

## **TAX COMPLIANCE CERTIFICATE**

**\$8,750,000**

### **Golden Urban Renewal Authority Tax Increment Revenue Note**

#### **1. In General.**

1.1. The undersigned is the Chairperson of the Board of Commissioners of the Golden Urban Renewal Authority (the "Authority") to whom the responsibility of issuing and delivering the Authority's Tax Increment Revenue Note (the "Note") has been delegated and hereby certifies to the statements contained herein.

1.2. This Tax Compliance Certificate (the "Tax Compliance Certificate") is executed for the purpose of establishing the reasonable expectations of the Authority as to future events regarding \$8,750,000 aggregate principal amount of the Note. The Authority has not been notified of any listing or proposed listing of the Authority by the Internal Revenue Service as a issuer that may not certify its bonds. The Authority's reasonable expectation that the Note is not an "arbitrage bond" is based upon Section 148 of the Internal Revenue Code of 1986, as amended (the "Code"), and the regulations thereunder (the "Regulations").

1.3. The factual representations contained in this Tax Compliance Certificate are true and correct and, to the best of the knowledge, information and belief of the undersigned, the expectations contained in this Tax Compliance Certificate are reasonable.

1.4. The restrictions contained in this Tax Compliance Certificate shall apply to the investment and the expenditure of the amounts described herein unless the Authority receives an opinion of nationally recognized municipal bond counsel to the effect that an amendment to such restrictions will not adversely affect the exclusion of interest on the Note from gross income for federal income tax purposes.

1.5. Terms used, but not defined, herein or in Exhibit B to this Tax Compliance Certificate shall have the meanings ascribed to such terms in the Resolution adopted by the Board of Commissioners of the Authority on November 14, 2005 (the "Resolution") authorizing the execution and delivery of the Loan and Security Agreement, dated as of November 22, 2005 (the "Loan Agreement"), between the Authority and Colorado Business Bank (the "Bank"), and the issuance of the Note or in the Loan Agreement.

#### **2. The Purpose of the Note.**

2.1. As described in Section 3.1 hereof, the Note is a draw down obligation. The Authority expects to issue a draw a maximum principal amount of \$8,750,000.00 on the Note for the purposes of (i) refinancing a loan to the Authority from Wells Fargo Bank, National Association for the construction of a parking facility, (ii) refinancing a loan to the Authority from the City of Golden, Colorado (the "City") for certain capital expenditures of the Authority, (iii) financing the construction of an additional parking facility, (iv) financing certain public and private improvements and (v) funding a debt service reserve fund for the Note (collectively, the "Project").

2.2. The Authority reasonably expects to draw down the entire \$8,750,000.00 of the Note within three years of the date of issuance of the Note. The Note will mature on December 1, 2015. The Note has an average weighted maturity (\_\_\_\_ years) that does not exceed 120% of the average reasonably expected economic life of the capital improvements financed by the Note (at least \_\_\_\_ years). The Authority does not expect that the plan of financing relating to the Note will result in the creation of any replacement proceeds within the meaning of § 1.148-1(c) of the Regulations.

### 3. **Source and Disbursement of Funds.**

3.1 In accordance with the terms of the Loan Agreement, the Bank has committed to loan the Authority (which loan is evidenced by the Note) up to \$8,750,000.00 from the date of issuance of the Note through November 1, 2009. The Authority conducted a request for proposals for the Note and the Bank's proposal was accepted by the Authority. The Authority believes that the interest rate on the Note payable to the Bank is a fair and reasonable market interest rate.

3.2 The \$8,750,000.00 the Authority expects to receive from the sale of the Note is expected to be expended on the Project.

### 4. **Temporary Period for Certain Proceeds.**

4.1. The Authority expects to expend at least 85% of the proceeds of the Note within three years of the date of issuance of the Note and the Authority will proceed with due diligence to complete the Project. The Authority will incur expenditures on the Project in excess of 5% of the proceeds of the Note within six months of the date of issuance of the Note. Proceeds of the Note may be invested without regard to investment yield limitation until the date that is three years from the date of issuance of the Note and thereafter at a yield not in excess of the yield on the Note plus 0.125%. Investment earnings on the proceeds of the Note will be expended on the Project or will be used to pay debt service on the Note.

4.2. Any interest earnings or investment gains realized from the investment of any proceeds of the Note may be reinvested pending disbursement in obligations that bear a yield in excess of the yield of the Note. The period of unrestricted investment of such earnings will not exceed the longer of (a) a one-year period beginning on the date of receipt of such investment income or (b) the period ending on the date which is three years from the date of issuance of the Note. After the period of unrestricted reinvestment of investment earnings described in this subsection, such earnings shall be invested in obligations that bear a yield equal to or less than one-eighth of one percent (.125%) above the yield of the Note.

5. **Property Tax Revenue Account.** The Loan Agreement establishes the Property Tax Revenue Account. Property Tax Revenues received by the Authority are required to be deposited into the Property Tax Revenue Account. To the extent that amounts on deposit in the Property Tax Revenue Account are in excess of the annual debt service payment on the Note, such amounts are not reasonably expected to be available to pay debt service on the Note. The portion of the Property Tax Revenue Account used to accumulate the annual debt service payment of the Note will be used primarily to achieve a proper matching of revenues with

principal and interest payments on the Note within each bond year and will be depleted at least annually, except for a reasonable carryover amount not to exceed the greater of (i) the earnings on the fund for the immediately preceding Bond Year; or (ii) one twelfth of the principal and interest payments on the Note for the immediately preceding Bond Year. The annual debt service on the Note is less than \$2,500,000 annually, the Note is a fixed rate obligation and the average life of the Note is greater than 5 years, thus, amounts on deposit in the Property Tax Revenue Account may be invested without regard to yield limitation and are not subject to the Rebate Requirements applicable to the Note.

