

Hugh L. Carey Battery Park City Authority  
Meeting of the Members  
200 Liberty Street, 24<sup>th</sup> floor  
New York, New York 10281  
September 27, 2023  
2:00 p.m.

AGENDA

- I. CALL TO ORDER
- II. APPROVAL OF THE AUGUST 16, 2023 MINUTES
- III. PUBLIC COMMENT
- IV. INVESTMENT COMMITTEE MEETING REPORT
- V. M/WBE REPORT
- VI. RESILIENCY UPDATE
- VII. CORPORATE ACTION
  - A. Authorization to Adopt and Implement Post-Issuance Tax Compliance Policy and Procedures.
  - B. Adoption of Amended Procedures Governing Member Videoconferencing Pursuant to NY Public Officers Law §103-a.
  - C. Request to Amend Agreement with New York State Industries for the Disabled, Inc. (Document Scanning).
  - D. Authorization to Enter into an Agreement with The Alliance for Downtown New York, Inc. (Downtown Connection Bus Service).
  - E. Authorization to Amend a Contract with LiRo Program and Construction Management, PE P.C to Amend the Scope of Work, Increase the Contract Value and Extend the Term .
- VIII. MOTION TO ADJOURN

**AUTHORIZATION TO ADOPT AND IMPLEMENT THE AMENDED AND RESTATED  
POST-ISSUANCE TAX COMPLIANCE POLICY AND PROCEDURES**

BE IT RESOLVED, that the Amended and Restated Post-Issuance Tax Compliance Policy and Procedures (the “Policy”), substantially in the form presented at this meeting, be, and hereby are approved and shall be adopted and implemented by the Authority; and be it further

RESOLVED, that the Chief Operating Officer of the Authority or his designee(s) be, and each of them hereby is, authorized and empowered to execute all such other and further documents, and to take all such other and further actions as may be necessary, desirable or appropriate, in connection with the adoption and implementation of the Policy, and any such further actions heretofore taken with respect to the Policy are hereby ratified and approved.

**BATTERY PARK CITY AUTHORITY**

**POST-ISSUANCE TAX COMPLIANCE  
POLICY AND PROCEDURES**

**AMENDED AND RESTATED : \_\_\_\_\_, 2023**

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## SECTION I

### PURPOSE

The Battery Park City Authority, doing business as the Hugh L. Carey Battery Park City Authority (the “**Authority**”), has issued tax-exempt and tax-credit obligations (collectively, the “**Tax-Advantaged Obligations**”) to finance and refinance various infrastructure projects at the Battery Park City site (the “**BPC Site**”). The Tax-Advantaged Obligations the Authority has issued and may hereafter issue are collectively called the “**BPCA Bonds**”. The Internal Revenue Code of 1986, as amended (the “**Code**”), and the Federal income tax regulations (the “**Regulations**” and together with the Code, the “**Federal Tax Rules**”), impose a responsibility on issuers of the Tax-Advantaged Obligations to periodically review compliance with certain requirements and limitations of the Federal Tax Rules in order to maintain the tax-exempt status of interest on bonds, the eligibility of holders of taxable tax-credit bonds to receive tax credits or the issuers of tax-credit bonds to receive interest subsidy payments. **As of the date of this document, the Authority has no tax-credit bonds outstanding.** The Authority has covenanted in each of its Federal tax certificates (each, a “**Tax Certificate**”), executed by the Authority in connection with the issuance of each issue of BPCA Bonds, that it will comply with all of the Federal Tax Rules applicable to such issue. Bond Counsel to the Authority (“**Bond Counsel**”) advised the Authority that, although the Authority may have formal and informal procedures for maintaining compliance with such requirements and limitations of the Federal Tax Rules, the Internal Revenue Service (the “**IRS**”) has effectively required, through various pronouncements and required forms, that issuers of the Tax-Advantaged Obligations adopt and implement formal written post-issuance policies and procedures with the goal of timely preventing, identifying and resolving violations of the Federal Tax Rules in order to maintain the tax-exempt status of interest on its bonds. To affirmatively comply with such reporting requirements and to formalize and memorialize the Authority’s then existing tax compliance policy and procedures regarding arbitrage rebate and yield restriction requirements, monitoring of facilities financed or refinanced with proceeds of the BPCA Bonds (each, a “**Bond-Financed Facility**”) for private activity compliance, accounting and recordkeeping requirements and tax documentation and filing requirements, and in furtherance of the tax covenants made by the Authority in each Tax Certificate, the Authority formally adopted the policy and procedures effective January 30, 2014 (the “**2014 Policy and Procedures**”), which 2014 Policy and Procedures were amended and restated on September 24, 2019 (the “**2019 Policy and Procedures**”), and are hereby further amended and restated (the “**Policy and Procedures**”) to reflect the issuance of additional BPCA Bonds and the defeasance and redemption of prior BPCA Bonds and updates to the Federal Tax Rules.

