

BATTERY PARK CITY AUTHORITY

**Post-Issuance Tax Compliance
Policy and Procedures**

Effective Date: January 30, 2014

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SECTION I

PURPOSE

The Battery Park City Authority, doing business as the Hugh L. Carey Battery Park City Authority (the “**Authority**”), has issued tax-exempt and tax-credit obligations (collectively, the “**Tax-Advantaged Obligations**”) to finance and refinance various infrastructure projects at the Battery Park City site (the “**BPC Site**”). The Tax-Advantaged Obligations the Authority has issued are collectively called the “**BPCA Bonds**”. The Internal Revenue Code of 1986, as amended (the “**Code**”), and the Federal income tax regulations (the “**Regulations**” and together with the Code, the “**Federal Tax Rules**”) impose a responsibility on issuers of the Tax-Advantaged Obligations of maintaining compliance with certain requirements and limitations of the Federal Tax Rules in order to maintain the tax-exempt or tax-credit status of such obligations. The Authority has covenanted in each of its Federal tax certificates (each, a “**Tax Certificate**”), executed by the Authority in connection with the issuance of each issue of BPCA Bonds, that it will comply with all of the Federal Tax Rules applicable to such issue. Bond Counsel to the Authority (“**Bond Counsel**”) advised the Authority that, although the Authority has formal and informal procedures for maintaining compliance with such requirements and limitations of the Federal Tax Rules, the Internal Revenue Service (the “**IRS**”) has effectively required, through various pronouncements and required forms, that issuers of the Tax-Advantaged Obligations adopt and implement formal written post-issuance policies and procedures with the goal of timely preventing, identifying and resolving violations of the Federal Tax Rules in order to maintain the tax-exempt or tax-credit status of such obligations. To affirmatively comply with such reporting requirements and to formalize and memorialize the Authority’s existing tax compliance policy and procedures regarding arbitrage rebate and yield restriction requirements, monitoring of facilities financed or refinanced with proceeds of the BPCA Bonds (the “**Bond-Financed Facilities**”) for private activity compliance, accounting and recordkeeping requirements and tax documentation and filing requirements, and in furtherance of the tax covenants made by the Authority in each of the Tax Certificates, the Authority formally adopted the policy and procedures set forth herein for all of its BPCA Bonds on November 19, 2013 (the “**Policy and Procedures**”).

In the event the Policy and Procedures conflict, in whole or in part, with any Tax Certificate, such Tax Certificate shall control; *however*, the Authority shall consult with Bond Counsel to determine whether such Tax Certificate should be amended to resolve any such conflict.

SECTION II**THE AUTHORITY'S POLICY**

It is the policy of the Authority to comply in all respects with Federal Tax Rules applicable to each issue of BPCA Bonds for the respective terms of such issues and the applicable statute of limitations.

SECTION III

RESPONSIBILITY OF CERTAIN DESIGNATED EMPLOYEES OF THE AUTHORITY

Except as otherwise described herein, the Authority's Chief Financial Officer (the "**CFO**") shall have primary responsibility for ensuring that each issue of outstanding BPCA Bonds is, and will remain, in compliance in all respects with the Federal Tax Rules. The CFO may delegate certain of his or her primary responsibilities relating to financial matters to the Authority's Controller (the "**Controller**") and to the Authority's Director of Financial Reporting (the "Director"). The Controller's responsibilities will include private activity monitoring and compliance as described in Section V below and the Director's responsibilities will include arbitrage rebate and yield restriction monitoring and compliance as described in Section VII below. The Authority's General Counsel (the "**General Counsel**") shall have primary responsibility for legal matters relating to compliance with the Federal Tax Rules. The General Counsel may delegate certain of his or her primary responsibilities relating to legal matters to other members of the Legal Department. The CFO, the Controller, the Director and the General Counsel, in order to ensure compliance with such rules, including the Policy and Procedures, will consult and coordinate with other departments and groups within the Authority as necessary, including:

- Finance
- Legal
- Real property
- Accounting
- Administration
- Information technology

The CFO, the Controller, the Director and the General Counsel will also consult and coordinate with third-party professionals including:

- Bond Counsel
- arbitrage rebate and yield restriction services provider (the "**Rebate Consultant**")
- other advisors such as DAC, as necessary.

The CFO will identify from time to time the respective employee(s) of the Authority who will be responsible for each of the procedures listed herein, notify the current holder of that office of the responsibilities and provide that person with a copy of the Policy and Procedures. Upon employee transitions, the CFO will advise the new personnel of their responsibilities under the Policy and Procedures in writing and will ensure that the appropriate employees understand the importance thereof. If employee positions are restructured or eliminated, the CFO will reassign responsibilities as necessary to ensure that all of the Policy and Procedures have been appropriately assigned.

Each employee who holds the office of CFO, Controller, Director or General Counsel (individually a "**Compliance Officer**") will acknowledge the assigned duties of such office under the Policy and Procedures by signing and dating the Signature Page. The person then holding the office of a Compliance Officer will not be relieved of such duties until the successor to such office has signed and dated the Policy and Procedures. In the event the duties of the office of a Compliance Officer are assumed or assigned to another employee of the Authority, the term "CFO", "Controller," "Director," and "General Counsel" as used in the Policy and Procedures shall mean such other employee.

The Authority's current procedures require all agreements, contracts and arrangements involving the use, lease, ownership and disposition of or utility or similar services provided from any of the Authority's facilities to be reviewed and approved by the Authority's Legal Department. The Authority's current procedures also require each agreement, contract or arrangements for a facility which is a Bond-Financed Facility to be reviewed and approved by the General Counsel for compliance with the Federal Tax Rules. No such agreement, contract or arrangement shall be valid and binding on the Authority unless such review is performed by and approval is obtained from the General Counsel. In determining whether to approve an agreement, contract or arrangement, the General Counsel shall consult, if necessary or appropriate, with Bond Counsel to ascertain whether such agreement, contract or arrangement will affect the level of private activity (as described in Section V.(A) below) of applicable BPCA Bond issues and with the Controller to ascertain whether any increased level of private activity will cause the Private Activity Test to be met (as defined in Section V.(B) below) with respect to applicable BPCA Bond issues.

