

## TAX EXEMPT BOND ISSUE POST ISSUANCE TAX COMPLIANCE POLICY AND PROCEDURES

Use of tax-exempt bond proceeds must comply with Federal tax rules pertaining to the expenditure of proceeds, use of bond financed property, investment of proceeds in compliance with arbitrage rules, and retention of records. In addition to its own, the San Dieguito Union High School District (the "District") has entered into a lease-sublease arrangement in support of tax-exempt bonds with the San Dieguito Public Facilities Authority (the "Authority") (the "Issuer") and shall provide for both the District and the Authority the monitoring compliance of its tax-exempt bond issues ("Obligations") for compliance with those Federal tax rules by the following:

### 1. GENERAL PROCEDURES

The following relate to procedures and systems for monitoring post-issuance compliance generally.

- The Associate Superintendent, Business Services of the District or the Treasurer of the Authority (the "Compliance Officer") shall be responsible for monitoring post-issuance compliance issues.
- The Compliance Officer will coordinate procedures for record retention and review of such records with applicable staff members of the Issuer.
- All documents and other records relating to Obligations issued by the Issuer shall be maintained by or at the direction of the Compliance Officer.
- The Compliance Officer shall be aware of options for voluntary corrections for failure to comply with post-issuance compliance requirements and take such corrective action when necessary and appropriate.
- The Compliance Officer will review post-issuance compliance procedures and systems on a periodic basis, but not less than annually.

### 2. ISSUANCE OF OBLIGATIONS

With respect to each issue of Obligations, the Compliance Officer will:

- Obtain and store a closing binder and/or an electronic copy of the relevant and typical transaction documents (the "Transcript").
- Confirm that bond counsel has filed the applicable information report (e.g., Form 8038, Form 8038-G, Form 8038-CP) for such issue with the Internal Revenue Service ("IRS") on a timely basis.
- Coordinate receipt and retention of relevant portions of the Transcript with respect to the investment and expenditure of the proceeds of such Obligations with other applicable staff members of the Issuer.

### 3. EXPENDITURE OF PROCEEDS

Expenditure of bond proceeds will be reviewed by the Compliance Officer and will be subject to periodic monitoring by the District and or Authority.

- Establish form and procedure for preparation and review of requisitions of bond proceeds.
- Requisitions must identify the financed property in conformity with the tax certificate and agreement ("**Tax Certificate**"), executed by the Issuer at closing.

- Requisitions for costs that were paid prior to the issuance of the bonds are, in general, limited to costs paid subsequent to, or not more than 60 days prior to, the date a “declaration of intent” to reimburse the costs was adopted by an authorized officer of the District or by the Authority.
- Requisitions will be summarized in a written “final allocation” of proceeds to uses not later than 18 months after the in-service date of the financed property (and in any event not later than 5 years and 60 days after the issuance of the bonds). In the alternative, a final allocation of proceeds may be made using any reasonable, consistently applied principles provided it complies with Federal tax regulations.
- Expenditure of proceeds should be measured against the tax certificate expectation to spend or commit 5% of net sale proceeds within 6 months, to spend 85% of net sale proceeds within 3 years, and to proceed with due diligence to complete the project and fully spend the net sale proceeds.
- Expenditure of “available construction proceeds” should also be measured against the provisions for the arbitrage rebate exception set forth in the Tax Certificate.

#### 4. USE OF BOND-FINANCED PROPERTY

Use of bond-financed property when completed and placed in service will be periodically reviewed by the Compliance Officer so long as the bonds are outstanding and be periodically monitored by the District and or the Authority.

- Records must be kept as to when property financed with bond proceeds is placed in service.
- Average nonexempt use of bond-financed property over the life of the issue cannot exceed 10% of the proceeds. For this purpose, nonexempt use includes use by nongovernmental persons except to the extent it constitutes general public use, short-term use as described in the Tax Certificate, or use pursuant to a qualified management contract or qualified research contract.
- Agreements with nongovernmental users for lease, management, sponsored research, or any other potential nonexempt use of bond-financed property will be reviewed prior to execution for compliance with the 10% limit.
- No item of bond-financed property will be sold or transferred to a nonexempt party without advance arrangement of a “remedial action” under the applicable Treasury regulations.

#### 5. INVESTMENTS

Investment of bond proceeds in compliance with the arbitrage bond rules and rebate of arbitrage will be supervised by the Compliance Officer and be periodically monitored by the District and or the Authority.