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

**SECTION II****THE AUTHORITY'S POLICY**

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

### SECTION III

#### **RESPONSIBILITY OF CERTAIN DESIGNATED EMPLOYEES OF THE AUTHORITY**

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

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

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

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

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

Each employee who holds the office of CFO, Controller, Director or General Counsel (individually a "**Compliance Officer**") will acknowledge the assigned duties of such office under the Policy

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

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

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

The Legal Department has final responsibility for handling notices, information document requests from the IRS ("IDRs") in respect of IRS audits, which are received by the Authority. The Finance Department will coordinate with Bond Counsel in gathering the requisite information and preparing appropriate responses, and/or advising a course of action. The response will be submitted under the President's signature.

**SECTION IV****TAX-ADVANTAGED OBLIGATIONS**

The status of the Tax-Advantaged Obligations of the Authority that have been issued since December 22, 2009, is described in **EXHIBIT D**. **EXHIBIT D** will be updated upon the issuance of each issue of BPCA Bonds.

## SECTION V

### **PRIVATE ACTIVITY AND SPECIAL RULES**

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

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

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

D. **Definition of Private Use.** “**Private Use**” is defined as any direct or indirect use of a Bond-Financed Facility in any trade or business carried on by any Non-Exempt Person. Private Use generally results from any contract or other arrangement including, without limitation, ownership, leases, management or operation(s) contracts, research agreements, service contracts, incentive payment contracts, guarantee contracts, take or pay contracts, put or pay contracts, output contracts or joint ventures which provides for use (direct or indirect) of a Bond-Financed Facility

by any Non-Exempt Person. In addition, Private Use includes any arrangement that conveys a “special legal entitlement” for the beneficial use of a Bond-Financed Facility to a Non-Exempt Person. In general, Private Use commences on the first date on which there is a right to actual use of a Bond-Financed Facility by a Non-Exempt Person. Use of a Bond-Financed Facility by a Non-Exempt Person will not constitute Private Use if such use is available to the general public at either no charge or on the basis of rates that are generally applicable and uniformly applied (“**General Public Use**”). For this purpose, rates may generally be treated as generally applicable and uniformly applied even if different rates apply to different classes of users, such as volume purchasers, if the differences in rates are customary and reasonable. Furthermore, Private Use does not result from (1) contracts for services that are solely incidental to the primary governmental function or functions of a Bond-Financed Facility (*e.g.*, contracts for janitorial, office equipment repair, hospital billing, or similar services), or (2) contracts to provide for services, if the only compensation is the reimbursement of the service provider for actual and direct expenses paid by the service provider to unrelated parties.

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

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

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

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

F. Certain Incidental Use. Certain arrangements with a Non-Exempt Person for the incidental use of a Bond-Financed Facility do not result in Private Use if the following requirements are met: except for vending machines, pay telephones, kiosks and similar uses, the use does not involve the transfer of possession and control of space separated from other areas of

a Bond-Financed Facility by walls, partitions, barriers and the like, the nonpossessory use is not functionally related to any other use of such facility by the same person (other than a different nonpossessory use) and all nonpossessory uses do not in the aggregate exceed 2.5 percent of the Bond-Financed Facility.

G. Management Contracts. An arrangement for the use of a Bond-Financed Facility pursuant to a management or operation(s) contract does not constitute Private Use if such contract meets the requirements of Revenue Procedure 2017-13, as summarized in **EXHIBIT A**. The General Counsel, in coordination with the Controller, will consult with Bond Counsel to determine the impact, if any, that a potential management or operation(s) contract relating to any Bond-Financed Facility would have on the tax-exempt or tax-credit status of any issue of BPCA Bonds, the proceeds of which financed or refinanced such facility, prior to executing, amending or renewing such a contract.

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

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

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

or Security with respect to the issue of BPCA Bonds the proceeds of which financed or refinanced a Bond-Financed Facility to which such change-in-use relates.

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

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

1. Build America Bonds. [reserved]

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

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

a) Modification of the Private Activity Test.

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

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

(3) All of the Bond-Financed Facilities financed or refinanced with net proceeds of the Qualified 501(c)(3) Bonds must be owned by a 501(c)(3) organization or a State or local governmental unit.

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

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

## SECTION VI

### CHANGE-IN-USE AND REMEDIAL ACTIONS

A. Remedial Action. The Authority hereby acknowledges that the remedial action rules contained in Regulations Section 1.141-12, as supplemented by Rev. Proc. 2018-26, provide the Authority with the ability, in certain circumstances, to voluntarily remediate or “**self-correct**” a change-in-use pursuant to a “deliberate action” that would cause an outstanding issue of BPCA Bonds to meet the Private Activity Test or the Private Loan Test. Prior to taking any such “deliberate action”, the Authority will consult with Bond Counsel regarding the applicability of the remedial action rules to such “deliberate action” and the ability to voluntarily remediate the impacted BPCA Bonds. If at any time it is determined that the Authority should take a remedial action and the conditions to taking such remedial action are satisfied, the following three choices are generally available:

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

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

3. Remedial Action through Alternative Qualified Use of Bond-Financed Facility. This remedial action is available if (a) the Bond-Financed Facility, the change-in-use of which causes the Private Activity Test or Private Loan Test to be met, is used in an alternate manner permitted by the Federal Tax Rules (e.g., use that qualifies for financing as “governmental bonds” as defined in Regulations Section 1.150-1(b), or, subject to certain conditions, as Qualified 501(c)(3) Bonds, or as “exempt facility bonds” under Section 142 of the Code); (b) the nonqualified bonds are treated as reissued as of the date of the deliberate action for certain purposes of the Code and meet applicable requirements of the Code throughout the remaining term the nonqualified bonds portion of the affected issue of BPCA Bonds remains outstanding; (c) the deliberate action does not involve a disposition to a purchaser that finances the acquisition with proceeds of Tax-Advantaged Obligations; and (d) any disposition proceeds other than those arising from an agreement to provide services (including disposition proceeds from an installment sale) resulting from the deliberate action are used to pay debt service on the BPCA Bonds on the next available payment date or, within 90 days of receipt, are deposited into an escrow that is restricted to the yield on such issue of BPCA Bonds to pay debt service on such bonds on the next available payment date. If the tax-exempt bonds are reissued as Qualified 501(c)(3) Bonds or “exempt facility bonds” under section 142 of the Code, the bonds and the property financed thereby must be the subject of a public notice, hearing and approval in accordance with the provisions of section 147(f) of the Code prior to the deliberate action taking place. If the tax-exempt bonds are reissued as a category of “exempt facility bonds”, which require an allocation of volume cap under section 146 of the Code, such allocation must be secured prior to the date of the deliberate action.

4. Rev. Proc. 2018-26: Certain Long-Term Leases. Rev. Proc. 2018-26 allows certain leases, where the term of the lease a) is equal to the lesser of 20 years or 75 percent of the weighted average reasonably expected economic life of the leased Bond-Financed Property as of the start of the lease or b) runs through the final maturity date of the bonds and the lease payments for the Bond-Financed Property is paid exclusively in cash, irrespective of when paid, to be treated as a disposition exclusively for cash. Under this provision of the Rev. Proc., the amount equal to the present value of the lease payments determined at the yield on the tax-exempt bonds as of the start of the lease is treated as disposition proceeds for purposes of the applying the alternative qualified use of proceeds remedial action described in paragraph 2. above, and the Authority must reasonably expect to spend such amounts within the two year period following the date of the deliberate action.

5. Anticipatory Remedial Actions. If the Authority expects an outstanding issue of BPCA Bonds to meet the Private Activity Test or the Private Loan Test, it may take action to remediate the nonqualified bonds in advance of the deliberate action by a) redeeming or defeasing the nonqualified bonds and b) officially declaring its intent to redeem or defease such nonqualified bonds on or prior to the date of the redemption or defeasance. The declaration of official intent must identify the Bond-Financed Property with respect to which the anticipatory remedial action is being taken and describe the deliberate action that may result in the Private Activity Test or the Private Loan Test being met. The Authority must also comply with the other requirements of paragraph 1, above, as they relate to the remediation of the tax-exempt bonds by redemption or defeasance.

6. Definitions.

a) “**Disposition proceeds**” means “any amounts (including property, such as an agreement to provide services) derived from the sale, exchange, or other disposition (disposition) of property (other than investments) financed with the proceeds of an issue.” Disposition proceeds are considered proceeds of the tax-exempt bond for purposes of applying the arbitrage and rebate rules described in Section VII below.

b) “**Nonqualified bonds**” means the portion of the outstanding BPCA Bonds in an amount that, if the remaining BPCA Bonds were issued on the date on which the Private Activity Test or the Private Loan Test is met, neither of such tests would be met (*i.e.*, the aforementioned 10% or 5% limitation or the \$15,000,000 limitation would not be exceeded) and the Private Loan Test (*i.e.*, the aforementioned 5% or \$5,000,000 limitation would not be exceeded).

## SECTION VII

### **INVESTMENT OF PROCEEDS AND ACCOUNTING**

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

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

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

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

E. Interest Rate Hedges.

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

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

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

3. In August 2019, in connection with the issuance of the Series 2019DE Bonds, the Authority amended the 2003 Swaps (the “**2019 Swaps**”), which consisted of six interest-rate exchange agreements with three counterparties, with an original aggregate notional amount of \$342,125,000. The Authority executed the 2019 Swaps for the purpose of hedging its variable debt risks and integrated the 2019 Swaps with the Series 2019DE Bonds.

4. In August 2023, in connection with the issuance of the Series 2023AB Bonds, the Authority terminated the 2019 Swaps contemporaneously with the refunding of the Series 2019E Bonds and a portion of the Series 2019D Bonds.

F. Accounting.

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

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

a) The amount of proceeds of each issue of BPCA Bonds financing or refinancing a Bond-Financed Facility expended on such facility;

b) The amount of unspent proceeds of each issue of BPCA Bonds financing or refinancing a Bond-Financed Facility; and

c) The date on which the Authority expects such unspent proceeds to be fully expended.