If it is determined that the Private Activity Test with respect to a BPCA Bond issue may adversely affect the exclusion of the interest on such BPCA Bond issue from gross income for Federal income tax purposes, the CFO, the General Counsel, the Controller and the Director will consult with Bond Counsel to decide whether to undertake a remedial action permitted under the Federal Tax Rules (as described in Section VI below) or enter into a closing agreement with the IRS under the VCAP (as described in Section IX.(B) below) to preserve the tax-exemption of the interest.

The Legal Department has final responsibility for handling notices, information document requests from the IRS ("**IDRs**") and IRS audits which are received by the Authority. The General Counsel shall coordinate with the CFO, the Controller and the Director and consult, if necessary or appropriate, with Bond Counsel in formulating an appropriate response or course of action.

SECTION IV

TAX-ADVANTAGED DEBT OUTSTANDING

A. Series 2009A Bonds. On December 22, 2009, the Authority issued \$56,600,000 aggregate principal amount of Senior Revenue Bonds, Series 2009A (Federally Taxable—Build America Bonds) (the “**Series 2009A Bonds**”). The Series 2009A Bonds were issued as “build America bonds” (“**BABs**”) under Section 54AA of the Code to finance a portion of the costs of certain ongoing infrastructure and other capital improvements at the BPC Site. Proceeds of the Series 2009A Bonds also were used to pay certain costs of issuance and the State bond issuance charge with respect to the Series 2009A Bonds.

B. Series 2009B Bonds. On December 22, 2009, the Authority also issued \$30,635,000 aggregate principal amount of Senior Revenue Bonds, Series 2009B (Tax-Exempt Bonds) (the “**Series 2009B Bonds**” and together with the Series 2009A Bonds, the “**Series 2009 Bonds**”). The Series 2009B Bonds were issued as tax-exempt private activity bonds pursuant to Section 145 of the Code (“**Qualified 501(c)(3) Bonds**”) to finance a portion of the costs of a community center located on the BPC Site, which center is managed by Asphalt Green, Inc., an organization described in Section 501(c)(3) of the Code, pursuant to a management services agreement. Proceeds of the Series 2009B Bonds also were used to fund the Reserve Fund and to pay certain costs of issuance and the State bond issuance charge with respect to the Series 2009B Bonds. Bond Counsel has advised that, although the 2009A Bonds and the 2008B Bonds were sold and issued on the same dates, the 2009A Bonds and the 2009B Bonds are treated as separate issues for all purposes of the Code and Regulations.

C. Tax-Exempt Series 2013 Bonds. On October 23, 2013, the Authority issued \$356,085,000 aggregate principal amount of Senior Refunding Revenue Bonds, Series 2013A (Tax-Exempt Bonds) (the “**Series 2013A Bonds**”), \$210,865,000 aggregate principal amount of Junior Revenue Bonds, Series 2013C (the “**Series 2013C Bonds**”), \$199,330,000 principal amount of Junior Revenue Bonds, Series 2013D (the “**Series 2013D Bonds**”) and \$199,335,000 principal amount of Junior Revenue Bonds, Series 2013E (the “**Series 2013E Bonds**” and together with the Series 2013A Bonds, the Series 2013C Bonds and the Series 2013D Bonds, the “**Tax-Exempt Series 2013 Bonds**”). The Tax-Exempt Series 2013 Bonds were issued to finance a portion of the costs of certain ongoing infrastructure and other capital improvements at the BPC Site and current refund portions of the Authority’s Senior Revenue Bonds, Series 2003A (the “**Series 2003A Bonds**”), Junior Revenue Bonds, Series 2003B (the “**Series 2003B Bonds**”) and Junior Revenue Bonds, Series 2003C (the “**Series 2003C Bonds**” and together with the Series 2003A Bonds and the Series 2003B Bonds, the “**Series 2003 Bonds**”), originally issued on October 16, 2003 to finance and refinance certain infrastructure and other capital improvements at the BPC Site. On October 23, 2013, the Authority also issued \$6,700,000 aggregate principal amount of Senior Revenue Bonds, Series 2013B (Federally Taxable Bonds) (the “**Series 2013B Bonds**”). The Series 2013B Bonds were issued as Federally taxable obligations to finance a portion of the costs of certain ongoing infrastructure and other capital improvements at the BPC Site which, if financed with proceeds of an issue of Tax-Advantaged Obligations on a stand-alone basis, would cause such issue to meet the Private Activity Test (as defined in Paragraph B of Section V). The Policy and Procedures do not apply to Series 2013B Bonds.

SECTION V

PRIVATE ACTIVITY AND SPECIAL RULES

A. Types of Bonds. Under the Code, two types of tax-exempt bonds may be issued: “**governmental bonds**” and “**qualified private activity bonds**”. Governmental bonds may be issued if the level of “**private activity**” does not exceed limits specified by the Code. Qualified private activity bonds may be issued if the specified level of private activity is exceeded but only if the bonds are issued for the one of the purposes specified by the Code and other requirements specified by the Code for such issuance are met. Bonds which are neither governmental bonds nor qualified private activity bonds are treated as “**private activity bonds**”, the interest on which is Federally taxable and not tax-exempt. Under the Code, various “**tax-credit**” bonds also may be issued for certain specified purposes. The interest on tax-credit bonds is Federally taxable. The issuers or the bondholders of tax-credit bonds receive “**tax-credits**” from the U.S. Treasury Department. Certain tax-credit bonds, such as “**build America bonds**”, also must comply with the limitations on the amount of private activity that is applicable to governmental bonds.

B. Private Activity Test. An issue of governmental bonds will be considered private activity bonds (the interest on which is Federally taxable) if more than the lesser of 10% or \$15,000,000 of the proceeds of such issue are directly or indirectly used in Private Use as defined in Paragraph D of this Section V (the “**Private Use Test**”) AND more than lesser of 10% or \$15,000,000 of the debt service on such issue is directly or indirectly (a) secured by any interest in property subject to any Private Use or (b) derived from payments made in respect of property subject to any Private Use (the “**Private Payment and Security Test**”). The goal in issuing tax-exempt bonds is not to meet (*i.e.*, to fail) either or both of the Private Use Test and the Private Payment and Security Test. The Private Use Test and the Private Payment and Security Test are together referred to as the “**Private Activity Test**”. If the Private Use of a Bond-Financed Facility is unrelated to any governmental use of such facility or is disproportionate to a related governmental use thereof, the 10% limitation of both the Private Use Test and the Private Payment and Security Test is reduced to 5%.