6. **Debt Service Reserve Account.** The Loan Agreement establishes the Debt Service Reserve Account. Proceeds of the Note and any moneys of the Authority deposited in the Debt Service Reserve Account for the Note are reasonably required and may be invested in obligations that bear a yield in excess of the yield on the Note. Any such amounts deposited to the Debt Service Reserve Account may be invested without regard to investment yield limitation only to the extent such amounts, together with any other amounts representing a reasonably required reserve for the Note, do not exceed the least of (i) 10% of the face amount of the Note, (ii) maximum annual debt service on the Note and (iii) 125% of average annual debt service on the Note. Amounts in excess of the limit described in the preceding sentence shall be invested at a yield not in excess of the yield on the Note (after giving effect to any allowable Yield Reduction Payments). Investments in the Debt Service Reserve Account will be subject to the Rebate Requirements applicable to the Note. The Debt Service Reserve Account was established to meet the requirements of the Bank's proposal.

7. **Price and Yield of the Note.** As used in this Tax Compliance Certificate, the term "yield" refers to the discount rate which, when used in computing the present worth of all payments of principal and interest to be paid on an obligation, produces an amount equal to the issue price. The calculations of yield will be made on the basis of semiannual compounding using a 365 or 366-day year, as appropriate, and upon the assumption that payments are made on the last day of each semiannual interest payment period. For purposes of computing yield, the purchase price of any obligation is equal to the fair market value as of the date of a binding contract to acquire such obligation. The purchase price of the Note is \$\_\_\_\_\_ and the yield on the Note is \_\_\_\_%.

8. **Miscellaneous.**

8.1. The Authority will not sell any other tax-exempt obligations within 15 days of the date the Note was sold, pursuant to the same plan of financing with the Note and payable from substantially the same source of funds used to pay the Note. There are no funds or accounts other than those described in this Tax Compliance Certificate that the Authority expects to establish or otherwise have available for the payment of debt service on the Note.

8.2. The Authority covenants that it shall not use or permit the use of any proceeds of the Note or any other funds of the Authority, from whatever source derived, directly or indirectly, to acquire any securities or obligations, and shall not take or permit to be taken any other action or actions, which would cause the Note to be an "arbitrage bond" within the meaning of Section 148 of the Code or would otherwise cause the interest on the Note to be includible in gross income for federal income tax purposes. The Authority covenants that it shall

at all times do and perform all acts and things permitted by law and which are necessary in order to assure that interest paid by the Authority on the Note shall, for purposes of federal income taxation, not be includible in gross income under the Code or any other valid provision of law.

8.3. In particular, but without limitation, the Authority further represents, warrants and covenants to comply with the following restrictions of the Code, unless it receives an opinion of nationally recognized bond counsel stating that such compliance is not necessary:

(a) gross proceeds of the Note shall not be used in a manner which will cause the Note to be considered “private activity bonds” within the meaning of the Code. (See, also, Sections 8.10 and 8.11 hereof.)

(b) the Note is not and shall not become directly or indirectly “federally guaranteed.”

(c) the Authority shall timely file Internal Revenue Form 8038-G which shall contain the information required to be filed pursuant to Section 149(e) of the Code.

8.4. The Authority shall not commingle gross proceeds of the Note with any other funds.

8.5. In connection with the Note, there has not been created or established and the Authority does not expect that there will be created or established, any sinking fund, pledged fund or similar fund, including, without limitation, any arrangement under which money, securities or obligations are pledged directly or indirectly to secure the Note, or any contract securing the Note or any arrangement providing for compensating or minimum balances to be maintained by the Authority with any owner or credit enhancer of the Note other than described in this Tax Compliance Certificate.

8.6. Section 149(e) of the Code requires as a condition to qualification for tax-exemption that the Authority provide to the Secretary of the Treasury certain information with respect to the Note and the application of the Note proceeds. The following representations of the Authority will be relied upon by Bond Counsel in satisfying this information reporting requirement. Accordingly, the Authority hereby represents, covenants and warrants to the best of its knowledge, for the benefit of Bond Counsel and the Bank, the truth and accuracy of (a) through (q) below:

- (a) Authority’s employer identification number ..... \_\_\_\_\_
- (b) Number of 8038-G reports previously filed by the Authority  
this calendar year ..... -0-
- (c) Issue Price of the Note exclusive  
of Accrued Interest..... \$8,750,000.00
- (d) Proceeds used for Accrued Interest..... \$-0-
- (e) Costs of Issuance (including Underwriter’s Discount)..... \$-0-

- (f) Reasonably required Reserve Account Deposits ..... \$-0-
- (g) Proceeds used for Credit Enhancement ..... \$-0-
- (h) Proceeds used to refund prior issue ..... \$ \_\_\_\_\_
- (i) Nonrefunding Proceeds..... \$ \_\_\_\_\_
- (j) Date of final maturity of the Note ..... 12/1/2015
- (k) Stated redemption price at maturity of the entire issue of the Note ..... \$8,750,000.00
- (m) Weighted average maturity of the Note ..... \_\_\_\_ years
- (n) Yield on the entire issue of the Note..... \_\_\_\_%
- (o) Weighted average maturity of the refunded obligations ..... \_\_\_\_ years
- (p) Date of prepayment of the refunded obligations ..... November 22, 2005
- (q) Date of issuance of the refunded obligations ..... \_\_\_\_\_, \_\_\_\_\_

8.7. Notwithstanding any other provision hereof, any provision of this Tax Compliance Certificate may be deleted or modified at any time at the option of the Authority, if the Authority has obtained an opinion, in form and substance satisfactory to the Authority, of Bond Counsel that such deletion or modification will not adversely affect the exclusion of interest on the Note from the gross income of the recipients thereof for purposes of federal income taxation.

