

NEW MEXICO FINANCE AUTHORITY
STATEWIDE ECONOMIC DEVELOPMENT FINANCE ACT
ECONOMIC DEVELOPMENT BOND MANAGEMENT POLICIES

SECTION 1: MISSION AND GOALS

Section 1.1 Mission

The statutory mission of the Statewide Economic Development Finance Act (“the Act” or “SWEDFA”), NMSA 1978, Section 6-25-1 through 29 is to stimulate economic development with needed finance programs in the public interest that serve necessary and valid public purposes and to provide one method of implementing the economic development assistance provisions of Subsection D of Article 9, Section 14 of the constitution of New Mexico.

The purpose of these Economic Development Bond Management Policies is to implement financing mechanisms authorized by federal and state law, including the American Recovery and Reinvestment Act of 2009 (“ARRA”), that encourage new investment in manufacturing and other facilities and the purchase of equipment thereby stimulating economic development. Additionally, ARRA created a new category of tax-exempt bonds entitled Recovery Zone Facility Bonds. A goal of these Economic Development Bond Management Policies (the “Policies”) is also to provide for the issuance and purchase by the Authority of Recovery Zone Facility Bonds and other ARRA bond programs.

Section 1.2. Implementation of the Economic Development Bond program:

For a business to access certain incentives such as to finance capital investment and/or to temporarily hold the financed property off the tax rolls, bonds must be issued on its behalf by a governmental entity exempt from taxation. SWEDFA establishes the New Mexico Finance Authority (“the Authority”) as the conduit bond issuer and New Mexico Economic Development Department (the “Department”) as the governmental entity authorized to hold property.

In its capacity as an issuer of conduit bonds, whereby the Authority issues bond on behalf of a qualified for-profit or not-for-profit company, the Authority does not undertake financial risk because the bonds issued are repaid solely by the revenues of the underlying project. The bonds are not general obligations of the Authority nor the State of New Mexico and all payment obligation remains with the Applicant. However, any defaults suffered may indirectly impact the Authority’s reputation in the bond market.

Therefore, the general purpose of the Economic Development Bond Management Policies is to set forth the parameters for issuing bonds and monitoring the outstanding bond portfolio. It is established to provide guidance to decision makers regarding the purposes for which bonds may be issued, the type and amounts of bonds permitted, the timing methods of sale that may be used, and structural features that should be considered.

These Policies are intended to supplement the rules and regulations governing the Economic Development Bond Program and provide Applicants with a better understanding of the process and the requirements of issuing bonds through the Authority.

The Authority is authorized under the Act to purchase project revenue bonds at subsidized rates into the Economic Development Revolving Fund (the “Fund”) established by SWEDFA and capitalized by the Legislature. The interest rates, terms and conditions of conduit bond purchases from the fund will be governed by the parameters established in the Smart Money Loan Participation Credit and Lending Policy.

Section 1.3. Objectives of the Economic Development Bond Management Policies:

- a) Establish the Authority’s uniform process for the issuance of Authority bonds and specify the Authority’s application and approval process, which requires a thorough analysis of the qualifications of each project;
- b) Establish qualifications for eligible entities to obtain tax-exempt financing and project tax abatements in full compliance with federal and state law; and establish terms and conditions for financing assistance; and
- c) Establish the process and criteria required by the Authority to lower borrowing costs further through the purchase of the project revenue bonds into the Economic Development Revolving Fund.

SECTION 2: ECONOMIC DEVELOPMENT BOND MANAGEMENT POLICY PARAMETERS

Section 2.1. Roles of Authority under Statewide Economic Development Finance Act

In order to encourage economic development in rural and underserved areas of the state, the Authority may issue project revenue bonds on behalf of eligible private entities. This may qualify the Applicant, depending on compliance with applicable federal and state laws, to benefit from lower rates on the project debt due to the following:

- a) An exemption of interest on the bonds from federal income tax;
- b) An exemption of interest on the bonds from New Mexico income tax;
- c) An exemption from state or local property or gross receipts tax for bond-financed facilities.
- d) Subsidized interest rates on bonds purchased into the Economic Development Revolving Fund.