C. Private Loan Test. An issue of governmental bonds also will be considered private activity bonds if more than the lesser of 5% or \$5,000,000 of the proceeds of such issue are used, directly or indirectly, to make or finance loans (the “**Private Loan Test**”) to any person or entity which is not a state or local governmental unit, including the United States or any agency and instrumentality thereof and any organization described in Section 501(c)(3) of the Code (a “**Non-Exempt Person**”).

D. Definition of Private Use. “**Private Use**” is defined as any direct or indirect use of a Bond-Financed Facility in any trade or business carried on by any Non-Exempt Person. Private Use generally results from any contract or other arrangement including, without limitation, ownership, leases, management or operation(s) contracts, research agreements, service contracts, incentive payment contracts, guarantee contracts, take or pay contracts, put or pay contracts, output contracts or joint ventures which provides for use (direct or indirect) of a Bond-Financed Facility by any Non-Exempt Person. In general, Private Use commences on the first date on which there is a right to actual use of a Bond-Financed Facility by a Non-Exempt Person. Use of a Bond-Financed Facility by a Non-Exempt Person will not constitute Private

Use if such use is available to the general public at either no charge or on the basis of rates that are generally applicable and uniformly applied ("**General Public Use**"). For this purpose, rates may generally be treated as generally applicable and uniformly applied even if different rates apply to different classes of users, such as volume purchasers, if the differences in rates are customary and reasonable. Furthermore, Private Use does not result from (1) contracts for services that are solely incidental to the primary governmental function or functions of a Bond-Financed Facility (e.g., contracts for janitorial, office equipment repair, hospital billing, or similar services), or (2) contracts to provide for services, if the only compensation is the reimbursement of the service provider for actual and direct expenses paid by the service provider to unrelated parties.

E. Certain Short-Term Permitted Arrangements. Certain short-term arrangements with a Non-Exempt Person for the use of a Bond-Financed Facility, including service or capacity from such facilities, do not result in Private Use if the requirements set forth below are met:

1. The arrangement has a term (including all renewal options) that is not longer than 200 days, does not result in ownership of the Bond-Financed Facility by a Non-Exempt Person, does not otherwise convey priority rights or other preferential benefits to a Non-Exempt Person and is reasonably available for use to natural persons not engaged in a trade or business. For this purpose, a right of first refusal to renew use under the arrangement is not treated as a renewal option if (i) the compensation for the use under the arrangement is redetermined at generally applicable, fair market value rates that are in effect at the time of renewal, and (ii) the use of the Bond-Financed Facility under the same or similar arrangements is predominantly by members of the General Public;

2. The arrangement has a term (including renewal options) that is not longer than 100 days, does not result in ownership of the Bond-Financed Facility by a Non-Exempt Person, would constitute General Public Use except that the Bond-Financed Facility is not available on the same basis for use by members of the General Public because generally applicable and uniformly applied rates are not reasonably available to members of the General Public and the Bond-Financed Facility was not financed or refinanced for the principal purpose of such Private Use; or

3. The arrangement has a term (including renewal options) that is not longer than 50 days, does not result in ownership of the Bond-Financed Facility by a Non-Exempt Person, is negotiated at arm's-length, the compensation paid for the use pursuant to such arrangement is at fair market value and the Bond-Financed Facility was not financed or refinanced for the principal purpose of such Private Use.

F. Certain Incidental Use. Certain arrangements with a Non-Exempt Person for the incidental use of a Bond-Financed Facility do not result in Private Use if the following requirements are met: except for vending machines, pay telephones, kiosks and similar uses, the use does not involve the transfer of possession and control of space separated from other areas of a Bond-Financed Facility by walls, partitions, barriers and the like, the nonpossessory use is not functionally related to any other use of such facility by the same person (other than a different

nonpossessory use) and all nonpossessory uses do not in the aggregate exceed 2.5 percent of the Bond-Financed Facility.

G. Management Contracts. An arrangement for the use of a Bond-Financed Facility pursuant to a management or operation(s) contract does not constitute Private Use if such contract meets the requirements of Revenue Procedure 97-13, as summarized in **EXHIBIT A**. The General Counsel, in coordination with the Controller, will consult with Bond Counsel to determine the impact, if any, that a potential management or operation(s) contract relating to any Bond-Financed Facility would have on the tax-exempt or tax-credit status of any issue of BPCA Bonds, the proceeds of which financed or refinanced such facility, prior to executing, amending or renewing such a contract.

H. Sale of Bond-Financed Property. The Authority expects that it or the City of New York (the "City") will own all of the Bond-Financed Facilities for the entire term of each issue of BPCA Bonds, the proceeds of which financed or refinanced such facilities. As an integral part of the Policy and Procedures, the CFO, the Controller, the Director and the General Counsel will consult with Bond Counsel to determine the impact, if any, that a potential sale or other disposition of any Bond-Financed Facility would have on the tax-exempt or tax-credit status of such BPCA Bonds prior to the actual sale or other disposition of such facility. No sale or other disposition of any Bond-Financed Facility shall be permitted if the exclusion of the interest on a BPCA Bond issue from gross income for Federal income tax purposes is adversely affected; it being understood that a remedial action may be taken or a closing agreement with the IRS under the VCAP may be entered into to preserve such exclusion.

I. Monitoring of Private Use and Private Payments and Security. As an integral part of the Policy and Procedures, the Controller, in consultation with the CFO and the General Counsel, will maintain an effective system for regularly monitoring all of the Bond-Financed Facilities for Private Use and private payments and security within the limits described in Paragraph B of this Section. The Controller will compile and maintain all Private Use and private payments and security information and documentation with respect to all of the Bond-Financed Facilities financed or refinanced by each issue of outstanding BPCA Bonds, including, without limitation, sale contracts, leases, management or operation(s) contracts, research agreements, service contracts, incentive payment contracts, guarantee contracts, take or pay contracts, put or pay contracts, output contracts or joint ventures which may provide for or result in Private Use and private payments and security of any portion of the Bond-Financed Facilities.