8.8. The Authority covenants to comply with the Rebate Requirement of Section 148(f) of the Code and to seek the advice of nationally recognized bond counsel with respect to the application of the arbitrage rebate requirements of Section 148(f) of the Code on the Notes. The regulations promulgated thereunder are described in Exhibit C to this Tax Compliance Certificate. Proceeds of the Note may not be subject to the arbitrage rebate requirements of Section 148(f) of the Code if the Authority qualifies for a spending exception described in Exhibit D to this Tax Compliance Certificate. The Authority will seek the advice of Bond Counsel to determine whether it qualifies for a spending exception and/or to ascertain the method to compute any rebatable arbitrage with respect to the Note.

8.9. The Authority has received and reviewed the Investment Instructions prepared by Bond Counsel with respect to the investment and disposition of moneys on deposit in the various funds and accounts created under the Agreement. The Investment Instructions have been prepared to comply with Section 148 of the Code including the rebate requirements of Section 148(f) of the Code. The Investment Instructions are attached hereto as Exhibit A and, by this reference, expressly incorporated herein.

8.10. In the event that the Authority shall dispose of any property acquired with proceeds of the Note, the Authority shall consult with Bond Counsel concerning the methods best to comply with the provisions of § 1.141-12 of the Regulations, including determining the permitted alternative uses of any disposition proceeds.

8.11. In order to ensure that interest on the Note is excludable from the gross income of the recipients thereof for purposes of federal income taxation, the Authority hereby certifies as follows:

(a) Ninety percent (90%) or more of the Net Sale Proceeds of the Note will be expended for the financing or refinancing of the acquisition, construction and completion of the Project.

(b) The Authority will not take or permit to be taken any action which would cause the Note to be deemed a private activity bond under the Code. The Note will be considered a “private activity bond” if: (i) more than 10% of the Proceeds of the Project is used directly or indirectly in the business of a nongovernmental person and (ii) more than 10% of the debt service on the Note is directly or indirectly (A) secured by any interest in property used in a private business or (B) derived from payments made with respect to property used in a private business. No more than 5% of any such private use and any such private security for or private payment of the Note may be unrelated to the Project. The Note will be considered a “private activity bond” if more than 5% of the Proceeds is loaned to non-Exempt Persons.

(c) The Authority will not permit payment of the principal of or the interest on more than 10% of the Note (under the terms of such Note or any underlying arrangement) to be directly or indirectly secured by any interest in property used or to be used for a private business use (or by any interest in payments in respect of such property), or to be derived from payments (whether or not to the Authority) in respect of property (or borrowed money) used or to be used for a private business use. In the event that Proceeds of the Project are to be used for any private business use that is not related (or is disproportionate) to any government use of such Proceeds of the Project (and to payments, property and borrowed money with respect to any such private business use), the proceeding covenant shall apply but not more than 5% (rather than 10%) of the Note may be so secured. This requirement is referred to herein as the “private payment test.”

In determining whether the Note meets the private payment test, the Authority will compare the present value of the payments taken into account to the present value of the debt service to be paid over the term of the Note. Debt service will include reasonable credit enhancement fees but will not include any amount to be paid from Proceeds. For example, debt service will not include accrued or capitalized interest or other amounts to be paid with Proceeds. For purposes of the discount rate to be applied in such present value calculations, the Yield on the Note must be used.

Payments taken into account in determining whether the Note meets the private payment test will include payments made for any private business use and payments in respect of any property financed (directly or indirectly) with Proceeds. However, any

payment that is properly allocable to the payment of ordinary or necessary expenses directly attributable to the operation and maintenance of such property (other than general overhead or administrative expenses of the Authority) will not be included as a payment taken into account. Similarly, payments by a person for use of Proceeds or such property will only be included to the extent that the present value of such payments does not exceed the present value of the debt service allocable to that person's use of such Proceeds or property. For example, if 10% of the Proceeds or the Project were used by a person, payments by such person would not be taken into account to the extent that the present value of such payments exceeded the present value of 10% of the debt service on the Note.

For purposes of the private payment test, certain incidental uses of any facility may be disregarded to the extent that the Proceeds or portion of the Project which result in the incidental use do not exceed 2-1/2% of the total Proceeds of the Note. The use of a portion of the Project by a person will be treated as an incidental use if such use does not involve the transfer to such person of possession and control of space that is separated physically from other areas of such facility and is not related to any other use of such facility by the same person. For example, use of space in common areas of an office building for coin-operated telephones, advertising displays, vending machines or a newsstand or shoeshine stand may be disregarded.

(d) The Authority acknowledges that in determining whether all or any portion or function of the facilities financed or refinanced with Proceeds is used, directly or indirectly, in the trade or business of a non-Exempt Person, use of any portion or function of the facilities financed or refinanced with Proceeds by a non-Exempt Person pursuant to a lease, sublease, management contract, service contract or other arrangement must be examined.

A lease, sublease, management contract, service contract or other arrangement between the Authority and a non-Exempt Person with respect to the facility financed or refinanced with Proceeds or any portion or function thereof will not result in the facilities financed or refinanced with Proceeds being used for federal income tax purposes in the trade or business of the non-Exempt Person if the guidelines set forth in § 1.141 of the Regulations and Rev. Proc. 97-13 are met.

[End of Tax Compliance Certificate]

IN WITNESS WHEREOF, the undersigned has set his hand as of the date set forth below.

