II. Bond Trust Indenture Completion Representations**

1. [The Project has been fully completed on [date of completion].
2. All permits necessary as of the date of this Completion Certificate for the occupancy and use of the Project have been obtained and are in full force and effect.
3. All fixtures required as of the date of this Completion Certificate for the operation of the Project have been obtained and are free and clear of all liens and security interest other than Permitted Encumbrances.
4. As of the date of this Completion Certificate the Project (to the extent of the Schedule in the Loan Agreement) has been fully paid for and no claims exist against

the Borrower or against the Project out of which a lien based on furnishing labor or material exists or might, with the passage of time or the giving of notice, ripen.

5. As of the date of this Completion Certificate no event of default has occurred and is continuing under the Bond Indenture or under the Loan Agreement.]

### **III. Allocation of Bond Proceeds to Expenditures (See Schedule I)**

The Borrower hereby allocates the proceeds of the Bonds to the expenditures set forth in Schedule 1 to this Certificate. In connection with this allocation, the Borrower represents as follows:

1. Each expenditure is included within the scope of the projects described in the notice of public hearing (“TEFRA hearing”) for the public approval of the Bonds.
2. The Borrower will consistently treat these expenditures as the expenditures financed with the Bonds for qualifying use, arbitrage and rebate and economic life purposes.
3. The weighted average reasonably expected economic life of the property financed with these expenditures is [Final Reasonably Expected Weighted Economic Life] years. 120% of the actual reasonably expected economic life of all of the property financed with the Bonds ([120% of Final Weighted Reasonably Expected Economic Life] years) is greater than the weighted average maturity of the Bonds, as shown above.
4. Each asset of the financed property is owned, and is reasonably expected to be owned for the lesser of the remaining term of the Bonds or the remaining economic life of the asset by The Borrower.
5. The non-complaint use of the financed property is reasonably expected to be not more than [5 or other Reasonably Expected Nonqualified Use Percentage]%, determined on an annual basis.
6. In each case, the allocation of Bond proceeds to an expenditure has been made, or is now being made in this Completion Certificate, within 18 months of the placed in service date of the project of which it is a part.

### **IV. Allocation of Bond Proceeds to Projects (See Schedule II)**

The Borrower hereby allocates the proceeds of the Bonds to the projects set forth in Schedule 2 to this Completion Certificate (the “Financed Projects”), which Financed Projects have also been, or are reasonably expected to be, financed in part with other sources of funding, which may include proceeds of other tax-exempt bonds and equity of the Borrower. In connection with this allocation, the Borrower represents and elects as follows:

1. Each Financed Project consists only of one or more identified facilities or capital projects that are functionally related or integrated and are located on the same site or on reasonably proximate adjacent sites and that have been or are reasonably expected to be placed in service within the same 12 month period.



2. The Bond proceeds and other sources of funding set forth on Schedule 2 have been, or are reasonably expected to be, expended pursuant to the same plan of financing.

3. Amounts set forth as “equity” consist only of proceeds of taxable obligations and cash spent on the Financed Project, and does not include equity interests in real property or tangible personal property. In addition, “equity” does not include amounts spent on subsequent improvements or replacements.

**SCHEDULE I TO COMPLETION CERTIFICATE**

**ALLOCATION TO EXPENDITURES**

[Attach spreadsheet schedule showing, amount, date, location, and related purpose of expenditures]

**SCHEDULE II TO COMPLETION CERTIFICATE**

**ALLOCATION TO FINANCED PROJECTS**

This Schedule 2 provides information regarding projects financed in part with Bond Proceeds and in part with equity of the Borrower, and does not necessarily list all expenditures made with Bond Proceeds.

**[INSERT A SEPARATE TABLE FOR EACH FINANCED PROJECT]**

Description of Project	
Commencement Date	
[Reasonably Expected] [Final] Placed in Service Date	
[Reasonably Expected] [Final] Total Project Costs	
Bond Proceeds Expenditures	
[Reasonably Expected] [Final] Equity Contribution	
[Reasonably Expected] [Final] Expenditures Financed with Other Tax-Exempt Bonds	

**SCHEDULE B**  
**FORM OF ANNUAL CERTIFICATE**

## **FORM OF ANNUAL CERTIFICATE OF THE BORROWER**

[NAME OF BOND ISSUE] (the “Bonds”),  
issued on [ISSUE DATE]

The undersigned, a duly authorized representative of \_\_\_\_\_ (the “Borrower”), hereby certifies on behalf of the Borrower that:

1. The Borrower is a party to the Loan Agreement dated as of \_\_\_\_\_, 20\_\_, and the Tax Agreement dated \_\_\_\_\_, 20\_\_, relating to the Bonds.

2. The Borrower has made a review of its activities during the preceding calendar year for purposes of determining whether it has complied with all terms, provisions and conditions of the Loan Agreement and the Tax Agreement. Such review has been made in a manner consistent with the post-issuance compliance policies and procedures of the Borrower (the “Borrower Policies and Procedures”).

3. The Borrower Policies and Procedures are current, complete and sufficient for the Borrower’s purposes, and the individual identified on Schedule I attached hereto is the current officer responsible for the Borrower’s implementation of and adherence to the Borrower Policies and Procedures (the “Borrower Responsible Officer”).

4. The Borrower has kept, observed, performed and fulfilled each and every covenant, provision and condition of the Loan Agreement and the Tax Agreement. Such covenants, provisions and conditions expressly include compliance with all federal securities law and tax law requirements relating to the Bonds.

5. The Borrower certifies that [nothing has changed since the Borrower submitted the Completion Certificate] [that the following has changed since the Borrower submitted the Completion Certificate: ].

6. [There has been a new private use of the Bond proceeds.] [The Borrower certifies that such use, together with other private uses, will not result in private use in excess of five percent (5%) of the proceeds of the Bonds]. [Attached hereto in Schedule II is an opinion of bond counsel [that such use will not cause the Bonds financing such project to become taxable.] [that appropriate remedial action has been taken to preserve the Bonds’ status as tax-exempt bonds.]

**SCHEDULE 1 TO ANNUAL CERTIFICATE**

Borrower Responsible Officer: \_\_\_\_\_

Title: \_\_\_\_\_

**SCHEDULE II TO ANNUAL CERTIFICATE  
OPINION OF BOND COUNSEL**