The Controller has undertaken a comprehensive review of each issue of outstanding BPCA Bonds to identify any change-in-use with respect to any of the Bond-Financed Facilities including, without limitation, any sale contracts, leases, management or operation(s) contracts, research agreements, service contracts, incentive payment contracts, guarantee contracts, take or pay contracts, put or pay contracts, output contracts or joint ventures and promptly notify Bond Counsel of any such change-in-use. The General Counsel, in coordination with the CFO and the Controller, will consult with Bond Counsel to determine the impact, if any, that any change-in-use will have on the amount of Private Use or private payments and security with respect to the issue of BPCA Bonds the proceeds of which financed or refinanced a Bond-Financed Facility to which such change-in-use relates.

The Controller will maintain a database of the amounts of Private Use and private payments and security at each Bond-Financed Facility for each issue of BPCA Bonds that financed or refinanced such Bond-Financed Facility for each annual period beginning from the issue date of each such issue until the final maturity or redemption of such issue and will update the database at least annually or whenever a material change-in-use of a Bond-Financed Facility occurs and is made known to the Authority. The Controller, in coordination with the CFO and the General Counsel, will consult with Bond Counsel in developing and maintaining the database. The Controller also will maintain a map showing the location of each Bond-Financed Facility on the BPC Site.

J. Special Rules for BPCA Bonds Issued as Build America Bonds.

1. Build America Bonds - Series 2009A Bonds. Issues of BABs, such as the Series 2009A Bonds, have special program requirements that must be followed, in addition to other requirements under the Code and the Regulations, including specifically:

a) Not Meeting the Private Activity Test and the Private Loan Test. Proceeds of BABs must not be used in a manner that causes either the Private Activity Test or the Private Loan Test to be met.

b) 2% Costs of Issuance Limitation. Costs of issuance (including underwriter's discount) of an issue of BABs, if paid with proceeds of such issue, must not exceed two percent (2%) of the sale proceeds of such issue.

c) Capital Expenditure Requirement. 100% of the Available Project Proceeds must be used to finance "**capital expenditures**". The term "**Available Project Proceeds**" means sale proceeds of an issue of BABs, plus investment proceeds thereon, less proceeds of such issues: (i) used to pay costs of issuance with respect to such issue (not in excess of two percent (2%) of the sale proceeds) and (ii) deposited in a reasonably required reserve fund with respect to such issue (not in excess of ten percent (10%) of the sale proceeds).

d) Correct and Timely 8038-CP Filing. In case of direct pay BABs, such as the Series 2009A Bonds, the Authority must timely file a correctly completed Form 8038-CP (Return for Credit Payments to Issuers of Qualified Bonds) for each debt service period in order to receive each payment of the Federal interest subsidy in accordance with the applicable IRS guidelines. The CFO and the Bond Trustee will be the primary persons responsible for applying for the Federal interest subsidy payment by filing the Form 8038-CP. In completing the Form 8038-CP, including the determination of the amount of the requested Federal interest subsidy payment, reference should be made to the Form 8038-B that was filed for an issue of BABs. The CFO will verify with the Bond Trustee the proper determination of the amount of interest payable on each interest payment date and the proper amount of refundable tax credit to be reported on the Form 8038-CP to ensure the accurate completion thereof.

The Form 8038-CP will be submitted semi-annually **no earlier than** 90 days and **no later than** 45 days prior to each interest payment date on an issue of BABs. (The below table summarizes the foregoing filing dates and deadlines for the Series 2009A Bonds.)

<u>Interest Payment Date</u>	<u>File No Earlier Than:</u>	<u>File No Later Than:</u>
May 1	February 1	March 16
November 1	August 2	September 16

The Controller, in consultation with the CFO, and together with the Bond Trustee, will establish a system for reminders of these filing dates.

K. Special Rules for BPCA Bonds Issued as Qualified 501(c)(3) Bonds.

1. **Qualified 501(c)(3) Bonds - Series 2009B Bonds.** Issues of Qualified 501(c)(3) Bonds, such as the Series 2009B Bonds, have special program requirements that must be followed, in addition to other requirements under the Code and the Regulations, including specifically:

a) **Modification of the Private Activity Test.**

(1) The Private Activity Test is applied to an issue of Qualified 501(c)(3) Bonds by substituting “5%” for “10%” each place it appears and by substituting “net proceeds” for “proceeds” each place it appears. The 5% is further reduced by the amount of proceeds used to pay costs of issuance. “**Net proceeds**” is the difference of sale proceeds of the Qualified 501(c)(3) Bonds and the amount of proceeds of the Qualified 501(c)(3) Bonds deposited in a reasonably required reserve fund.

(2) Use and/or ownership of a Bond-Financed Facility by a 501(c)(3) organization, in connection with its activities that do not constitute unrelated trade or business under Section 513(a) of the Code, is not considered Private Use for purposes of the application of the Private Activity Test. To the extent any Bond-Financed Facility is financed with Qualified 501(c)(3) Bonds, the Authority will monitor the use of such facility by each 501(c)(3) organization to ensure that such use does not constitute **unrelated** trade or business of such 501(c)(3) organization.

(3) All of the Bond-Financed Facilities financed or refinanced with net proceeds of the Qualified 501(c)(3) Bonds

must be owned by a 501(c)(3) organization or a State or local governmental unit.

b) 2% Costs of Issuance Limitation. Costs of issuance (including underwriter's discount) of an issue of Qualified 501(c)(3) Bonds, if paid with proceeds of such issue, must not exceed two percent (2%) of the sale proceeds of such issue.

c) Maturity Limitation. The average maturity of an issue of Qualified 501(c)(3) Bonds cannot exceed 120 percent of the average reasonably expected economic life of the Bond-Financed Facilities financed or refinanced with such an issue of Qualified 501(c)(3) Bonds.