The Authority, as the issuer of economic development bonds:

- a) Takes no financial risk in issuing the bonds, while providing access to tax-exempt financing;
- b) Pledges neither the credit of the Authority nor the State;
- c) Is responsible for determining that the eligible entity and the project meet all federal and State legal requirements;
- d) May provide access to the credit market on either a single-issue or pooled issue basis;
- e) Ensures adequate return to the state as a condition of financing as necessary.

The Authority, as the purchaser of economic development bonds:

- a) Assumes the role of investor in the project and bears the risk of default;
- b) Purchases the conduit bonds at a rate of interest below that of a typical investor in order to increase the investment incentive to the Applicant;
- c) Ensures that the Applicant provides sufficient economic development return to the state to warrant the additional subsidy;
- d) Determines that the Applicant has sufficient revenue and collateral to secure the bonds;

Section 2.2. Governing Laws and Regulations

In addition to these Bond Management Policies, the Authority, in its issuance and management of bonds, is required to comply with the state constitution and with all other legal requirements imposed by federal, state and local rules and regulations, including:

- a) Statewide Economic Development Finance Act;
- b) New Mexico Private Activity Bond Act (this Act applies to certain tax exempt bonds that may be issued and purchased pursuant to these Policies);
- c) The Rules and Regulations Governing the Economic Development Bond Program as approved by the New Mexico Finance Authority Board of Directors and the New Mexico Finance Authority Legislative Oversight Committee;
- d) The New Mexico Economic Development Department Rules and Regulations which govern the administration of the Opt-in Agreements and the abatement of Compensating and/or Gross Receipts Tax (“GRT”) and property taxes;
- e) The Authority shall issue and manage tax exempt debt in accordance with the limitations and constraints imposed by federal rules and regulations, including Internal Revenue

Code of 1986, as amended; the Treasury Department regulations there under; Taxable and tax exempt debt shall be issued and in compliance with the Securities Acts of 1933 and 1934;

- f) The Authority shall issue and manage debt in accordance with the limitations and constraints imposed by local rules and regulations, including land use ordinances; and
- g) Recovery Zone Facility Bonds shall be issued and managed as provided by the ARRA

SECTION 3: ECONOMIC DEVELOPMENT BOND ISSUANCE TIMELINE

Applications received under the Economic Development Bond program will generally proceed under the following timeline.

- a) The Applicant submits a complete application and any relevant fee. To ensure compliance with applicable laws, the Applicant is expected to have consulted an experienced Bond Counsel prior to submitting its application and project description;
- b) The Authority and NMEDD review the application to determine eligibility;
- c) The Authority staff performs an independent analysis and financial feasibility of the project and may, at the sole discretion of the Authority, refer the Application to a third party reviewer for additional analysis;
- d) The Authority staff forwards its written recommendation to the Economic Development Committee for its review and recommendation;
- e) The Economic Development Committee forwards its recommendation for financing to the Board for its consideration;
- f) Board Approval and Adoption of Preliminary (Inducement) Resolution: If the Board approves an Applicant's request, project financing will advance in accordance with the terms of the Preliminary Resolution, which is drafted based on the application and the Economic Development Committee's recommendation, and all limitations imposed by current federal and state law, including the availability of sufficient volume cap under the New Mexico Private Activity Bond Act, and, where applicable, the allocation of Recovery Zone Bond capacity. To ensure compliance with applicable laws, the Applicant is expected to have consulted an experienced Bond Counsel prior to submitting its application and project description.
- g) Staff and the Applicant will work together to confirm the award of volume cap or the allocation of Recovery Zone Bond capacity, if applicable.

- h) Prior to the consideration of a Final Bond Resolution each Applicant must satisfy the public notice and hearing requirements of the Tax Equity and Fiscal Responsibility Act of 1984 (“TEFRA”);
- i) Board Approval of Final Resolution: The Applicant must inform the Authority at least six weeks prior to the adoption date of the Board’s adoption of the Final Bond Resolution. Before the Board’s final consideration of a project, copies of all financing documents, including the loan agreement, the trust indenture, the official statement (or other disclosure document), the bond purchase agreement and the Final Bond Resolution must be delivered to the Authority. The Closing dates and the final bond issuance date are set as part of Final Resolution approval;

SECTION 4: APPLICATION FOR ECONOMIC DEVELOPMENT BOND ISSUANCE

The Application Process provides guidance to the Authority and its Applicants about the information that must be included in an application and what is determined to constitute a complete application.