## SECTION VIII

### **RECORD RETENTION**

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

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

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

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

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

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

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

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

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

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

## SECTION IX

### **IRS INTERACTIONS**

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

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

**SECTION X****CONTINUING EDUCATION**

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

B. The Authority will arrange at least once biannually to conduct classes and training sessions for its employees involved in tax compliance and may enlist the Arbitrage Consultant and Bond Counsel in providing such continuing education.

**SECTION XI****PERIODIC COMPLIANCE REVIEWS**

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

**SIGNATURE PAGE**

<b><u>Title</u></b>	<b><u>Name</u></b>	<b><u>Signature</u></b>	<b><u>Effective Date</u></b>
<i>Chief Financial Officer</i>	<i>Pamela M. Frederick</i>		
<i>General Counsel</i>	<i>Abigail Goldenberg</i>		
<i>Deputy General Counsel</i>	<i>Brett Beecham</i>		
<i>Controller</i>	<i>Karl Koenig</i>		
<i>Director of Financial Reporting</i>	<i>Jason Rachnowitz</i>		

**EXHIBIT A****SAFE-HARBOR MANAGEMENT CONTRACT GUIDELINES - Revenue Procedure 2017-13****General Rule.**

A contract between a state or local governmental unit (a “**Qualified User**”) and a manager or operator which is not a state or local government unit (a “**Provider**”) for the management of, or services rendered at, or incentive payment in respect of, a tax-exempt bond-financed facility (the “**Managed Property**”) that meets the safe-harbor guidelines of Rev. Proc. 2017-13 as summarized below, is treated as not creating any private business use under Section 141(b) of the Internal Revenue Code (the “**Code**”). In addition, if the guidelines are met, the burden to prove that the contract creates impermissible private activity would shift to the Internal Revenue Service (“**IRS**”) in a tax court proceeding. All contracts must be reviewed on a case-by-case basis.

Under Rev. Proc. 2017-13, a contract under which the only compensation consists of reimbursements of actual and direct expenses paid by the Provider to “Unrelated Parties” and reasonable related administrative overhead expenses of the Provider does not create private business use. “Unrelated Parties” are persons other than either: (1) a related party (as defined in § 1.150-1(b) of the federal income tax regulations) to the Provider; or (2) a Provider’s employee.

**General Financial Requirements.**

1. *Reasonable Compensation.* The compensation, including any payments to reimburse actual and direct expenses paid by the Provider and related administrative expenses of the Provider, must be reasonable.
2. *No net profits arrangements.* The compensation paid to the Provider must not include a share of net profits from the operation of the Managed Property.
  - Compensation to the Provider will not be treated as including a share of net profits if no element of the compensation takes into account, or is contingent upon, either the Managed Property’s net profits or both the Managed Property’s revenues and expenses for any fiscal period (other than any reimbursements of direct and actual expense paid by the Provider to Unrelated Parties).
  - For this purpose, the elements of the compensation are the eligibility for, the amount of, and the timing of the payment of the compensation.
  - Incentive compensation will not be treated as providing a share of net profits if the eligibility for the incentive compensation is determined by the Provider’s performance in meeting one or more standards that measure quality of services, performance, or productivity, and the amount and the timing of the payment of the compensation is not based on or contingent on the net profits of the Managed Property.
3. *No Bearing of Net Losses.* The contract must not, in substance, impose upon the Provider the burden of bearing any share of net losses from the operation of the Managed Property.
  - An arrangement will not be treated as requiring the Provider to bear a share of net losses if:
    - the determination of the amount of the Provider’s compensation and the amount of any expenses to be paid by the Provider (and not reimbursed), separately and collectively, do

not take into account either the Managed Property's net losses or both the Managed Property's revenues and expenses for any fiscal period; and

- the timing of the payment of compensation is not contingent upon the Managed Property's net losses.
- The reduction of a Provider's compensation by a stated dollar amount (or one of multiple stated dollar amounts) for failure to keep the Managed Property's expenses below a specified target (or one of multiple specified targets) will not be treated as bearing a share of net losses as a result of this reduction.

4. *Permissible Certain Types of Compensation.* Compensation in the form of capitation fees, periodic fixed fees and per-unit fees is not treated as providing a share or net profits or requiring the Provider to bear a share or net losses regardless of whether the Service Provider pays expenses with respect to the Managed Property.

- *Capitation Fee* is a fixed periodic amount for each person for whom the Provider or the Qualified User assumes the responsibility to provide all needed services for a specified period so long as the quantity and type of services actually provided to such persons varies substantially. A capitation fee may include a variable component of up to 20 percent of the total capitation fee designed to protect the Provider against risk such as risk of catastrophic loss.
- *Periodic Fixed Fee* is a stated dollar amount for services rendered for a specified period of time. The stated dollar amount may automatically increase according to a specified objective external standard (*e.g.*, Consumer Price Index and similar external indices) that is not linked to the output or efficiency of the Managed Property.
- *Per-Unit Fee* is a fee based on a unit of services provided specified in contract or otherwise specially determined by an independent third party. The stated dollar amount may automatically increase according to a specified objective external (*e.g.*, Consumer Price Index and similar external indices) standard that is not linked to the output or efficiency of the Managed Property.