GOLDEN URBAN RENEWAL AUTHORITY

By: \_\_\_\_\_  
Chairperson, Board of Commissioners

Dated: November 22, 2005

[Signature Page for Tax Compliance Certificate]

**EXHIBIT A**  
**TO TAX COMPLIANCE CERTIFICATE**  
**TAX LETTER OF INSTRUCTIONS**

November 22, 2005

Golden Urban Renewal Authority  
922 Washington Avenue, Suite 100  
Golden, Colorado 80401

**\$8,750,000**  
**Golden Urban Renewal Authority**  
**Tax Increment Revenue Note**

Ladies and Gentlemen:

This letter sets forth instructions (the “Instructions”) regarding the investment and disposition of moneys deposited in various funds and accounts created under the Loan Agreement, dated as of November 22, 2005 (the “Loan Agreement”), between the Authority and Colorado Business Bank (the “Bank”) and the Resolution (the “Resolution”), authorizing and providing for the issuance of the above-captioned note (the “Note”), adopted by the Board of Commissioners of the Golden Urban Renewal Authority on November 14, 2005.

The purpose of these Instructions is to assure that the investment of moneys in the funds and accounts described herein will comply with the arbitrage limitations imposed by Section 148 of the Internal Revenue Code of 1986, as amended (the “Code”), and the regulations thereunder (the “Regulations”). These Instructions implement the investment provisions of the Tax Compliance Certificate executed by the Authority on the date of issue of the Note and constitute the “Investment Instructions” referred to in said Tax Compliance Certificate. Terms not otherwise defined herein shall have the definitions ascribed to such terms in the Resolution and the Tax Compliance Certificate.

1. **Computation of Yield.** For purposes of these Instructions, the term “yield” shall have the meaning set forth in the Regulations. The Regulations provide that the term “yield” means that yield which when used in computing the present worth of all payments of principal and interest to be paid on an obligation produces an amount equal to the purchase price of such obligation. The yield of the Note and the yield of obligations acquired with moneys described in these Instructions shall be computed by using the same frequency of interest compounding. In the case of the Note, the purchase price is \$\_\_\_\_\_ which is the offering price to the public. The yield of the Note has been represented by the Authority to be \_\_\_\_%

**2. Proceeds of the Note, Property Tax Revenue Fund and Debt Service Reserve Fund.**

(a) Sale proceeds of the Note may be invested in obligations that bear a yield in excess of the yield of the Note. The period of unrestricted investment of such original proceeds shall end on the date which is three years from the date of issuance of the Note. After the period of unrestricted yield, any such sale proceeds of the Note may not be invested in obligations that bear a yield in excess of one-eighth of one percent (.125%) greater than the yield of the Note.

(b) Any interest earnings or investment gains realized from the investment of any Proceeds of the Note may be reinvested pending disbursement in obligations that bear a yield in excess of the yield of the Note. The period of unrestricted investment of such earnings shall not exceed the longer of (i) a one-year period beginning on the date of receipt of each amount of investment income, or (ii) a period ending on the date which is three years from the date of issuance of the Note. After the period of unrestricted investment, such interest earnings and investment gains may not be invested in obligations that bear a yield in excess of one-eighth of one percent (.125%) greater than the yield of the Note.

(c) Any amounts deposited to the Property Tax Revenue Account may be invested without regard to investment yield limitation.

(d) Any amounts deposited to the Debt Service Reserve Fund for the Notes may be invested without regard to investment yield limitation only to the extent such amounts, together with any other amounts representing a reasonably required reserve for the Note, do not exceed the least of (i) 10% of the face amount of the Note, (ii) maximum annual debt service on the Note and (iii) 125% of average annual debt service on the Note. Amounts in excess of the limit described in the preceding sentence shall be invested at a yield not in excess of the yield on the Note (after giving effect to any allowable Yield Reduction Payments).

**3. Rebate and Recordkeeping.** Proceeds of the Note are subject to arbitrage rebate requirements of Section 148(f) of the Code. If the Proceeds of the Note are not spent in accordance with one of the spending exceptions to rebate described in Exhibit D to the Tax Compliance Certificate, the Authority will seek the advice of nationally recognized bond counsel with respect to the application of the arbitrage rebate requirements of Section 148(f) of the Code on the Note. In connection with any rebate and record retention requirements, the Authority shall maintain the following records for a period of four years after the retirement of the last obligation of the Note:

(a) The Authority shall record all amounts paid to the United States.

(b) The Authority shall retain records of all rebate or yield reduction payment calculations made with respect to the Note.

(c) The Authority shall retain documentation pertaining to expenditure and investment of Note Proceeds and actual investment income received from the investment of such Note Proceeds.

4. **Change in Law.** These Instructions are based on law in effect as of this date, and we undertake no obligation to monitor or update the status of these Instructions. Statutory or regulatory changes, including but not limited to clarifying Regulations, may affect these Instructions.

Very truly yours,

KUTAK ROCK LLP

**EXHIBIT B  
TO TAX COMPLIANCE CERTIFICATE**

**GENERAL DEFINITIONS**

(a) **Bond Counsel** shall mean Kutak Rock LLP, or any other law firm appointed by the issuer, having a national reputation in the field of municipal finance whose opinions are generally accepted by purchasers of municipal bonds.

(b) **Bond Year** means the period commencing December 1 and terminating on the next succeeding November 30 of each calendar year during the term of the Note, except that the first Bond Year shall commence on the Date of Issuance and end on November 30, 2005 (unless a different period is required by the Regulations as hereinafter defined).

(c) **Bond Yield** shall have the meaning set forth in the Tax Certificate.

(d) **Code** shall mean the Internal Revenue Code of 1986, as amended.

