Industrial Development Authority
of the City of Lexington, VA
Wednesday, August 7, 2013, 5:30 pm
City Hall, Community Meeting Room, 1st Floor

1. **Call to Order**
2. **Approval of Minutes of June 20, 2013***
3. **Consideration of Washington & Lee Post-Bond Issuance Compliance Policy***
4. **Discussion of fee structure for IDA issuance**
5. **Adjourn**

MINUTES

The following are the Minutes of the June 20, 2013 Industrial Development Authority (IDA) meeting held at City Hall, 300 E Washington St, Lexington, VA in the Community Meeting Room.

Presiding: Michael Murphy, Chair
Members: Jim Joyner
Anna-Lisa Fitzgerald
Eric Bond
Homer (Buddy) Derrick

Staff: T Jon Ellestad, IDA Secretary and Larry Mann, IDA Attorney

Applicant: Steve McAllister, Washington and Lee VP/Treasurer; Charles Shimer, Kutak Rock LLP (Bond Counsel); Stephanie Arbanas, and Deborah Caylor

Public: 0

CALL TO ORDER: The meeting was called to order by Chairman Murphy at 5:30 p.m.

Approval of Minutes: A motion was made by Mr. Joyner and seconded by Mrs. Fitzgerald to approve the minutes of the May 20, 2013 meeting with one typo correction. The motion passed unanimously.

Presentation from Washington and Lee University (W&L) for issuance of up to $41,250,000 in bonds: Steve MacAlister, Vice President and Treasurer of W&L explained the request from W&L University to issue up to $41,250,000 in education facilities revenue bonds for various capital improvements listed in the application. Most of the improvements will be for the renovation of two dormitories. Also, there is a possibility that $6 million will be used to refinance a 2006 issuance. There were numerous questions posed by the Authority and answered by Mr. McAllister. Charles Shimer, Bond Counsel for W&L then reviewed the Resolution that was before the Authority.

Public Hearing: Chairman Murphy opened the public hearing on the Resolution. Hearing no comments, he closed the public hearing at 5:59 p.m.

Consideration of Resolution – Mr. Derrick moved to approve the W&L inducement resolution presented, which was seconded by Mr. Bond. The motion was approved unanimously.

Selection of Assistant Secretary – Mr. Ellestad indicated that he would be on vacation during the period when the bond document would need to be signed. Mr. Bond made a motion that Mrs. Fitzgerald be appointed Assistant Secretary, which was seconded by Mr. Joyner. The motion was approved unanimously.

The meeting adjourned at 6:05 p.m.

Respectfully submitted,

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T. Jon Ellestad, Secretary of the IDA

INDUSTRIAL DEVELOPMENT AUTHORITY
OF THE CITY OF LEXINGTON, VIRGINIA

POST-ISSUANCE COMPLIANCE POLICY

The purpose of this Post-Issuance Tax Compliance Policy is to establish policies and procedures in connection with tax-exempt qualified obligations (the "Bonds") issued by the Industrial Development Authority of the City of Lexington, Virginia (the "Authority") so as to ensure that all applicable post-issuance requirements of federal income tax law needed to preserve the tax status of the Bonds as qualified tax-exempt bonds are met. The Authority reserves the right to use its discretion as necessary and appropriate to make exceptions or request additional provisions as circumstances warrant. The Authority also reserves the right to change these policies and procedures from time to time.

General

The Authority expects to primarily act as a conduit issuer, in which case, pursuant to the tax certificate as to arbitrage or tax compliance agreement relating to an issue of Bonds (each, a "Tax Certificate"), the conduit borrower (the "Borrower") will bear primary responsibility for all ongoing tax compliance matters relating to Bonds, including without limitation ensuring that any nonqualified Bonds are remediated in accordance with applicable requirements of the federal Internal Revenue Code of 1986, as amended, and the Treasury Regulations thereunder. The Borrower shall designate one of its officers or staff members, by title, as the individual responsible for post-issuance compliance duties described herein and in the Tax Certificate.

Post-Issuance Compliance Requirements

External Advisors / Documentation

The Authority and the Borrower shall consult with bond counsel and other legal counsel and advisors, as needed, throughout the Bond issuance process to identify requirements and to establish procedures necessary or appropriate so that the Bonds will continue to qualify for tax-exempt status. Those requirements and procedures shall be documented, and the Borrower shall covenant to comply with such requirements and procedures, in the Tax Certificate and/or other transaction documents finalized at or before issuance of the Bonds. Those requirements and procedures shall include future compliance with applicable arbitrage rebate requirements and all other applicable post-issuance requirements of federal tax law throughout (and in some cases beyond) the term of the Bonds.

The Borrower also shall consult with bond counsel and other legal counsel and advisors, as needed, following issuance of the Bonds to ensure that all applicable post-issuance requirements in fact are met. This shall include, without limitation, consultation in connection with future contracts with respect to the use of Bond-financed or refinanced assets.

The Authority shall require the Borrower to engage expert arbitrage rebate advisors (each a "Rebate Service Provider") to assist in the calculation of arbitrage rebate payable in respect of the investment of Bond proceeds, unless the Tax Certificate documents that exceptions to the arbitrage rebate requirements apply to all proceeds of an issue of Bonds.

Unless otherwise provided by the indenture or other authorizing documents relating to the Bonds, unexpended Bond proceeds shall be held by a trustee or the bank direct purchaser of the Bonds, as applicable, and the investment of Bond proceeds shall be managed by the Borrower. The Borrower shall prepare (or cause the trustee or bank, as applicable, to prepare) regular, periodic statements regarding the investments and transactions involving Bond proceeds and such statements shall be delivered to the Authority if it so reasonably requests.