5. *Timing of Payment of Compensation.* Deferral due to insufficient net cash flows will not cause the deferred compensation in the form of a capitation fee, periodic fixed fee or per-unit fee to be treated as contingent upon net profits or net losses if the contract includes the following requirements:

- The compensation is payable at least annually;
- The Qualified User is subject to reasonable consequences for late payment, such as reasonable interest charges or late payment fees; and
- The Qualified User will pay the deferred compensation (including interest and late payment fees) no later than the end of five years after the original due date of the payment.

#### **Control by the Qualified User.**

The Qualified User must exercise a significant degree of control over the use of the Managed Property.

- Generally, property that is leased, licensed or generally under the management or control of a Provider is treated as used in a private business use.
- This control requirement is met if the contract requires the Qualified User to approve the annual budget of the Managed Property, capital expenditures with respect to the Managed Property, each disposition of property that is part of the Managed Property, rates charged for the use of the Managed Property, and the general nature and type of use of the Managed Property (for example, the type of services).
- For this purpose, for example, a Qualified User may also show approval of capital expenditures for a Managed Property by approving an annual budget for capital expenditures described by functional purpose and specific maximum amounts; and a Qualified User may show approval of dispositions of property that is part of the Managed Property in a similar manner.
- Further, a Qualified User may show approval of rates charged for use of the Managed Property by either expressly approving such rates or approving a reasonable general methodology for setting such rates, or by including in the contract a requirement that the Provider charge rates that are reasonable and customary as specifically determined by an independent third party.

#### **Permitted Terms.**

The term of the contract, including all renewal options that may be exercised by the Provider, may not be greater than the lesser of 30 years or 80 percent of the weighted average reasonably expected economic life of the Managed Property.

- For this purpose, economic life is determined as of the beginning of the term of the contract, and a contract that is materially modified is retested as a new contract as of the date of the material modification.
- Any material modifications to a service contract will cause the term of the contract to be reviewed for purposes of Rev. Proc. 2017-13.
- If more than 25 percent of the proceeds of any bond issue is used to acquire land, then land is taken into account in the calculation and treated as having a 30-year life.

#### **No Circumstances Substantially Limiting Exercise of Rights.**

There must not be any role or relationship between the Qualified User and the Provider that would substantially limit the Qualified User's ability to exercise its rights under the contract, including cancellation rights (the "**Unrelated Person Requirement**").

- This requirement is considered satisfied if:
  - not more than 20% of the voting power of the governing board of the Qualified User in the aggregate is vested in the directors, officers, partners, members and employees of the Provider,
  - neither the chief executive officer or the chairperson (or equivalent executive) of the Provider is a member of the governing board of the Qualified User, and

- the chief executive officer of the Provider (or any person with equivalent management responsibilities) is not the chief executive officer of the Qualified User or any entity that is part of the same “controlled group” as the Qualified User.
- For these purposes, an entity is part of the same “controlled group” as the Qualified User if one entity has either (i) the right or power both to approve and remove, without cause, a controlling portion of the governing board of the other entity, or (ii) the right or power to require the use of funds or assets of the controlled entity for any purpose of the controlling entity.

**Risk of Loss of the Managed Property.**

The Qualified User must bear the risk of loss upon damage or destruction of the managed property (for example, upon *force majeure*).

**No Inconsistent Tax Position.**

The contract must contain language evidencing the agreement by the Provider to not take any tax position that it is inconsistent with being a service provider to the Qualified User with respect to the Managed Property, *e.g.*, the Provider must agree not to claim any depreciation or amortization, investment tax credit, or deduction for any payment as rent with respect to the Managed Property.

**Functionally Related and Subordinate Use.**

A Provider’s use of the Managed Property that is functionally related and subordinate to performance of its services under a management contract for the Managed Property conforming to the requirements of Rev. Proc. 2017-13 does not result in private business use (for example, use of storage areas to store equipment used to perform activities required under a management contract that meets the requirements of Rev. Proc. 2017-13 does not result in private business use).

**Certain Exceptions.**

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

- Contracts for services that are solely incidental to the primary governmental function or functions of a bond-financed facility (*e.g.*, contracts for janitorial, office equipment repair, hospital billing or similar services);
- The mere granting of admitting privileges by a hospital to a doctor, even if those privileges are conditioned on the provision of *de minimis* services, if those privileges are available to all qualified physicians in the area, consistent with the size and nature of its facilities;
- A contract to provide for the operation of a facility or system of facilities that consists predominantly of public utility property (as defined in section 168(i)(10) of the 1986 Code), if the only compensation is the reimbursement of actual and direct expenses of the service provider and reasonable administrative overhead expenses of the service provider; and
- A contract for services, if the only compensation is the reimbursement of the service provider for actual and direct expenses paid by the service provider to unrelated parties. For this purpose, payments to employees of the Provider are not treated as payments to unrelated parties.