SECTION VI

CHANGE-IN-USE AND REMEDIAL ACTIONS

A. Remedial Action. The Authority hereby acknowledges that the remedial action rules contained in Regulations Section 1.141-12 provide the Authority with the ability, in certain circumstances, to voluntarily remediate or “**self-correct**” a “deliberate action” that would cause an outstanding issue of BPCA Bonds to meet the Private Activity Test or the Private Loan Test. Prior to taking any such “deliberate action”, the Authority will consult with Bond Counsel regarding the applicability of the remedial action rules to such “deliberate action” and the ability to remediate the impacted BPCA Bonds. If at any time it is determined that the Authority should take a remedial action and the conditions to taking such remedial action are satisfied, the following three choices are generally available:

1. Remedial Action through Redemption or Defeasance. This remedial action requires the Authority to either (a) redeem within 90 days of any “deliberate action” which causes any issue of BPCA Bonds to meet the Private Activity Test or the Private Loan Test, the “**nonqualified bonds**” (as defined below) of such issue, or (b) if such nonqualified bonds are not redeemable within the requisite 90-day period, to defease such nonqualified bonds by: (i) establishing an escrow to defease and call on the first call date such nonqualified bonds, (ii) funding such defeasance escrow from a source of funds other than proceeds of other Tax-Advantaged Obligations unless qualified private activity bonds may be issued for the purpose, (iii) investing funds deposited to such defeasance escrow at a yield that does not exceed the yield on such issue of BPCA Bonds, and (iv) providing a written notice of the defeasance to the IRS within 90 days of the establishment of such defeasance escrow. If the Private Activity Test is met as the consequence of a disposition of a Bond-Financed Facility exclusively for cash and the amount of “**disposition proceeds**” (as defined below) received from the sale of such Bond-Financed Facility at fair market value is less than the par amount of the nonqualified bonds, the redemption/defeasance requirements set forth above will be satisfied if the actual amount received is used to redeem or defease such portion of the nonqualified bonds at the earliest call date.

2. Remedial Action through Alternative Qualified Use of Disposition Proceeds. This remedial action is available if (a) the Private Activity Test or the Private Loan Test is met as the consequence of a disposition of a Bond-Financed Facility exclusively for cash; (b) the Authority reasonably expects to spend the disposition proceeds within two years of the deliberate action; (c) the disposition proceeds are used in a manner that does not cause the Private Activity Test and the Private Loan Test to be met (*i.e.*, the disposition proceeds are treated as proceeds of the BPCA Bonds which financed the Bond-Financed Facility) and the Authority does not take any action subsequent to the date of the deliberate action to cause either of these tests to be met; and (d) any disposition proceeds not used in an alternative qualified use will be applied to redeem or defease nonqualified bonds in accordance with the requirements of Subparagraph (1) above.

3. Remedial Action through Alternative Qualified Use of Bond-Financed Facility. This remedial action is available if (a) the Bond-Financed Facility, the change-in-use of which causes the Private Activity Test to be met, is used in an alternate manner permitted by the Federal Tax Rules (e.g., use that qualifies for financing as “governmental bonds” as defined in Regulations Section 1.150-1(b), or, subject to certain conditions, as Qualified 501(c)(3) Bonds, or as “exempt facility bonds” under Section 142 of the Code); (b) the nonqualified bonds are treated as reissued as of the date of the deliberate action for certain purposes of the Code and meet applicable requirements of the Code throughout the remaining term the nonqualified bonds portion of the affected issue of BPCA Bonds remains outstanding; (c) the deliberate action does not involve a disposition to a purchaser that finances the acquisition with proceeds of Tax-Advantaged Obligations; and (d) any disposition proceeds other than those arising from an agreement to provide services (including disposition proceeds from an installment sale) resulting from the deliberate action are used to pay debt service on the BPCA Bonds on the next available payment date or, within 90 days of receipt, are deposited into an escrow that is restricted to the yield on such issue of BPCA Bonds to pay debt service on such bonds on the next available payment date.

4. Definitions.

a) **“Disposition proceeds”** means “any amounts (including property, such as an agreement to provide services) derived from the sale, exchange, or other disposition (disposition) of property (other than investments) financed with the proceeds of an issue.”

b) **“Nonqualified bonds”** has two meanings depending on which set of tax regulations the Authority elects to apply. Under the proposed regulations issued on July 21, 2003 (the **“Proposed Regulations”**), nonqualified bonds means the portion of the outstanding BPCA Bonds in an amount that, if the remaining BPCA Bonds were issued on the date on which the Private Activity Test or the Private Loan Test is met, neither of such tests would be met (i.e., the aforementioned 10% or 5% limitation or the \$15,000,000 limitation would not be exceeded) and the Private Loan Test (i.e., the aforementioned 5% or \$5,000,000 limitation would not be exceeded). Under the Regulations (i.e., the current tax regulations), nonqualified bonds means the portion of the outstanding BPCA Bonds in an amount equal to the highest percentage of Private Use in any one-year period commencing with the date on which the Private Activity Test or the Private Loan Test is met.

SECTION VII

INVESTMENT OF PROCEEDS AND ACCOUNTING

A. Monitoring of Arbitrage Rebate and Yield Restriction Liability. As an integral part of the Policy and Procedures, the Authority will comply in all respects with the arbitrage rebate and yield restriction requirements of the Federal Tax Rules and the Tax Certificate for each issue of BPCA Bonds. In furtherance of such policy, the Authority has retained and will continue to retain a nationally recognized arbitrage rebate and yield restriction service provider (the “**Arbitrage Consultant**”) to review each issue of outstanding BPCA Bonds for compliance with the arbitrage rebate and yield restriction requirements and ascertain whether the Authority has incurred an arbitrage rebate or yield reduction liability that must be paid to the IRS under the Federal Tax Rules.

B. Maintenance of Database. The Director, in coordination with the Arbitrage Consultant, will maintain a database showing for each issue of BPCA Bonds the accumulated amount of rebate liability and yield restriction liability, any payments made and due to the IRS, due dates and other pertinent information. The Controller, in coordination with the Arbitrage Consultant, will update such database not less than annually.