Section 4.1. The Application

The bond issuance process commences when an Applicant files a complete application with the Authority.

- a) The Authority, based on the type of Applicant, the project being proposed and the specific revenues designated to repay the bonds, will evaluate applications utilizing the process set forth below. Such evaluation will include, to the extent applicable, an evaluation of project feasibility, administrative capacity, financial position, debt management and economic and demographic factors.
- b) The Applicant must deliver a completed application and any relevant fees no later than five (5) weeks prior to the date of the Board meeting at which it is to be considered. Applications received after this period may be brought forward at the sole discretion of the Authority. Otherwise, it will be considered at the next regular scheduled meeting of the Board.
- c) The Authority will provide a written application form to prospective as requested. Each complete application will be reviewed and evaluated within 20 days of receipt.

Section 4.2. Authority Fees

Upon submission of an application, an Applicant must pay any application fees. The Authority’s current fee schedule, which is subject to change by the Authority’s Board at its sole discretion, can be obtained by contacting the Authority. The application fee will be deducted from the issuance fee at the time of bond closing. The Authority’s closing fee and its Issuer’s Counsel Fee are payable at the bond closing. In the event that a project, approved by the Authority’s Board,

does not close, the Applicant will not have to pay the Authority's closing fee; however, the Applicant shall be liable for and shall pay any and all costs associated with the Authority's retention of outside professionals, including but not limited to Issuer's Counsel, in connection with the project.

Section 4.3. The Application Requirements:

Applicants are responsible for notifying the Authority as soon as possible of subsequent material changes in the nature or descriptions of the project or the financing.

The Authority may deem an application complete if it:

- a) Cites a specific loan amount being sought and a description of the proposed use or uses of the funds;
- b) Identifies a specific, legally permissible source of revenue as repayment of the proposed debt;
- c) Lists all of the outstanding senior, parity or subordinate indebtedness secured by the proposed revenue stream, including bonds, lease purchase agreements and other loans, by name and principal amount (both the original principal amount and the currently outstanding amount) and the debt service schedule associated with each indebtedness;
- d) Contains a description of the project or projects to be financed or refinanced, including:
 - 1) Description of the scope of work of the project;
 - 2) Estimated cost; and
 - 3) Target dates for the initiation and completion of the project (Note: Applicants are responsible for notifying the Authority as soon as possible of subsequent material changes in the nature or descriptions of the project or the financing.)
- e) Includes the Applicant's financial reports for the most recent three years;
- f) Describes the benefits an applicant will contract to provide, such as local hiring quotas, job training commitments and installation of public facilities or infrastructure, in connection with the requested tax abatements or with any economic development incentives available to the applicant from any other source;
- g) An estimate of the number of jobs to be created or retained by this project and the wages associated with those jobs;

- h) A written appraisal report, prepared by a certified appraiser, for any real or personal property securing a loan;
- i) A letter of intent from the proposed letter of credit provider, credit enhancer, underwriter, the bond purchaser or other guarantors;
- j) For projects seeking tax-exempt financing, sufficient project detail to determine whether ARRA Recovery Zone Facility Bond “Small manufacturer”, exempt facility or allowable 501 (c) 3 non-profit requirements are being met;
- k) A completed Economic Disclosure Statement provided by the Authority; and
- l) Any additional information requested by staff and referenced in the rules based upon the type of Applicant and the project being financed.

Section 4.4 Exemption from the Inspection of Public Records Act

- a) Pursuant to SWEDFA, certain information submitted to the Authority with the application representing the applicant’s business plan, financial position, financial projections, personal financial statements and background checks will be kept confidential, to the extent allowed by law.
- b) A signed transmittal letter and application are stamped with the date received and marked confidential before being scanned into the electronic records system.

Section 4.5: Authority Indemnification

The Act expressly permits the Authority to issue bonds in accordance with Economic Development Bond Rules and Regulations approved by the Legislative Oversight Committee and the Authority Board. In order to foster the Authority’s statutory role and to enable the Authority to provide Applicants with discretion relative to their financing and their financing teams, all issues must provide for indemnification of the Authority.