(e) **Commingled Fund** shall mean any fund or account containing both Gross Proceeds of an issue and amounts in excess of \$25,000 that are not Gross Proceeds of that issue if the amounts in the fund or account are invested and accounted for collectively, without regard to the source of funds deposited in the fund or account.

(f) **Computation Date** shall mean each date on which the rebate amount for an issue is computed.

(g) **Computation Date Credit** shall mean, with respect to an issue, a credit of \$1,000 against the rebatable arbitrage on (i) the last day of each Bond Year during which there are amounts allocated to Gross Proceeds of an issue that are subject to the Rebate Requirement; and (ii) the final maturity date for an issue.

(h) **Computation Period** shall mean the period between Computation Dates. The first Computation Period begins on the date hereof and ends on the first Computation Date. Each succeeding Computation Period begins on the date immediately following the Computation Date and ends on the next Computation Date.

(i) **Exempt Person** shall mean a state of the United States of America or a local governmental unit thereof.

(j) **Gross Proceeds** shall mean any Proceeds and Replacement Proceeds of an issue.

(k) **Investment Proceeds** shall mean any amounts actually or constructively received from investing Proceeds of an issue.

(l) **Investment Property** shall include: (i) any security or obligation (other than a Tax-Exempt Bond not described in clause (iv), below) within the meaning of Section 148(b)(2) of the Code; (ii) any annuity contract; (iii) as to the Gross Proceeds of bonds other than private activity bonds, any interest in any residential rental property for family units which is not located

within the jurisdiction of the issuer; (iv) as to Gross Proceeds of bonds the interest on which is excluded from Federal gross income and which is not an item of tax preference within the meaning of Section 57(a)(5) of the Code, any Tax-Exempt Bond that is a “specified private activity bond” within the meaning of Section 57(a)(5)(C); and (v) any other Investment-Type Property.

(m) **Investment-Type Property** shall include any property that is held principally as a passive vehicle for the production of income. A prepayment for property or services is Investment-Type Property if a principal purpose for prepaying is to receive an investment return from the time the prepayment is made until the time payment otherwise would be made. A prepayment is not Investment-Type Property if (i) the prepayment is made for a substantial business purpose other than investment return and the issuer has no commercially reasonable alternative to the prepayment; or (ii) prepayments on substantially the same terms are made by a substantial percentage of persons who are similarly situated to the issuer but who are not beneficiaries of tax-exempt financing. Investment-Type Property also includes a contract that hedges the issuer’s risk of interest rate changes if that contract contains a significant investment element (i.e., an expected return), such as one that provides for non-periodic payments or payments that do not otherwise correspond closely in time.

(n) **Multipurpose Issue** shall mean an issue that is used for two or more separate governmental purposes.

(o) **Net Sale Proceeds** shall mean Sale Proceeds, less the portion of those Sale Proceeds invested in a reasonably required reserve or replacement fund.

(p) **Nonpurpose Investment** shall mean any Investment Property that is not a Purpose Investment.

(q) **Nonpurpose Payment** shall mean:

(1) amounts actually or constructively paid to acquire a Nonpurpose Investment (or treated as paid to a Commingled Fund);

(2) in the case of a Nonpurpose Investment that is first allocated to an issue on a date after it is actually acquired (e.g., an investment that becomes allocable to Transferred Proceeds or to Replacement Proceeds) or that becomes subject to the Rebate Requirement on a date after it is actually acquired (e.g., an investment allocated to a reasonably required reserve or replacement fund for a construction issue at the end of the two year spending period), the Value of that investment on that date;

(3) in the case of a Nonpurpose Investment that was allocated to an issue at the end of the preceding Computation Period, the Value of that Nonpurpose Investment at the beginning of the Computation Period; and

(4) the Computation Date Credit.

(r) **Nonpurpose Receipt** shall mean:

(1) amounts actually or constructively received from a Nonpurpose Investment (including amounts treated as received from a Commingled Fund);

(2) in the case of a Nonpurpose Investment that ceases to be allocated to an issue before its disposition or redemption date (*e.g.*, an investment that becomes allocable to Transferred Proceeds of another issue or that ceases to be allocable to the issue pursuant to the Universal Cap) or that ceases to be subject to the Rebate Requirement on a date earlier than its disposition or redemption date (*e.g.*, an investment allocated to a fund initially subject to the Rebate Requirement but that subsequently qualifies as a bona fide debt service fund), the Value of that Nonpurpose Investment on that date; and

(3) in the case of a Nonpurpose Investment that is held at the end of a Computation Period, the Value of that Nonpurpose Investment at the end of that Computation Period.

(s) **Plain Par Bond (or Plain Par Investment)** shall mean a bond (or an investment) (i) issued (or, in the case of an investment acquired on a date other than the issue date, acquired) with not more than a de minimis amount (*i.e.*, two percent of stated principal amount) of discount or premium; (ii) issued for a price that does not include accrued interest, other than Pre-Issuance Accrued Interest; (iii) that bears interest from the issue date at a single, stated, fixed rate or that is a variable rate debt instrument under Section 1275 of the Code, in each case with interest unconditionally payable at least annually; and (iv) that has a lowest stated redemption price that is not less than its outstanding stated principal amount. In addition, a plain Par Bond shall include a “qualified tender bond” as defined in I.R.S. Notice 88-130.

(t) **Pre-Issuance Accrued Interest** shall mean amounts representing interest that has accrued on an obligation for a period of not greater than one year before its issue date but only if those amounts are paid within one year after the issue date.

(u) **Proceeds** shall mean any Sale Proceeds, Investment Proceeds and Transferred Proceeds of an issue.