C. Payment of Arbitrage Rebate and Yield Reduction Liability. In the event the Director or the Authority's Arbitrage Consultant determines that the Authority owes an arbitrage rebate or yield reduction liability payment to the IRS, the Director, in consultation with the CFO and the General Counsel, will timely submit, or cause the Arbitrage Consultant to timely submit, an IRS Form 8038-T, Arbitrage Rebate, Yield Reduction and Penalty in Lieu of Arbitrage Rebate, together with payment in the amount equal to the arbitrage rebate or yield reduction liability, to the IRS at the address specified by the Regulations. In general, with respect to each issue of BPCA Bonds, the Authority will pay to the IRS at least 90% of the amount of arbitrage rebate and yield reduction liability owed within 60 days after each installment computation date and 100% of the amount of arbitrage rebate and yield reduction liability owed within 60 days after the final installment computation date, determined in accordance with the provisions of the Tax Certificate for each issue of BPCA Bonds and the applicable Federal Tax Rules.

D. Fair Market Price Rule. The Authority will comply with the “fair market price rule” in purchasing investments with gross proceeds of each issue of the BPCA Bonds. For purposes of the foregoing, the Authority understands that competitive bids must be received with respect to certain investments such as guaranteed investment contracts and investments for any yield restricted defeasance escrow.

E. Interest Rate Hedges.

1. The Authority will engage a third-party financial advisor for all interest rate hedges entered into by the Authority, irrespective of whether any such hedge is acquired through a direct negotiation with the provider or procured through a competitive bidding process. In all cases, the Authority will obtain appropriate certifications from its financial advisor and/or the provider to establish the fair market value of the swap. The Authority will consult with Bond Counsel with respect to all interest rate hedging

transactions related to an outstanding or prospective issue of Tax-Advantaged Obligations prior to the date on which the interest rate hedging transaction is either entered into or modified.

2. In October 2003, in connection with the issuance of the Series 2003C Bonds, the Authority entered into interest rate exchange agreements (the “2003 Swaps”), which consisted of six interest-rate exchange agreements with three counterparties, with an original aggregate notional amount of \$400 million. The Authority executed the 2003 Swaps for the purpose of hedging its variable debt risks. As stated in Paragraph C of Section IV, the Tax-Exempt Series 2013 Bonds, among other things, refunded the Series 2003C Bonds. In connection with such refunding for Federal income tax purposes, the 2003 Swaps were deemed terminated and the deemed termination payments are taken into account as additional payments on the Tax-Exempt Series 2013 Bonds in accordance with the Federal Tax Rules.

F. Accounting.

1. General. Except as otherwise described in the Tax Certificate for each issue of BPCA Bonds or stated below, it is an integral part of the Policy and Procedures to apply acceptable accounting methods for the allocation of proceeds of each issue of BPCA Bonds to costs of capital projects for which such issue were issued.

2. Accounting of Expenditures. With respect to each Bond-Financed Facility, the Director will compile, maintain and update a ledger which will include the below-mentioned information for each issue of outstanding BPCA Bonds.

- a) The amount of proceeds of each issue of BPCA Bonds financing or refinancing a Bond-Financed Facility expended on such facility;
- b) The amount of unspent proceeds of each issue of BPCA Bonds financing or refinancing a Bond-Financed Facility; and
- c) The date on which the Authority expects such unspent proceeds to be fully expended.

SECTION VIII

RECORD RETENTION

A. General. The Authority is aware of its ongoing recordkeeping responsibilities associated with all issues of BPCA Bonds to substantiate compliance with the Federal Tax Rules, which responsibilities may differ from those prescribed by state or local law applicable to the Authority. The Tax Certificate for each issue of BPCA Bonds shall provide a description of the records to be maintained by or on behalf of the Authority and the period of time such records must be maintained. In addition, the Authority is familiar with the IRS's Frequently Asked Questions related to the recordkeeping requirements for Tax-Advantaged Obligations. See **EXHIBIT B**.

B. Means of Maintaining Records. The Controller and the Director may maintain all records required to be held as described in this Section in paper and/or electronic (e.g., CD, disks, tapes) form. As part of the Policy and Procedures, the Authority will maintain as much of its records electronically as is feasible.

C. Transcript and Use of Debt Proceeds. The Controller and the Director shall maintain, or cause to be maintained, all records relating to each issue of BPCA Bonds until the later of the date specified in the Tax Certificate for such issue of BPCA Bonds or which is three years after the date the last outstanding obligation of such issue of BPCA Bonds has been retired. The records that must be retained with respect to each issue of BPCA Bonds include, but are not limited to:

1. basic records and documents, including the transcript, which shall include, among other records, the Tax Certificate, IRS Form 8038-G, IRS Form 8038, IRS Form 8038-TC, IRS Forms 8038-CP and the respective IRS Notices CP152, escrow deposit agreements and verification reports, if applicable, and authorizing resolution(s), ordinance(s) or any other documentation authorizing the issuance of BPCA Bonds for the purpose of financing or refinancing the Bond-Financed Facilities;
2. documentation evidencing the expenditure of proceeds of BPCA Bonds, including, construction contracts, requisitions, checks, invoices, *etc*;
3. documentation evidencing the use of the Bond-Financed Facilities, including copies of all arrangements described in Paragraph I of Section V;
4. documentation evidencing the costs of the Bond-Financed Facilities reimbursed from proceeds of each issue of BPCA Bonds;
5. documentation evidencing all sources of payment or security; and
6. documentation pertaining to any investment of proceeds of BPCA Bonds (including the purchase and sale of securities, SLGS subscriptions, yield calculations for each class of investments, actual investment income received from the investment of proceeds, guaranteed investment contracts, and rebate calculations).

D. Bond and Related Payment Records. The Controller shall maintain detailed records evidencing payments of debt service on and redemption price of each issue of BPCA Bonds, qualified guarantee fees and swap payments and receipts.