**Terms to be Included in Each Management Contract.**

Each Management Contract should evidence compliance with each of the requirements set forth above and explicitly include the following:

- Language evidencing control by the Qualified User.
- Language identifying the Managed Property and the parties' estimation of the reasonably expected economic life of the Managed Property at the time the parties enter into the Management Contract.
- Language identifying rates charged for use of the Managed Property or including a reasonable general description of the method used to set the rates, or evidencing that the Provider charges rates that are reasonable and customary as specifically determined by, or negotiated with, an independent third party.
- An explicit provision that all net losses from the Managed Property and the risks of damage, destruction or taking of the Managed Property, other than damage or destruction of the Managed Property resulting from negligence, recklessness or intentional acts of the Provider, are to be borne by the Qualified User.
- Representations of each party that the Unrelated Person Requirement is satisfied.
- Language evidencing the agreement by the Provider to not take any tax position that it is inconsistent with being a service provider to the Qualified User with respect to the Managed Property.

**EXHIBIT B**

**Internal Revenue Service Recordkeeping Frequently Asked Questions (FAQs)**

**Website: <https://www.irs.gov/tax-exempt-bonds/tax-exempt-bond-faqs-regarding-record-retention-requirements>**

**EXHIBIT C**

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

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

**and**

**IRS Publication 5091**

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

**and**

**IRS TEB Phase I Training**

**Website: [https://www.irs.gov/pub/irs-tege/TEB\\_phase\\_1\\_training.pdf](https://www.irs.gov/pub/irs-tege/TEB_phase_1_training.pdf)**

**and**

**IRS Arbitrage and Rebate Training**

**Website: [https://www.irs.gov/pub/irs-tege/teb1\\_lesson5.pdf](https://www.irs.gov/pub/irs-tege/teb1_lesson5.pdf)**

## EXHIBIT D

## Tax-Advantaged Obligations

A. Series 2023AB Bonds. On August 3, 2023, the Authority issued \$339,820,000 principal amount of Senior Revenue Bonds, Series 2023A (Sustainability Bonds) (the “**Series 2023A Bonds**”) and \$383,500,000 principal amount of Senior Revenue Bonds, Series 2023B (the “**Series 2023B Bonds**”, and together with the Series 2023A Bonds, the “**Series 2023 Bonds**”).

The Series 2023A Bonds were issued to finance the costs of certain sustainability infrastructure and other sustainability improvements at the BPC site, including by paying down \$4,000,000 of principal outstanding on BPCA’s Junior Revenue Notes, Series 2023A and 2023B, the proceeds of which were used for the same purpose.

The Series 2023B Bonds were issued as follows: (i) \$9,390,000 principal amount of Series 2023B Bonds (the “**New Money 2023B Bonds**”), (ii) \$111,640,000 principal amount of Series 2023B Bonds (the “**2013 Refunding 2023B Bonds**”), and (iii) \$262,470,000 principal amount of Series 2023B Bonds (the “**2019 Refunding 2023B Bonds**”). The New Money 2023B Bonds were issued to finance costs of certain infrastructure and other capital improvements at the BPC site. The 2013 Refunding 2023B Bonds were issued to current refund, together with amounts currently on deposit in the debt service fund for such bonds, the outstanding portion of the Series 2013A Bonds (defined in paragraph F. below). The 2019 Refunding 2023B Bonds were issued to current refund, together with amounts then on deposit in the debt service fund for such bonds and amounts in a parity debt service reserve fund for such bonds, a portion of the outstanding Series 2019DE Bonds (defined in paragraph C. below), including the payment of a termination payment in respect of the 2019 Swap, identified in subparagraph E.4. of Section VII above.

B. Series 2019AB Bonds. On August 6, 2019, the Authority issued \$72,765,000 aggregate principal amount of Senior Revenue Bonds, Series 2019A (Sustainability Bonds) (the “**Series 2019A Bonds**”) and \$146,510,000 aggregate principal amount of Senior Revenue Bonds, Series 2019B (the “**Series 2019B Bonds**,” and together with the Series 2019A Bonds, the “**Series 2019AB Bonds**”). A portion of the Series 2019A Bonds were issued to finance the costs of certain sustainability infrastructure and other sustainability improvements at the BPC Site. The remaining portion of the Series 2019A Bonds were issued as tax-exempt private activity bonds pursuant to Section 145 of the Code (the “**Series 2019A Qualified 501(c)(3) Bonds**”) to finance a portion of the sustainability capital improvement costs of a community center located on the BPC Site, which center is managed and leased by Asphalt Green, Inc., an organization described in Section 501(c)(3) of the Code, pursuant to a management services agreement. A portion of the Series 2019B Bonds were issued to finance a portion of the costs of certain ongoing infrastructure and other capital improvements at the BPC Site and to current refund the outstanding portions of the Authority’s Senior Revenue Bonds, Series 2009A (Federally Taxable—Build America Bonds) (the “**Series 2009A Bonds**”), and a portion of the Authority’s Junior Revenue Bonds, Series 2013C (as defined below), consisting of Series C-1 and Series C-2. The remaining portion of the Series 2019B Bonds were issued as tax-exempt private activity bonds pursuant to Section 145 of the Code (the “**Series 2019B Qualified 501(c)(3) Bonds**”) to current refund the outstanding portions of the Authority’s Senior Revenue Bonds, Series 2009B (Tax-Exempt Bonds) (the “**Series 2009B Bonds**”). On August 6, 2019, the Authority also issued \$3,570,000 aggregate principal amount of Senior Revenue Bonds, Series 2019C (Federally Taxable Bonds) (the “**Series 2019C Bonds**”). The Series 2019C Bonds were issued as Federally taxable obligations to finance a portion of the capital improvement costs of a facility located at the BPC site which, if financed with proceeds of an issue of Tax-Advantaged Obligations on a stand-alone basis, would cause such issue to meet the Private Activity Test (as defined in Paragraph B of Section V).