(v) **Purpose Investment** shall mean an investment that is acquired to carry out the governmental purpose of an issue.

(w) **Qualified Administrative Costs** shall mean reasonable, direct administrative costs, other than carrying costs, such as separately stated brokerage and selling commissions that are comparable to those charged nongovernmental entities in transactions not involving Tax-Exempt Bond proceeds, excluding legal and accounting fees, recordkeeping, custody or similar costs. In addition, certain indirect administrative costs may be characterized as Qualified Administrative Costs with respect to Nonpurpose Investments in publicly offered regulated investment companies and certain “external commingled funds”, as defined in § 1.148-5(e)(2)(ii) of the Treasury Regulations. For a guaranteed investment contract, a broker’s commission or similar fee paid on behalf of either an issuer or the provider is a Qualified Administrative Cost to the extent that the amount of the broker’s commission or similar fee does not exceed the lesser of (i) \$31,000 and (ii) 0.2% of the amount of Gross Proceeds the issuer expects, as of the date the

guaranteed investment contract is acquired, to be deposited into the guaranteed investment contract over the term of such guaranteed investment contract or, if such amount exceeds \$3,000, then \$3,000.

(x) **Rebate Bond Yield** shall mean the Bond Yield unless either:

(1) the issuer or any conduit borrower enters into a hedge transaction (*e.g.*, interest rate swap, interest rate cap or collar) which has not otherwise been taken into account in computing the Bond Yield, in which case the issuer shall consult with Bond Counsel prior to entering into such a transaction to obtain guidance as to the determination of the Rebate Bond Yield; or

(2) the issuer or any conduit borrower, in a transaction that is separate and apart from the original sale of an issue, transfers, waives or modifies any right that is part of the terms of an issue (*e.g.*, a sale of the call rights on an issue). The issuer shall consult with Bond Counsel prior to entering into any such transaction.

(y) **Rebate Requirement** shall have the meaning ascribed thereto in the Tax Certificate.

(z) **Replacement Proceeds** shall mean amounts that have a sufficiently direct nexus to an issue to conclude that the amounts would have been used for that governmental purpose if the Proceeds of the issue were not used or to be used for that governmental purpose. For this purpose, governmental purposes include the expected use of amounts for the payment of debt service on a particular date. The mere availability or preliminary earmarking of amounts for a governmental purpose, however, does not in itself establish a sufficient nexus to cause those amounts to be Replacement Proceeds. Replacement Proceeds include, but are not limited to, amounts held in a sinking fund or a pledged fund. For these purposes, an amount is pledged to pay principal of or interest on an issue if there is reasonable assurance that the amount will be available for such purposes in the event that the issuer encounters financial difficulties. Replacement Proceeds also include working capital reserves that are directly or indirectly financed with Proceeds of the issue. Replacement Proceeds also include amounts held under an agreement to maintain the amount at a particular level for the direct or indirect benefit of the holders of the bonds or any guarantor of the bonds (known as a “negative pledge”), unless either (i) the issuer may grant rights in the amount that are superior to the rights of the bondholders or the guarantor or (ii) the amount is not in excess of the reasonable needs for which it is maintained, is tested not more frequently than once every six months and may be spent without any substantial restriction other than it be replenished before the next testing date.

(aa) **Sale Proceeds** shall mean any amounts actually or constructively received by the issuer from the sale of an issue, including amounts used to pay underwriters’ discount or compensation and accrued interest other than Pre-Issuance Accrued Interest. Sale Proceeds also include any amounts derived from the sale or other transfer of a right that is associated with any bond that is part of the issue (*e.g.*, the sale of a redemption right) in a transaction that is separate and apart from the original sale of the bond.

(bb) **Tax-Exempt Bond** means any bond the interest on which is excludable from gross income under Section 103 of the Code. In addition, in the context of investments of Gross Proceeds in Tax-Exempt Bonds, such investments also include (i) an interest in a regulated investment company to the extent that at least 95 percent of the income to the holder thereof is interest excludable from gross income under Section 103 of the Code or (ii) a United States Treasury State and Local Government Series-Demand Deposit Certificate of Indebtedness.

(cc) **Transferred Proceeds** means Proceeds of a refunding issue which become transferred proceeds of a refunding issue and cease to be Proceeds of a prior issue when Proceeds of the refunding issue discharge any of the outstanding principal amount of the prior issue. The amount of Proceeds of the prior issue that become transferred proceeds of the refunding issue is an amount equal to the Proceeds of the prior issue on the date of that discharge multiplied by a fraction:

(1) the numerator of which is the principal amount of the prior issue discharged with Proceeds of the refunding issue on the date of that discharge; and

(2) the denominator of which is the total outstanding principal amount of the prior issue on the date immediately before the date of that discharge.

(dd) **Treasury Regulations** shall mean the Treasury Regulations promulgated pursuant to Sections 103 and 141 through 150 of the Code, as in effect and applicable to the issue, and to the extent applicable, any subsequent amendments to such regulations or any successor regulations.

(ee) **Universal Cap** shall mean the Value of all then outstanding bonds of the issue.

(ff) **Value (of a Bond)** shall mean with respect to a Plain Par Bond, the outstanding principal amount, plus accrued unpaid interest; for any other bond, its present value.

(gg) **Value (of an Investment)** shall have the following meaning in the following circumstances:

(1) **General Rules.** Subject to the special rules in the following paragraph, an issuer may determine the Value of an investment on a date using one of the following valuation methods consistently applied for all purposes relating to arbitrage and rebate with respect to that investment on that date:

(i) a debt obligation acquired with not more than a two percent discount or premium may be valued at its outstanding stated principal amount, plus accrued unpaid interest;

(ii) a fixed rate investment may be valued at its present value;

(iii) an investment may be valued at its fair market value on a date.