- a) Compliance with the indemnification requirements of the Authority is essential to securing the Authority’s Board approval of the proposed bond financing, and the Authority will not participate in a bond financing if its indemnification requirements are not met. The Authority will not take any responsibility for due diligence investigations or disclosure, and the Authority’s Issuer’s Counsel specifically disclaims any responsibility for such disclosure in its opinion.
- b) The existence of credit enhancement does not obviate the obligation to indemnify the Authority. Credit enhancement does not release the underwriter, placement agent, remarketing agent or comparable entity of the obligation to abide by covenants in the bond documents.

- c) A clear statement of the indemnification of the Authority must appear in all relevant Bond Documents (Loan Agreement, Bond Purchase Agreement etc.). Inconsistency with indemnification provisions in bond documents may thwart their protective purposes. In addition, the Official Statement, Offering Memorandum and other disclosure documents must clearly state that the Authority has only reviewed or approved particular information relating to the Authority, under specific headings. Furthermore, the Bond Purchase Agreement must articulate the Authority's non-participation in the preparation of the offering document, except for the information relating to the Authority under specific headings.

SECTION 5. APPLICATION REVIEW PROCESS:

Section 5.1. Authority Review and Credit Analysis

The Authority staff, using the application and supporting information, will review the application for completeness and will analyze the financial viability of the project. The Authority staff in making its recommendation to the Economic Development Committee will undertake the following:

1. Debt Management The Authority will examine the Applicant's debt management history and the credit-worthiness of any pledged revenue will be examined. All debt obligations secured by the revenues pledged will be analyzed. To assess an Applicant's debt position, the following factors may be evaluated:
 - a) The total dollar amount of the debt owed by the Applicant, including the project revenue bonds being requested;
 - b) Interest rate based on risk assumptions relative to perceived risk;
 - c) Amortization period based on useful life of assets being financed;
 - d) Cash flow coverage;
 - e) Loan collateral requirements, including collateral value, loan to value and lien position; and
 - f) Proposed bond closing documents and agreements.
2. Credit Analysis Authority staff will review the bondholder security offered by the Applicant and the analyze the credit quality of the Applicant, taking into consideration:
 - a) Educational and work history of the officers, managers, members or partners of the applicant;

- b) The Applicant's experience and position in the industry and in managing similar projects;
 - c) Assets and liabilities of the Applicant;
 - d) Existence of liens or encumbrances on the Applicant's assets; and
 - e) Debt to equity or other applicable ratios.
3. Financial Position Financial performance and liquidity is a key factor in the evaluation of any Applicant and the Authority's evaluation will include the following:
- a) All internal reserve funds to determine whether the Applicant has sufficient resources to cover unexpected costs;
 - b) Applicable revenue projections and the timing of all receivables to determine the ability of the Applicant to service debt; and
 - c) Predictability of cash flow; and
 - d) Revenues that will be used to repay the bonds will be analyzed to determine affordability of the project and the level of flexibility that exists.

Section 5.2. Application Review Process

In addition to performing a financial analysis as described in Section 5.2 above, the Authority staff will be responsible for ensuring the Application meets all federal and state laws, the Rules and Regulations of the Economic Development Bond Program and these Bond Management Policies which generally include, but is not limited to, the following duties:

- a) Preliminary determination of tax-exempt status of the Bonds based upon qualifications of project revenue bonds and their interest for exemption from federal income taxation and state income taxation, including whether an allocation of the State's private activity bond volume cap is required. Final determination will be made by a nationally recognized Bond Counsel who must render an opinion at or before closing that the bonds are exempt from federal taxation.
- b) For those projects seeking GRT and/or property tax abatements, confirm that the required Opt-In Agreements by and between the Department and local governments where project is located have been executed;
- c) Determine eligibility of State or Local Tax Abatements;
- d) For those projects seeking a GRT or property tax abatement, ensure that an Economic Impact analysis has been performed and that the project being financed provides sufficient economic development benefits to warrant the financing assistance;

- e) Execute all waivers of confidentiality required for public consideration of the economic development bond issuance application by the Authority Board;
- f) Provide the applicant with written confirmation the structure and readiness to proceed requirements following Authority Board approval;
- g) Review all bond closing documents and agreements, facilitate the final bond documents, and obtain the signature of the Authorized Officers of the Authority once all conditions have been met; and
- h) After bond closing, authorize disbursements, track bond payments and monitor the Economic Development Loan Covenants and quarterly financial reports.