E. Investment Records. The Controller shall maintain detailed records with respect to every investment acquired with proceeds of each issue of BPCA Bonds, including: (1) the purchase date, (2) the purchase price, (3) information establishing fair market value on the date such investment became allocated to gross proceeds of the debt, (4) any accrued interest paid, (5) the face amount, (6) the coupon rate, (7) periodicity of interest payments, (8) the disposition price, (9) any accrued interest received, (10) the disposition date, and (11) the broker's fees paid (if any) or other administrative costs with respect to each such investment. The Controller shall maintain all such records until the date three years after the last outstanding obligation of the issue to which such records and investments relate has been retired.

F. Arbitrage Rebate and Yield Reduction Payment Records. The Director shall maintain all records of arbitrage rebate and yield reduction liability calculations performed by the Arbitrage Consultant (irrespective of whether the Authority owed any amount to the IRS), and records relating to any arbitrage rebate or yield reduction liability payments made to the IRS, including the calculations performed by the Arbitrage Consultant substantiating each such payment, together with the IRS Form 8038-T, Arbitrage Rebate, Yield Reduction and Penalty in Lieu of Arbitrage Rebate, that accompanied such payment, and a canceled check, evidencing such payment, until the date three years after the last outstanding obligation of the issue to which such records and rebate payment relate has been retired.

G. Overpayment of Arbitrage Rebate Records. In the event the Authority has overpaid to the United States an arbitrage rebate or yield reduction payment liability, the Director shall maintain all records of such arbitrage rebate or yield reduction payments, including calculations performed by the Arbitrage Consultant, together with the IRS Form 8038-R, Request for Recovery of Overpayments Under Arbitrage Rebate Provisions, that accompanied the request for a recovery of such overpayment until the date three years after the last outstanding obligation of the issue to which such records and rebate overpayments relate has been retired.

H. Other Records. In addition to the records described above, the General Counsel, in coordination with the Director, will maintain the following records, to the extent applicable to a particular issue of BPCA Bonds, until the date three years after the last outstanding obligation of the issue to which such records relate has been retired: (1) minutes and resolutions authorizing the issuance of, or the reimbursement of expenditures using proceeds of, such issue, (2) appraisals, demand surveys and feasibility studies related to the Bond-Financed Facilities, (3) documentation relating to any third-party funding for the Bond-Financed Facilities (including government grants) and (4) records of any IRS audit(s), compliance check(s), questionnaire(s) or any other IRS inquiry related to BPCA Bonds.

I. Applicability of Recordkeeping Requirement in the Event of a Refunding. In the event the Authority issues Tax-Advantaged Obligations to refund prior BPCA Bonds, the General Counsel, the Controller or the Director, as applicable, shall maintain all of the records described in this Section with respect to the refunded BPCA Bonds until the date that is three

years after the last outstanding obligation of such refunding Tax-Advantaged Obligations has been retired. For example, the Authority will maintain the records described in this Section with respect to the Series 2003 Bonds until the date three years after the date the last outstanding Tax-Exempt Series 2013 Bond has been retired because the Series 2013C Bonds were used to refund the Series 2003 Bonds. Since the Series 2003 Bonds themselves refunded prior Authority debt, the Authority shall also maintain records related to such prior debt for the same period of time.

SECTION IX**IRS INTERACTIONS**

A. The General Counsel will promptly notify the CFO, the Controller, the Director and Bond Counsel upon receiving notification of an audit, an IDR or other similar document from the IRS with respect to any issue of BPCA Bonds and will coordinate with Bond Counsel in developing an effective plan for responding to the IRS.

B. The General Counsel is aware that, when the Authority is unable to self-correct certain violations of the Federal Tax Rules under the remedial action rules described in Section VI, the Authority may, pursuant to IRS Notice 2008-31 and Internal Revenue Manual 7.2.3.1, submit a request for a voluntary closing agreement with the IRS to correct such failures to comply with the Federal Tax Rules applicable to any issue of BPCA Bonds. See **EXHIBIT C**.

SECTION X**CONTINUING EDUCATION**

A. As an integral part of the Policy and Procedures, the Authority will ensure that its officers and employees involved in tax compliance are sufficiently informed and understand the basic requirements of the Federal Tax Rules applicable to the BPCA Bonds. The Authority will continue to consult regularly with Bond Counsel regarding the Federal Tax Rules applicable to its outstanding BPCA Bonds and changes to such Federal Tax Rules, and the Authority will regularly update the Policy and Procedures to reflect any such changes. In addition, the Authority will consult regularly with the Arbitrage Consultant to refine and improve its arbitrage rebate and yield restriction compliance efforts and update the Policy and Procedures accordingly.

B. The Authority will arrange at least once annually to conduct classes and training sessions for its employees involved in tax compliance and may enlist the Arbitrage Consultant and Bond Counsel in providing such continuing education. The first such training session shall be held not more than 180 days from the effective date of the Policy and Procedures.

SECTION XI

The Policy and Procedures shall be subject to periodic compliance reviews by the Authority's Internal Controls Officer.

EXHIBIT A

SAFE-HARBOR MANAGEMENT CONTRACT GUIDELINES - Revenue Procedure 97-13**General Rule.**

A contract between a state or local governmental unit or a section 501(c)(3) organization (a "Qualified User") and a non-exempt provider (a "Provider") for the management of, or services rendered at, or incentive payment in respect of, a Tax-Exempt bond-financed facility that meets the safe-harbor guidelines of Rev. Proc. 97-13 as summarized below and does not otherwise give the Provider an ownership or leasehold interest in bond-financed property for Federal income tax purposes is treated as not creating any private business use under section 141(b) or 145(a)(2)(B) of the Internal Revenue Code (the "Code"). In addition, if the guidelines are met, the burden to prove that the contract creates impermissible private activity would shift to the Internal Revenue Service ("IRS") in a tax court proceeding. All contracts must be reviewed on a case-by-case basis.

General Requirements.