- Guaranteed investment contracts (“GIC”) will be purchased only using the three-bid “safe harbor” of applicable Treasury regulations, in compliance with fee limitations on GIC brokers in the regulations. Any exceptions to this rule must be discussed with the Authority for approval.
- Other investments will be purchased only in market transactions.
- Calculations of rebate liability will be performed in the fifth year unless specified otherwise in the Obligation’s Tax Certificate by outside consultants.
- Rebate payments will be made with Form 8038-T no later than 60 days after (a) each fifth anniversary of the date of issuance and (b) the final retirement of the issue. Compliance with rebate requirements will be reported to the bond trustee and the Authority.
- Identify date for first rebate payment at time of issuance. Enter in records for the issue.

## 6. FEDERAL SUBSIDY PAYMENTS

The Compliance Officer shall be responsible for the calculation of the amount of any federal subsidy payments and the timely preparation and submission of the applicable tax form and application for federal subsidy payments for tax-advantaged obligations such as New Clean Renewable Energy Bonds and Qualified School Construction Bonds.

## 7. REISSUANCE

The Compliance Officer will identify and consult with bond counsel regarding any post-issuance change to any terms of an issue of Obligations which could potentially be treated as a reissuance for federal tax purposes.

## 8. RECORDS

Management and retention of records related to tax exempt bond issues will be supervised by the Compliance Officer and be periodically monitored by the District and or the Authority.

- Coordinate with staff members of the Issuer regarding the records to be maintained to establish and ensure that an issue remains in compliance with applicable federal tax requirements for the life of such issue.
- Coordinate with staff members of the Issuer to comply with provisions imposing specific recordkeeping or reporting requirements and cause compliance with such provisions, where applicable.
- Coordinate with staff members of the Issuer to generally maintain the following:
  - Records will be retained for the life of the bonds plus any refunding bonds plus seven years. Records may be in the form of documents or electronic copies of documents, appropriately indexed to specific bond issues and compliance functions.
  - Retainable records pertaining to bond issuance include transcript of documents executed in connection with the issuance of the bonds and any amendments and copies of rebate calculations and records of payments including Forms 8038-T.
  - Retainable records pertaining to expenditures of bond proceeds include requisitions, trustee statements and final allocation of proceeds.
  - Retainable records pertaining to use of property include all agreements reviewed for nonexempt use and any reviewed documents relating to unrelated business activity.
  - Retainable records pertaining to investments include GIC documents under the Treasury regulations, records of purchase and sale of other investments, and records of investment activity sufficient to permit calculation of arbitrage rebate or demonstration that no rebate is due.
  - Retainable records pertaining to any credit enhancement of the bonds during the entire term of the bonds, including bond insurance contracts, letters of credit and standby purchase agreements.
  - Retainable records pertaining to interest rate swaps, interest rate caps and other hedging contracts, including any ISDA agreements, fairness opinions, termination agreements and records of termination payments.
- Coordinate the retention of all records in a manner that ensure their complete access to the IRS.

## 9. COMPLIANCE UNDER TAX CERTIFICATE AND AGREEMENT

The Compliance Officer shall also periodically review and comply with all provisions of the related Tax Certificate so long as the bonds are outstanding.

- The Issuer will also take timely remedial actions under section 1.141-12 of the Treasury Regulations (or other remedial actions authorized by the Commissioner of the IRS under Section 1.141-12(h) of the Regulations) to prevent from being considered “deliberate actions” any actions of the Issuer which cause the conditions of the private business tests or the private loan financing test to be met, resulting in private activity bonds.

## 10. CONTINUING DISCLOSURE

Under the provisions of SEC Rule 15c2-12 (the “Rule”), Participating Underwriters (as defined in the Rule) are required to determine that issuers (such as the Issuer) have entered into written Continuing Disclosure Agreements to make ongoing disclosure in connection with its Obligations. Unless exempt from compliance by the Rule, the Transcript for each issue of related obligations will include a Continuing Disclosure Agreement executed by the Issuer.

In order to monitor compliance by the Issuer with its Continuing Disclosure Agreements, the Compliance Officer will take the actions listed below as required. The Compliance Officer may coordinate with staff members of the Issuer, and may engage a dissemination agent, counsel, and/or other professionals to assist in discharging the Compliance Officer’s duties as deemed necessary.