Section 5.3. Third Party and Review

The Authority, at its sole discretion, may require an independent third-party review of the entire project evaluation and bond issue structuring prior to making a recommendation the Economic Development Committee.

Section 5.4. Economic Impact Analysis:

For projects seeking GRT and property tax exemptions, an economic impact analysis will be undertaken to determine the direct and indirect impact of a proposed project so that quantifiable benefits resulting in a net return to the State can be calculated.

Section 5.5 The role of the Economic Development Committee:

- a) Reviews proposal recommended for approval by Authority staff, including information submitted with the application that relevant to reaching a lending decision.
- b) Forwards to the Authority Board its recommendation for project approval.

Section 5.6 Authority Board of Director Review and Approval

In considering applications, the Board will use its independent judgment and may take into consideration the recommendations for approval by the Authority staff and the Authority's Economic Development Committee. The Board may approve all or part of a recommendation or refer all or part of the recommendation back to the Economic Development Committee, if the Board determines that sufficient information has not been made available on which to base a decision.

For applications requesting that the bonds be purchased by the Economic Development Revolving Fund, the Board of Directors may grant its approval for projects contingent on the approval of the legislature, provided there is no material change in the information submitted between the time of Board approval and legislative approval.

SECTION 6: DETERMINATION OF PROJECT ELIGIBILITY AND PRIORITY

The New Mexico Economic Development Department is required by statute to determine the criteria used to determine eligibility of funding based on the economic impact of a project. For an entity to be eligible for financing, state law requires that the New Mexico Economic Development Department determine that the entity is engaged in an enterprise that serves an economic development goal and is suitable for financing. A determination letter, submitted by the NMEDD Secretary, must be on file before consideration by the Economic Development Committee.

The New Mexico Finance Authority may apply the standards below to determine the economic benefits of a project and priority in awarding financial assistance.

- a) **High wage jobs:** Businesses creating jobs paying above the state or local median wage and offering workers health care coverage;
- b) **Economic/Export Base Companies:** A company that derives most of its revenue from outside New Mexico, either directly or as a supplier to any company doing business outside the State;
- c) **Projects with High Impact on New Mexico Economy:** Any project that creates more than one job per \$50,000 investment;
- d) **Location:** Businesses located in a rural or economically distressed area, as determined by the New Mexico Economic Development Department; and
- e) **New Capital Investment:** Businesses building a new facility or making substantial improvements to an existing facility.

SECTION 7: FAILURE TO MEET ECONOMIC DEVELOPMENT REQUIREMENTS

Bond documents for projects seeking GRT or property tax abatements submitted to the Board for approval will include a performance agreement that includes all requirements and representations regarding the jobs, wages and other economic development impacts of the project being financed. Failure to meet any of the requirements or representations under which bonds were issued may be considered a technical default and result in a re-payment of tax abatement incentives by the Borrower to the state and local government unless it is determined by Authority that failure was due to circumstances beyond the control of the business.

Claw back Provisions

The Authority will include Performance Agreements, also known as “claw backs” in the Bond Purchase Agreement or other appropriate document.

Facility Closure Claw backs:

In the event that a facility financed with conduit bonds issued by the Authority ceases operation within five years of bond issuance claw backs provide for a pro-rata repayment of the abated property, GRT and compensating taxes, depending upon the amount of time elapsed from date of issuance to date of closure of the project. Claw back provisions, may be adjusted to account for the unique circumstances of a particular issue. Staff will determine whether unique circumstances exist with respect to claw backs and will make such recommendations when the project is recommended for approval.

Performance Claw backs:

If employment numbers, sales volumes, or other economic benefits projected in the Performance Agreement are not achieved (for example, an applicant may forecast 100 jobs, but only achieve 80) a claw back, in the form of a payment in lieu of taxes may be implemented. The contingent payment in lieu of taxes provisions will be outlined in the Performance Agreement. Performance will be measured annually and compared to projections and provisions of the Bond Purchase Agreement by the Authority, Department or a third-party independent contractor.

In the event the reviewer determines there is a substantial shortfall of actual versus projected performance, then the Department may exercise a claw back of the taxes abated. In the event the recipient subsequently cures that shortfall, then abatement may be restored on a ratable basis.