C. Series 2019DE Bonds. On August 6, 2019, the Authority also issued \$300,000,000 aggregate principal amount of Junior Revenue Bonds, Series 2019D (Adjustable Rate Bonds) (the “**Series 2019D Bonds**”) and \$150,000,000 aggregate principal amount of Junior Revenue Bonds, Series 2019E (the “**Series 2019E Bonds**,” and together with the Series 2019D Bonds, the “**Series 2019DE Bonds**”). The Series 2019DE Bonds and the Series 2019AB Bonds are treated as separate issues for federal tax purposes. The Series 2019DE Bonds were issued to current refund a portion of the Series 2013C Bonds, as well as a portion of Series 2013D Bonds and Series 2013E Bonds described below.

D. Series 2009A Bonds. On December 22, 2009, the Authority issued \$56,600,000 aggregate principal amount of Senior Revenue Bonds, Series 2009A (Federally Taxable—Build America Bonds) (the “**Series 2009A Bonds**”). The Series 2009A Bonds were issued as “build America bonds” (“**BABs**”) under Section 54AA of the Code to finance a portion of the costs of certain ongoing infrastructure and other capital improvements at the BPC Site. Proceeds of the Series 2009A Bonds also were used to pay certain costs of issuance and the State bond issuance charge with respect to the Series 2009A Bonds. The Series 2009A Bonds were completely defeased (and scheduled for redemption on November 1, 2019) by the Series 2019B Bonds on August 6, 2019.

E. Series 2009B Bonds. On December 22, 2009, the Authority also issued \$30,635,000 aggregate principal amount of Senior Revenue Bonds, Series 2009B (Tax-Exempt Bonds) (the “**Series 2009B Bonds**” and together with the Series 2009A Bonds, the “**Series 2009 Bonds**”). The Series 2009B Bonds were issued as tax-exempt private activity bonds pursuant to Section 145 of the Code (“**Qualified 501(c)(3) Bonds**”) to finance a portion of the costs of a community center located on the BPC Site, which center is managed by Asphalt Green, Inc., an organization described in Section 501(c)(3) of the Code, pursuant to a management services agreement. Proceeds of the Series 2009B Bonds also were used to fund the Reserve Fund and to pay certain costs of issuance and the State bond issuance charge with respect to the Series 2009B Bonds. Bond Counsel has advised that, although the 2009A Bonds and the 2008B Bonds were sold and issued on the same dates, the 2009A Bonds and the 2009B Bonds are treated as separate issues for all purposes of the Code and Regulations. The 2009B Bonds were completely defeased (and scheduled for redemption on November 1, 2019) by the Series 2019B Qualified 501(c)(3) Bonds on August 6, 2019.

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



NOW THEREFORE, BE IT

RESOLVED, that the Authority hereby adopts the attached amended Procedures Governing Member Videoconferencing Pursuant to Public Officers Law §103-a, effective September 27, 2023.

## **Procedures for Member Videoconferencing Pursuant to Public Officers Law § 103-a**

*[amended September 27, 2023]*

In compliance with NY Public Officers Law (POL) § 103-a(2)(a), BPCA, following a public hearing, authorized, for itself and its committees, by resolution on December 14, 2022, the use of videoconferencing as described in POL § 103-a.

The following procedures are hereby established to satisfy the requirement of POL § 103-a(2)(b) that any public body which in its discretion wishes to permit its Members to participate in meetings by videoconferencing from private locations – under extraordinary circumstances – must establish written procedures governing Member and public attendance.

1. Members shall be physically present at any meeting of BPCA unless such Member is unable to be physically present at one of the designated public meeting locations due to extraordinary circumstances.

2. For purposes of these procedures, the term “extraordinary circumstances” includes disability, illness, caregiving responsibilities, or any other significant or unexpected factor or event which precludes the Member’s physical attendance at such meeting.