Arbitrage Rebate and Yield

Unless the Tax Certificate documents that arbitrage rebate will not be applicable to an issue of Bonds, it is the Authority's policy that the Borrower shall be responsible for:

- engaging the services of a Rebate Service Provider and, prior to each rebate calculation date, causing the trustee, bank or other account holder to deliver periodic statements concerning the investment of Bond proceeds to the Rebate Service Provider;

- providing to the Rebate Service Provider additional documents and information reasonably requested by the Rebate Service Provider;

- assuring payment of required rebate amounts, if any, no later than 60 days after each 5-year anniversary of the issue date of the Bonds, and no later than 60 days after the last Bond of each issue is redeemed;

- during the construction period of each capital project financed in whole or in part by Bonds, monitoring the investment and expenditure of Bond proceeds and consulting with the Rebate Service Provider to determine compliance with any applicable exceptions from the arbitrage rebate requirements, for example during each 6-month spending period up to 6 months, 18 months or 24 months, as applicable, following the issue date of the Bonds; and

- retaining copies of all arbitrage reports and account statements as described below under "Record Keeping Requirements" and, upon request, providing such copies to the Authority.

The Borrower, in the Tax Certificate relating to the Bonds and/or other documents finalized at or before the issuance of the Bonds, shall agree to undertake the tasks listed above (unless the Tax Certificate documents that arbitrage rebate will not be applicable to an issue of Bonds).

Use of Bond Proceeds and Bond-Financed or Refinanced Assets:

It is the Authority's policy that the Borrower shall be responsible for:

- monitoring the use of Bond proceeds and the use of Bond-financed or refinanced assets (e.g., facilities, furnishings or equipment) throughout the term of the Bonds to ensure compliance with covenants and restrictions set forth in the Tax Certificate relating to the Bonds;

- maintaining records identifying the assets or portion of assets that are financed or refinanced with proceeds of each issue of Bonds, including a final allocation of Bond proceeds as described below under "Record Keeping Requirements";

- consulting with bond counsel and other legal counsel and advisers in the review of any contracts or arrangements involving use of Bond-financed or refinanced assets to ensure compliance with all covenants and restrictions set forth in the Tax Certificate relating to the Bonds;

- maintaining records for any contracts or arrangements involving the use of Bond-financed or refinanced assets as described below under "Record Keeping Requirements";

- conferring at least annually with personnel responsible for Bond-financed or refinanced assets to identify and discuss any existing or planned use of Bond-financed or refinanced assets, to ensure that those uses are consistent with all covenants and restrictions set forth in the Tax Certificate relating to the Bonds; and

- to the extent that the Borrower discovers that any applicable tax restrictions regarding use of Bond proceeds and Bond-financed or refinanced assets will or may be violated, consulting promptly with bond counsel and other legal counsel and advisers to determine a course of action to remediate all nonqualified bonds, if such counsel advises that a remedial action is necessary. See "Remediation" below.

The Borrower, in the Tax Certificate relating to the Bonds and/or other documents finalized at or before the issuance of the Bonds, shall agree to undertake the tasks listed above.

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

<u>Record Keeping Requirement</u>

It is the Authority's policy, in accordance with federal Internal Revenue Service or Treasury Department guidance and applicable Treasury Regulations, that the Borrower shall be responsible for maintaining the following documents for the term of each issue of Bonds (including refunding Bonds, if any) plus at least three years:

- a copy of the Bond closing transcript(s) and other relevant documentation delivered to the Borrower at or in connection with closing of the issue of Bonds, including any elections made by the Authority or Borrower in connection therewith;

- a copy of all material documents relating to capital expenditures financed or refinanced by Bond proceeds, including (without limitation) construction contracts, purchase orders, invoices, trustee requisitions and payment records, draw requests for Bond proceeds and evidence as to the amount and date for each draw down of Bond proceeds, as well as documents relating to costs paid or reimbursed with Bond proceeds and records identifying the assets or portion of assets that are financed or refinanced with Bond proceeds, including a final allocation of Bond proceeds;

- a copy, or reasonably detailed summary, of all contracts and arrangements involving the use of Bond-financed or refinanced assets; and

- a copy, or reasonably detailed summary, of all records of investments, investment agreements, arbitrage reports and underlying documents, including trustee statements, in connection with any investment agreements, and copies of all bidding documents, if any.

The Borrower, in the Tax Certificate relating to the Bonds and/or other documents finalized at or before the issuance of the Bonds, shall agree to the foregoing records retention requirements and procedures.

Remediation

The disposition and certain uses of assets financed or refinanced with proceeds of certain Bonds may result in some or all of such Bonds becoming nonqualified bonds, which may require remedial action in accordance with Treasury Regulations Section 1.141-12 or 1.142-2, as applicable, to preserve the federal tax status of such Bonds as qualified tax-exempt bonds. Such remedial action is subject to satisfying certain conditions described in the applicable Treasury Regulations Section and may include:

- redemption or defeasance of nonqualified bonds;

- alterative use of proceeds revised upon disposition of such Bond-financed or refinanced assets;

- alternative qualifying use of such Bond-financed or refinanced assets; or

- other actions as may be prescribed from time to time by the Internal Revenue Service;

which generally have the effect of rectifying noncompliance with certain provisions of the federal Internal Revenue Code of 1986, as amended, and the Treasury Regulations thereunder and are taken to maintain the federal tax status of such Bonds as qualified tax-exempt bonds.

The Borrower, in the Tax Certificate relating to the Bonds and/or other documents finalized at or before the issuance of the Bonds, shall agree to undertake any such applicable actions to remediate any nonqualified Bonds.

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