The Authority acknowledges that the purpose of this condition is not to penalize the Borrower for business conditions or events that are outside the control of the company

SECTION 8: DETERMINATION OF PROJECT ELIGIBILITY FOR TAX-EXEMPT FINANCING

All economic development bonds issued by the Authority under SWEDFA are exempt from State taxation on interest, regardless of their exemption from federal taxation. The determination of federal tax-exemption is dependent upon receipt by the Authority of an opinion of nationally recognized bond counsel that interest on the bonds is exempt from federal income taxation.

SECTION 9: FINANCING MECHANICS, THE ISSUANCE OF ECONOMIC DEVELOPMENT BONDS

Section 9.1. Preliminary (Inducement) Resolution

Once the Economic Development Committee makes its recommendation, the Authority Board holds discretionary power to approve the recommendation. If the Board approves an application, project financing will advance in accordance with the terms of the Preliminary Resolution, which is drafted based on the Applicant's application, the Board's review and approval thereof, and all limitations imposed by current Federal and State law, including without limitation and where

applicable, the availability of sufficient volume cap or Recovery Zone Facility Bond allocation, if applicable at the time of the bond issuance.

For these reasons, Applicant's full disclosure of the uses of bond proceeds, including the use of bond proceeds to reimburse the Applicant for expenditures made prior to the issuance of bonds, and the project's description are essential. To ensure compliance with all applicable laws, the Applicant is expected to have consulted counsel prior to submitting its application and project description. Bond Counsel shall draft a project's Preliminary Bond Resolution, and deliver an electronic version thereof, in Word format, to the Authority's General Counsel no later than 9:00 am 10 days before the scheduled Board meeting.

Subsequent changes to a bond issue amount and /or material changes to the project description or use of bond proceeds must be reported to the Authority and may necessitate additional approval of the Board. Bond Counsel must notify the Authority of any such changes, in writing, no less than seven (7) business days in advance of the applicable Board Meeting; however, compliance with this notification requirement does not guarantee approval of the requested change.

Once adopted, a Preliminary Resolution will expire two years after its adoption, unless an earlier date is specified in the Resolution. A one-year extension of a Preliminary Resolution may be granted, for cause, at the sole discretion of the Board. Bond Counsel should contact the Authority's General Counsel to request an extension and to arrange for an extension submission to the Board.

The Authority understands that in certain instances an Applicant may have no need for a Preliminary Resolution, and the Applicant may wish to proceed directly to a Final Bond Resolution. The Authority will make all reasonable efforts to accommodate such a request. The Applicant should contact the Authority to discuss such a request as soon as possible, preferably at the time the Applicant files its application. The Authority's ability to grant such a request will, in substantial part, depend upon the nature and complexity of the proposed financing and the time constraints then confronting the Authority

Section 9.2. Preliminary and Final Official Statements

The Authority requires that all participants comply with any and all applicable Federal and State securities laws, including, but not limited to, those requiring full and complete disclosure of all material facts to potential investors. Responsibility falls on the participants to determine the appropriate investigations, material facts and required disclosure to prospective purchasers of bonds. The Authority will not take any responsibility for such investigations, material facts and disclosure; the Authority's Issuer's Counsel specifically disclaims any such disclosures in its opinion. The Authority expects that the due diligence process undertaken for Authority financings must meet the following standards.

- a) Underwriter's Counsel, who must be well experienced in securities law matters, is expected to take responsibility for due diligence investigations and official statement preparation and distribution.

- b) Underwriter's Counsel is expected to issue an opinion in connection with the transaction and the adequacy of disclosure in the Official Statement. The opinion must comply with the usual "10B-5" form, without any exceptions considered material by the Authority's Issuer's Counsel or General Counsel. (The Authority considers financial and statistical information and financial statements as permissible exceptions.)

Prior to Official Statement circulation, the Authority and its Issuer's Counsel must have a meaningful opportunity to review all portions of the Official Statement. Comments relating to the Authority and all other material comments of the Authority and its Issuer's Counsel should be incorporated in the Official Statement that is presented to bondholders. As a general matter, the Authority expects not to execute an Official Statement, Offering Memorandum or other disclosure documents. Applicants must execute all such documentation.