1. *Reasonable Compensation and No Net Profits.* The compensation must be reasonable and no portion of the compensation paid to the Provider may in any event be based on net profits derived from the bond-financed facility. However, a compensation that is based on a percentage either of gross revenues or of expenses (but not both) is permitted. Reimbursement for actual and direct expenses paid by the Provider to unrelated persons is not by itself treated as compensation.
2. *No Penalty if Required to be Cancelable.* Whenever a contract is required to be cancelable as described below, it must be possible to cancel it without penalty imposed on the Qualified User. A "penalty" means: (a) any limitation on the Qualified User's right to compete with the Provider; (b) any requirement that the Qualified User purchase equipment, goods or services from the Provider; or (c) any requirement that the Qualified User pay liquidated damages for cancellation of the contract. A requirement that the Qualified User reimburse ordinary and necessary expenses of the Provider or a restriction against hiring key personnel of the Provider is not a penalty. A penalty may exist where provisions of another contract between the Provider and Qualified User (e.g., a loan or guarantee) impair the practical ability of the Qualified User to terminate the service contract for example by automatically terminating when the service contract terminates.
3. *No Role or Relationship between Qualified User and Provider.* There must not be any role or relationship between the Qualified User and the Provider that would substantially limit the Qualified User's ability to exercise its rights under the contract, including cancellation rights. This requirement is considered satisfied if (a) not more than 20% of the voting power of the governing board of the Qualified User is vested in the Provider and its directors, officers, shareholders and employees, (b) overlapping board members do not include the chief executive officers of the service provider or its governing body or the Qualified User or its governing body, and (c) the Qualified User and the Provider are not "related persons" within the meaning of §1.150-1(b) of the Regulations.

Permitted Contract Term and Compensation Arrangements.

The contract term (which includes renewal options) and the compensation arrangements must meet one of the following five requirements:

<u>Contract Maximum Term Limit</u>	<u>Permissible Compensation Arrangements</u>
1. Lesser of 15 years (20 years for public utility property) or 80% of the reasonably expected useful life of the bond-financed property. No cancellation right required.	1. At least 95% of compensation for each annual period must be based on a periodic fixed fee. A one-time productivity award is permitted.
2. Lesser of 10 years (20 years for public utility property) or 80% of the reasonably expected useful life of the bond-financed property. No cancellation right required.	2. At least 80% of compensation for each annual period must be based on a periodic fixed fee. A one-time productivity award is permitted.
3. 5 years, cancelable by the Qualified User at the end of 3 years without penalty.	3. At least 50% of compensation for each annual period must be based on a periodic fixed fee or, alternatively, 100 percent must be based on a capitation fee or any combination of periodic fixed fees and capitation fees.
4. 3 years, cancelable by the Qualified User at the end of 2 years without penalty.	4. 100% of compensation may be based on a per-unit fee stated in the contract or otherwise specifically limited by the governmental service recipient or an independent third party (e.g., Medicare reimbursement formulas). Alternatively, 100 percent of compensation may be based on any combination of periodic fixed fees and per-unit fees.
5. 2 years, cancelable by the Qualified User at the end of 1 year without penalty.	5. 100% of compensation may be based on a percentage of the fees charged at the bond-financed facility except that, during the start-up period of the facility, it may be based on either gross revenues, gross revenues adjusted for bad debt or similar allowances or the expenses of the facility. This compensation arrangement is available only (i) with respect to facilities providing services to third parties (e.g., radiology, facilities) or (ii) during an initial start-up period during which operations have been insufficient to permit a reasonable estimate of annual gross revenues.

Definitions of Permissible Compensation Arrangements.

1. *Periodic Fixed Fee* is a stated dollar amount for services rendered for a specified period of time. The stated dollar amount may automatically increase according to a specified objective external standard that is not linked to the output or efficiency of a facility, e.g., the Consumer Price Index and similar external indices that track increases in prices in an area or increases in revenues or costs in an industry are objective external standards.
2. *Capitation Fee* is a fixed periodic amount payable for each person for whom services are provided (e.g., an HMO member) as long as the quantity and type of services actually provided vary substantially from person to person. A capitation fee may include a variable component of up to 20% of the total capitation fee designed to protect the Provider against risks such as catastrophic loss.

3. *Per-Unit Fee* is a stated amount for each unit of services provided (e.g., medical procedure performed, car parked, passenger mile traveled, ton of waste incinerated, unit of landfill capacity consumed). The stated dollar amount may automatically increase according to a specified objective external standard that is not linked to the output or efficiency of a facility, e.g., the Consumer Price Index and similar external indices that track increases in prices in an area or increases in revenues or costs in an industry are objective external standards.

4. *Productivity Award* is a stated dollar amount of additional compensation based on increases or decreases in gross revenues or reductions in total expense target (but not both) in any annual period during the term of a contract.

Revision and Renewal of Management Contract.

If the compensation arrangements of a management contract are materially revised, the requirements for compensation arrangements are retested as of the date of the material revision and the management contract is treated as one that was newly entered into as of the date of the material revision.

A renewal option is a provision under which the Provider has a legally enforceable right to renew the contract. Thus, for example, a provision under which a contract is automatically renewed for one-year periods absent cancellation by either party is not a renewal option (even if it is expected to be renewed).

Certain Exceptions.

Certain arrangements generally are not treated as management contracts that are subject to the above rules. These include:

1. Contracts for services that are solely incidental to the primary governmental function or functions of a bond-financed facility (e.g., contracts for janitorial, office equipment repair, hospital billing or similar services);
2. The mere granting of admitting privileges by a hospital to a doctor, even if those privileges are conditioned on the provision of *de minimis* services, if those privileges are available to all qualified physicians in the area, consistent with the size and nature of its facilities;
3. A contract to provide for the operation of a facility or system of facilities that consists predominantly of public utility property (as defined in section 168(i)(10) of the 1986 Code), if the only compensation is the reimbursement of actual and direct expenses of the service provider and reasonable administrative overhead expenses of the service provider; and
4. A contract to provide for services, if the only compensation is the reimbursement of the service provider for actual and direct expenses paid by the service provider to unrelated parties.

EXHIBIT B

Internal Revenue Service Recordkeeping Frequently Asked Questions (FAQs)

Website: <http://www.irs.gov/taxexemptbond/article/0,,id=134435,00.html>

EXHIBIT C

**Internal Revenue Service Notice 2008-31 and IRM 7.2.3.1
Voluntary Closing Agreement Program**

Website: <http://www.irs.gov/pub/irs-drop/n-08-31.pdf>

and

IRS Publication 5091

Website: <http://www.irs.gov/pub/irs-pdf/p5091.pdf>

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