### A. Compilation of Currently Effective Continuing Disclosure Agreements

The Compliance Officer shall compile and maintain a set of all currently effective Continuing Disclosure Agreements of the Issuer. Continuing Disclosure Agreements are “Currently Effective” for so long as the Obligations to which they relate are outstanding. As Obligations are completely repaid or redeemed, the Compliance Officer shall remove the related continuing disclosure agreements from the set of Currently Effective Continuing Disclosure Agreements.

### B. Annual Review and Annual Reporting Requirements

The Compliance Officer shall ensure that all necessary financial statements, financial information and operating data is filed in the manner and by the filing dates set forth in the set of all Currently Effective Continuing Disclosure Agreements of the Issuer. The Compliance Officer shall review the set of Currently Effective Continuing Disclosure Agreements annually, prior to each annual filing, keeping in mind:

- The financial information and operating data required to be reported under a particular Continuing Disclosure Agreement may differ from the financial information and operating data required to be reported under another Continuing Disclosure Agreement; and
- The timing requirements for reporting under a particular Continuing Disclosure Agreement may differ from the timing requirements for filing under another Continuing Disclosure Agreement.

### C. Calendar; EMMA Notification System

The Compliance Officer shall keep a calendar of all pertinent filing dates required under the Issuer’s Currently Effective Continuing Disclosure Agreements. The Compliance Officer shall also subscribe to notification services made available through the EMMA system.

**D. Annual Review of Prior Filings**

As part of the annual review process, the Compliance Officer shall also review prior filings made within the past five years subsequent to the last such review of prior filings. If the Compliance Officer discovers any late or missing filings, the Compliance Officer (after discussing the circumstances with the Issuer's dissemination agent, counsel or other agents as necessary) shall "remedy" such prior failures by ensuring that the missing information is filed.

**E. Monitoring of Listed Events**

The Compliance Officer shall monitor the occurrence of any of the following events and/or other events set forth in the set of all Currently Effective Continuing Disclosure Agreements and shall provide notice of the same in the required manner and by the relevant reporting deadline (likely within 10 business days of the occurrence):

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

**F. Review of Official Statements**

The Compliance Officer shall review drafts of any Official Statement for a new offering, with assistance from its dissemination agent, counsel or other agents of the Issuer as necessary, and shall determine that the Official Statement accurately and completely describes the Issuer's continuing disclosure compliance history within the five years prior to the date of the respective Official Statement. This

compliance review is not meant to limit the Issuer's other reviews of or diligence procedures relating to its Official Statements.

#### **G. Municipalities Continuing Disclosure Cooperative Initiative**

If the Issuer has previously reported to the Division of Enforcement (the "Division") of the U.S. Securities and Exchange Commission (the "Commission") under the Municipalities Continuing Disclosure Cooperative Initiative (the "MCDC Initiative") and if the Division recommended enforcement proceedings and settlement terms in that connection, then the Compliance Officer shall also be responsible, with assistance from its dissemination agent, counsel, and/or other agents of the Issuer, for implementing the undertakings required by such settlement. A list of these "undertakings" is set forth in the Division's announcement describing the MCDC Initiative: <http://www.sec.gov/divisions/enforce/municipalities-continuing-disclosure-cooperation-initiative.shtml>.

#### **H. Record Retention**

The Compliance Officer shall retain documentation evidencing the Issuer's annual reviews and its reviews of Official Statements in connection with new offerings as set forth above. This Issuer shall retain this documentation, for each Continuing Disclosure Agreement, for the period that the related bonds or notes are outstanding.

#### **I. Annual Review Checklist**

The Compliance Officer may (or may not) choose to use and retain the attached Annual Review Checklist to assist in implementing these procedures.

### **OVERALL RESPONSIBILITY**

Overall administration and coordination of this policy is the responsibility of the Associate Superintendent, Business Services of the District or, in the case where the Authority is the direct user of the proceeds of the Bonds, the Treasurer of the Authority.

### **ONGOING COMPLIANCE CHECK BY THE AUTHORITY**

The Authority shall have the right to annually or more often if the Authority deems necessary, check and require the District to show evidence of compliance with this Policy and the Tax Certificate. The District shall make its records available for such review and examination. The Treasurer of the Authority shall be the contact and oversight person for the Authority in administering these policies and procedures. The Authority shall have the right to hire consultants and professionals to assist it in monitoring compliance with this and the Tax Certificate, and the District shall pay the cost thereof.