Section 9.3. Final Bond Resolution

To have an action considered by the Board, Bond Counsel and /or the Applicant must inform the Authority as early as possible but in no event less than six (6) weeks prior to the anticipated adoption date of the Final Bond Resolution of the schedule for final document preparation and execution. Prior to final Board consideration of a project, copies of all major financing documents, including, without limitation, the Loan Agreement, the Trust Indenture, the Official Statement (or other disclosure document), the Bond Purchase Agreement, and the Final Bond Resolution must be delivered to the Authority's General Counsel in substantially final form satisfactory to the Authority and its Issuer's Counsel no later than 9:00 am on the 10-days prior to the Board Meeting. The Authority understands that the Tax Agreement, escrow documents and closing certificate may not be in final form at the time. Once received, the Authority's General Counsel will review the submitted materials. If this review finds that the materials are insufficient, the Authority reserves the right to remove the financing from the meeting agenda. An insufficient review consists of, but is not limited to, the following:

- a) The structure or material terms of the financing remain unsettled,
- b) A lack of a committed bond purchaser,
- c) Documents are not in substantially final form,
- d) The adoption of a final resolution is otherwise not appropriate.

For those documents to which the Authority is not a party, such as bank documents in a credit enhanced financing, Bond Counsel should provide the Chief Executive Officer or the Authority's General Counsel with a report, via e-mail or letter, on the status of such documents no later than 12:00pm on the Friday prior to the Board meeting.

Section 9.4. Private Placement Disclosure Compliance

A bond issue constitutes a private placement if:

- a) It is offered to a limited number of accredited or institutional investors, as defined by the Securities and Exchange Commission (the “SEC”);
- b) The bond issue transcript includes a certificate or letter from each bond purchaser. Under certain circumstances, a certificate or letter from the underwriter or placement agent for the bonds satisfactory to the Authority; however, this matter must be discussed with and approved by the Authority’s General Counsel prior to the adoption of the Final Bond Resolution authorizing the bonds.
- c) The decision to accept under such a certificate or letter rests solely with the Authority. The Authority and its Issuer’s Counsel assume that any purchaser in a private placement transaction will insist on receiving from the other parties to the transaction the information that the purchasers deem necessary to finalize their investment decisions.

Section 9.5. Public Offering Disclosure Requirement

All other offerings which do not meet the private placement requirements described above are considered public offerings. Upon request, the Authority will, in its Final Bond Resolution, authorize or ratify the distribution of a disclosure document in the form of an Official Statement, Offering Memorandum or the like. In the Authority’s Certificate, however, the Authority will only certify to those portions of the Official Statement or Memorandum describing the Authority and material litigation pending or threatened against the Authority.

Section 9.6. Secondary Market

As a conduit issuer, the Authority typically does not provide secondary market disclosure. At the time of sale of the bonds, the Authority requires the Applicant and/or other participants to provide secondary market disclosure of financial information, operational data and other material information, as required by law. If applicable given the particulars of the financing, the Official Statement or Memorandum must contain language stating that the Authority does not provide secondary market disclosure, either at closing or on an on-going basis.

Section 9.7. Bond Denominations

- a) **Rated Bonds.** The Authority will issue bonds in denominations of \$5,000 upon satisfaction of specific credit rating requirements. To qualify for a \$5,000 denomination, the Applicant must obtain a rating on the bonds at least equal to that of the next to the lowest investment grade rating. As of the date hereof, the minimum rating accepted by the Authority for issuance of \$5,000 denominations are Moody’s/S&P/Fitch rating of Baa2/BBB/BBB. The pertinent rating used shall be the rating(s) applied to or issued in connection with the subject bond issuance (s). Bonds rated Baa3/BBB- /BBB-, shall follow the same denomination structure as non-enhanced or unrated bonds described below.
- b) **Unenhanced and Unrated Bonds.** Due to greater risk, non-enhanced and unrated bonds have a higher interest rate than other investments. These high risk and high yield

investments generally require a greater level of investor sophistication and securities expertise. Except as noted below, the Authority requires that all non-enhanced or unrated bonds be sold only to accredited investors (as defined by the SEC) or in minimum denominations of at least \$100,000, or if the total par amount of the bonds is less than \$100,000, then one accredited investor must purchase all of the bonds. An Applicant wishing to issue non-enhanced or unrated bonds should contact the Authority as early in the process as possible to discuss the appropriate minimum bond denomination amount for the particular issue.

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