(2) **Special Rules.**

(i) Yield restricted investments are to be valued at present value;

(ii) Except as otherwise provided in clause (i), above, regarding yield restricted investments, an investment must be valued at its fair market value when it is first allocated to an issue, when it is disposed of and when it is deemed acquired or deemed disposed of, unless it is an investment either (A) that is allocated from one exclusively tax-exempt issue to another exclusively tax-exempt issue as a result of transferred proceeds or the application of the Universal Cap or (B) that is an investment in a Commingled Fund (other than a commingled bona fide debt service fund) other than on its initial deposit to or withdrawal from a commingled common reserve, replacement or sinking fund.

(iii) Except as otherwise provided in clause (i), above, regarding yield restricted investments, in the case of transferred proceeds, the Value of a nonpurpose investment that is allocated to transferred proceeds of a refunding issue on a transfer date may not exceed the Value of that investment on the transfer date used for purposes of applying the arbitrage restrictions to the refunded issue.

**EXHIBIT C**  
**TO TAX COMPLIANCE CERTIFICATE**

**REBATE REQUIREMENT**

(a) **Generally.** Section 148(f) of the Code requires that certain earnings on Nonpurpose Investments allocable to the Gross Proceeds of an issue be paid to the United States to prevent the bonds of the issue from being arbitrage bonds. The arbitrage that must be rebated is based on the difference between the amount actually earned on Nonpurpose Investments and the amount that would have been earned if those investments had a yield equal to the yield on the issue. As of any date, the rebate amount for an issue is the excess of the future value, as of that date, of all receipts on Nonpurpose Investments over the future value, as of that date, of all payments on Nonpurpose Investments. The future value of a payment or receipt at the end of any period is determined using the economic accrual method and equals the value of that payment or receipt when it is paid or received (or treated as paid or received), plus interest assumed to be earned and compounded over the period at a rate equal to the yield on the issue, using the same compounding interval and financial conventions used to compute that yield.

(b) **Computation Dates (Other than the Final Computation Date).** For a fixed yield issue, an issuer may treat any date as a Computation Date provided such date is within five years of the issue date. For a variable yield issue, an issuer may treat the last day of any Bond Year that is not later than five years from the issue date as a Computation Date and may not change that treatment after the first rebate payment, if any, is due. After the first rebate payment, if any, is due, an issuer must consistently treat either the end of each Bond Year or the end of each fifth Bond Year as Computation Dates and may not change these Computation Dates after the first rebate payment, if any, is due.

(c) **Final Computation Date.** The date that an issue is discharged is the Final Computation Date. For an issue retired within three years of its issue date, however, the Final Computation Date need not occur before the end of eight months after the issue date or during the period in which the issuer reasonably expects that any of the spending exceptions to the Rebate Requirement will apply to the issue.

(d) **Amount of Required Rebate.** The arbitrage rebate is generally paid in installments. The first rebate installment payment must be made for a Computation Date that is not later than five years after the issue date of the bonds. Subsequent installment payments must be made for a Computation Date that is not later than five years after the previous Computation Date for which an installment payment was made. For installment payment Computation Dates other than the Final Computation Date, an issuer must rebate an amount that when added to the future value, as of that Computation Date, of previous rebate payments made for the issue, equals at least 90 percent of the rebate amount as of that date. For the Final Computation Date, a final rebate payment must be paid in an amount that, when added to the future value of previous rebate payments made for the issue, equals 100 percent of the rebate amount as of that date.

(e) **Time and Manner of Payment.** Each rebate payment must be paid no later than 60 days after the Computation Date to which the payment relates. Any rebate payment paid within this 60-day period may be treated as paid on the Computation Date to which it relates.

Each payment made pursuant to this Exhibit C shall be filed with the Internal Revenue Service Center, Ogden, Utah 84201, and shall be accompanied by Form 8038-T.

(f) **Penalty in Lieu of Loss of Tax Exemption.** The failure to pay the correct rebate amount when required will cause the bonds of the issue to be arbitrage bonds, unless the Commissioner determines that the failure was not caused by willful neglect and the issuer promptly pays a penalty to the United States. If no bond of the issue is a private activity bond (other than a qualified 501(c)(3) bond), the penalty equals 50 percent of the rebate amount not paid when required to be paid, plus interest on that amount. Otherwise, the penalty equals 100 percent of the rebate amount not paid when required to be paid, plus interest on that amount. Interest accrues at the underpayment rate under Section 6621 of the Code, beginning on the date the correct rebate amount is due and ending on the date 10 days before it is paid. The penalty is automatically waived if the rebate amount that the issuer failed to pay plus interest is paid within 180 days after discovery of the failure, unless the Commissioner determines that the failure was due to willful neglect, or the issue is under examination by the Commissioner at any time during the period beginning on the date the failure first occurred and ending on the date 90 days after the receipt of the rebate amount. Generally, extensions of this 180-day period and waivers of the penalty in other cases will be granted by the Commissioner only in unusual circumstances.

(g) **Recovery of Overpayment of Rebate.** An issuer may recover an overpayment of a rebate amount for an issue of Tax-Exempt Bonds by establishing to the satisfaction of the Commissioner that the overpayment occurred. An overpayment is the excess of the amount paid to the United States for an issue under Section 148 of the Code over the sum of the rebate amount for the issue as of the most recent Computation Date and all amounts that are otherwise required to be paid under Section 148 of the Code as of the date the recovery is requested. Notwithstanding the preceding sentence, an overpayment may be recovered only to the extent that a recovery on the date that it is first requested would not result in an additional rebate amount if that date were treated as a Computation Date. Furthermore, except for overpayments in certain limited circumstances, an overpayment of less than \$5,000 may not be recovered before the Final Computation Date.