**CONTINUING DISCLOSURE ANNUAL REVIEW CHECKLIST**

**1. Date:**

**2. Fiscal Year Ending:** \_\_\_\_\_

**3. Name of Compliance Officer or assigned:** \_\_\_\_\_

**4. Obligations for which there are Currently Effective Continuing Disclosure Agreements:**

\$ \_\_\_\_\_, \_\_\_\_\_, dated \_\_\_\_\_, 20\_\_

\$ \_\_\_\_\_, \_\_\_\_\_, dated \_\_\_\_\_, 20\_\_

\$ \_\_\_\_\_, \_\_\_\_\_, dated \_\_\_\_\_, 20\_\_

\$ \_\_\_\_\_, \_\_\_\_\_, dated \_\_\_\_\_, 20\_\_

\$ \_\_\_\_\_, \_\_\_\_\_, dated \_\_\_\_\_, 20\_\_

\$ \_\_\_\_\_, \_\_\_\_\_, dated \_\_\_\_\_, 20\_\_

\$ \_\_\_\_\_, \_\_\_\_\_, dated \_\_\_\_\_, 20\_\_

**5. Have any new Obligations subject to continuing disclosure been issued this year?**

\_\_\_\_\_ No

\_\_\_\_\_ Yes (Add Agreement to Set of Currently Effective Continuing Disclosure Agreements)

If Yes, did the Compliance Officer review the Official Statement's Description of the Issuer's Continuing Disclosure Compliance History within the Prior 5 Years? **Circle:** Y/ N (If N, review and discuss any issues with bond counsel.)

**6. Have any Obligations subject to Continuing Disclosure Been Completely Paid or Redeemed this Year?**

\_\_\_\_\_ No

\_\_\_\_\_ Yes (Remove Agreement from Set of Currently Effective Continuing Disclosure Agreements)

**7. Has the Compliance Officer reviewed the Annual Continuing Disclosure Filing to ensure that all Necessary Financial Statements, Financial Information and Operating Data is Included?**

\_\_\_\_\_ Yes

\_\_\_\_\_ No (Compliance Officer must review the Annual Continuing Disclosure Filing)

**Have any of the Following Events Occurred this Year?**

<b><u>Event</u></b>	<b><u>Circle</u></b>
1. Principal and interest payment delinquencies	Y / N
2. Unscheduled draws on debt service reserves reflecting financial difficulties	Y / N
3. Unscheduled draws on credit enhancements reflecting financial difficulties	Y / N
4. Substitution of credit or liquidity providers, or their failure to perform	Y / N
5. Adverse tax opinions or issuance by the Internal Revenue Service of proposed or final determinations of taxability or of a Notice of Proposed issue (IRS Form 5701 TEB)	Y / N
6. Tender offers	Y / N
7. Defeasances	Y / N
8. Rating changes	Y / N
9. Bankruptcy, insolvency, receivership or similar event of the Issuer	Y / N
10. Other notices or determinations (not identified in #5) by the Internal Revenue Service with respect to the tax status of the Obligations or other events effecting the tax status of the Obligations, if material	Y / N
11. Modification to rights of holders of the Issuer's Obligations, if material	Y / N
12. Optional, unscheduled or contingent Calls of the Issuer's Obligations, if material	Y / N
13. Release, substitution or sale of property securing repayment of the Issuer's Obligations, if material	Y / N
14. Non-payment related defaults, if material	Y / N
15. The consummation of a merger, consolidation, or acquisition involving an Obligated person or the sale of all or substantially all of the assets of the obligated Person, other than in the ordinary course of business, the entry into a definitive agreement to undertake such an action or the termination of a definitive agreement relating to any such actions, other than pursuant to its terms, if material	Y / N
16. Appointment of a successor or additional trustee or the change of name of a trustee, if material	Y / N



**If any such Event Occurred, was Proper Notice Provided?**

\_\_\_\_\_ Yes

\_\_\_\_\_ No (Call your dissemination agent or bond counsel immediately to discuss)

\_\_\_\_\_ N/A

**Has the Issuer Retained a Dissemination Agent? (i.e., a Paid Third Party that Assists with Filings)**

\_\_\_\_\_ Yes: Name/Contact: \_\_\_\_\_

\_\_\_\_\_ No