(h) **Recordkeeping Requirement.** An issuer must retain records of the determination of its Rebate Requirement until four years after the retirement of the last obligation of the issue.

(i) **Exception for earnings on gross proceeds in certain “bona fide debt service funds”.** Earnings on Nonpurpose Investments of Gross Proceeds in a bona fide debt service fund are not taken into account in computing the arbitrage rebate liability for an issue if either (i) the gross earnings on such fund for the Bond Year is less than \$100,000 or (ii) the issue is a long-term, fixed rate governmental bond issue (i.e., the issue has an average maturity of at least 5 years and each of the bonds that are part of such issue are neither private activity bonds nor have rates of interest that vary during the term of the issue). For purposes of clause (i), an issuer may treat an issue with average annual debt service not exceeding \$2,500,000 as satisfying the \$100,000 limitation and therefore not earning more than \$100,000 in any Bond Year.

**EXHIBIT D**  
**TO TAX COMPLIANCE CERTIFICATE**  
**REBATE SPENDING EXCEPTIONS**

(a) Section 148(f)(4) of the Code and § 1.148-7 of the Regulations provide for spending exceptions (the “Spending Exceptions”) to the rebate requirement. These exceptions are the six-month exception (the “Six-Month Exception”), the eighteen-month exception (the “Eighteen-Month Exception”), and the two-year exception (the “Two-Year Exception”). To the extent that Gross Proceeds of the Note are determined to have been allocated to Expenditures in a manner which satisfies any of the Spending Exceptions, investment earnings allocable to such Gross Proceeds need not be rebated to the United States of America.

(b) Use of the Spending Exceptions is not mandatory.

(c) Any failure to satisfy the final spending requirement of the Eighteen-Month Exception or the Two-Year Exception may be disregarded if the Authority exercises due diligence to complete the new money portion of the Projects and the amount of the failure does not exceed the lesser of 3% of the Issue Price of the Note or \$250,000.

(d) The Six-Month Exception requires that Gross Proceeds of the Note be allocated to Expenditures for the new money portion of the Financed Projects within the six-month period, beginning on the Date of Issuance, and that the rebate requirement is met for amounts not required to be spent within the six-month spending period (excluding earnings on a bona fide debt service fund). For purposes of the Six-Month Exception, Gross Proceeds does not include amounts in a bona fide debt service fund; in a reasonably required reserve or replacement fund; that as of the Date of Issuance are not reasonably expected to be Gross Proceeds but that become Gross Proceeds after the end of the six-month spending period; amounts representing Sale Proceeds or Investment Proceeds derived from Payments under any Purpose Investment of the Note; and amounts representing repayments of grants financed by the Note.

(e) The Note is treated as meeting the rebate requirement under the Eighteen-Month Exception if the following requirements are satisfied:

(i) Gross Proceeds of the Note (excluding amounts used to refinance previously incurred obligations) are allocated to Expenditures for the new money portion of the Financed Projects in accordance with the following schedule measured from the Date of Issuance and none of the issue is treated as complying with the Two-Year Exception:

(A) at least 15% within six months;

(B) at least 60% within 12 months; and

(C) 100% within 18 months, with an exception for reasonable retainage, not in excess of 5% of the Net Sale Proceeds of the Note allocable to

the new money portion of the Financed Projects, which reasonable retainage must be allocated to Expenditures within thirty months of the Date of Issuance.

(ii) For purposes of determining compliance with the six-month and 12-month spending periods, the amount of Investment Proceeds is determined based on the Authority's reasonable expectations on the Date of Issuance.

(iii) All of the Gross Proceeds of the Note allocable to the new money portion of the Financed Projects, excluding amounts in a bona fide debt service fund; a reasonably required reserve or replacement fund, that, as of the Date of Issuance, are not reasonably expected to be Gross Proceeds but that become Gross Proceeds after the 18-month spending period, representing Sale Proceeds or Investment Proceeds derived from Payments under any Purpose Investment of the Note; and representing repayments of grants financed by the Note; must qualify for the general three-year temporary period for the new money portion of the Financed Projects described in § 1.148-2(e)(2) of the Regulations.

(f) Gross Proceeds of the Note are treated as meeting the rebate requirement under the Two-Year Exception if the following requirements are met:

(i) The new money portion of the Note is a qualified "construction issue" because seventy-five percent of "available construction proceeds" of such portion of the Note is expected to be expended on construction. The face amount of Note qualifying for a "construction issue" is an amount equal to a 100% of the Issue Price.

(ii) A "construction issue" is treated as meeting the rebate requirement for "available construction proceeds" if those proceeds are allocated to Expenditures for the new money portion of the Financed Projects in accordance with the following two-year expenditure schedule measured from the Date of Issuance:

(A) at least 10% within six months;

(B) at least 45% within one year;

(C) at least 75% within 18 months; and

(D) 100% within two years, with an exception for reasonable retainage expended within three years.

For these purposes, the Authority elects to include investment earnings on the Debt Service Reserve Account as "available construction proceeds" during the period beginning on the Date of Issuance and ending on the earlier of the two-year period or the date the new money portion of the Financed Projects is placed in service.

(iii) The Two-Year Exception is further described in § 1.148-7(e) of the Regulations. In particular, there are restrictions on what constitutes a "construction issue," "construction expenditures," "available construction proceeds" and the ability to bifurcate an issue. The Authority should seek the advice of Bond Counsel or the Rebate

Analyst in determining whether the requirements of the Two-Year Exception have been satisfied.