3. If a Member is unable to be physically present at one of the designated public meeting locations and wishes to participate by videoconferencing from a private location due to extraordinary circumstances, the Member must notify the Secretary no later than four business days prior to the scheduled meeting in order for proper notice to the public to be given. If extraordinary circumstances present themselves on an emergent basis within four days of a meeting, BPCA shall update its notice as soon as practicable to include that information. If it is not practicable for BPCA to update its notice, BPCA may reschedule its meeting.

4. If there is a quorum of Members participating at a physical location(s) open to the public, BPCA may properly convene a meeting. A Member who is participating from a remote location that is not open to in-person physical attendance by the public shall not count toward a quorum but may participate and vote if there is a quorum of Members at a physical location(s) open to the public. **Notwithstanding the foregoing, any Member who has a disability, as defined in section two hundred ninety-two of the New York State Executive Law, where such disability renders such Member unable to participate in-person at any such meeting location where the public can attend, may be considered present for purposes of fulfilling the quorum requirements at any meetings conducted through videoconferencing, provided, however, that the remaining criteria set forth in these procedures are otherwise met; and provided, further, that BPCA maintains at least one physical location where the public can attend the meeting.**

5. Except in the case of executive sessions conducted pursuant to POL § 105, BPCA shall ensure that its Members can be heard, seen, and identified while the meeting is being conducted, including but not limited to any motions, proposals, resolutions, and any other matter formally discussed or voted upon. This shall include the use of first and last name placards physically placed in front of the Members or, for Members participating by videoconferencing from private locations due to

extraordinary circumstances, such Members must ensure that their full first and last name appears on their videoconferencing screen.

6. The minutes of the meetings involving videoconferencing based on extraordinary circumstances pursuant to POL § 103-a shall include which, if any, Members participated by videoconferencing from a private location due to such extraordinary circumstances.

7. The public notice for the meeting shall inform the public: (i) that extraordinary circumstances videoconferencing will (or may) be used, (ii) where the public can view and/or participate in such meeting, (iii) where required documents and records will be posted or available, and (iv) the physical location(s) for the meeting where the public can attend.

8. BPCA shall provide that each open portion of any meeting conducted using extraordinary circumstances videoconferencing shall be recorded and such recordings posted or linked on BPCA's website within five business days following the meeting, and shall remain so available for a minimum of five years thereafter. Such recordings shall be transcribed upon request.

9. If Members of BPCA are authorized to participate by videoconferencing from a private location due to extraordinary circumstances, BPCA shall provide the opportunity for members of the public to view such meeting by video, and to participate in proceedings by videoconference in real time where public comment or participation is authorized. BPCA shall ensure that where extraordinary circumstances videoconferencing is used, it authorizes the same public participation or testimony as in person participation or testimony.

10. Open meetings of BPCA conducted using extraordinary circumstances videoconferencing pursuant to the provisions of POL § 103-a shall be broadcast pursuant to the requirements of POL § 103(f) and shall utilize technology to permit access by Members of the public with disabilities consistent with the 1990 Americans with Disabilities Act (ADA), as amended, and corresponding guidelines. For the purposes of this guideline, "disability" shall have the meaning defined in Executive Law § 292.

11. The in-person participation requirements of POL § 103-a(2)(c) shall not apply during a state disaster emergency declared by the governor pursuant to NY Executive Law § 28 or a local state of emergency proclaimed by the chief executive of a county, city, village or town pursuant to § 24 of the NY Executive Law if the Members determine that the circumstances necessitating the emergency declaration would affect or impair the ability of BPCA to hold an in-person meeting.

12. These procedures shall be conspicuously posted on BPCA's website.

**AUTHORIZATION TO AMEND AGREEMENT WITH NEW YORK STATE INDUSTRIES FOR THE DISABLED, INC.**

BE IT RESOLVED, that in accordance with the materials submitted at this Board meeting, the Chief Operating Officer (the “COO”) of the Battery Park City Authority or his/her designee(s) be, and each of them hereby is, authorized and empowered to amend agreement with New York State Industries for the Disabled, Inc. to extend the term by three (3) years to September 13, 2026 and to add an additional \$45,000.00 for a new not-to-exceed total of \$90,000.00, and be it further

RESOLVED, that the COO or his/her designee(s), and each of them hereby is, authorized and empowered to execute and deliver the amendment on behalf of the Authority, subject to such changes as the officer or officers executing the amendment shall, with the advice of counsel, approve as necessary and appropriate and in the best interest of the Authority, such approval to be conclusive evidence by the execution and delivery of the amendment; and be it further

RESOLVED, that the COO or his/her designee(s) be, and each of them hereby is, authorized and empowered to execute all such other and further documents, and to take all such other and further actions as may be necessary, desirable or appropriate, in connection with the transactions contemplated in the foregoing resolutions, and any such execution of documents and any other and further actions heretofore taken are hereby ratified, and any actions hereafter taken are confirmed and approved.

**AUTHORIZATION TO ENTER AN AGREEMENT WITH THE ALLIANCE FOR DOWNTOWN NEW YORK, INC.**

BE IT RESOLVED, that in accordance with the materials submitted at this Board meeting, the Chief Operating Officer (the “COO”) of the Battery Park City Authority or his/her designee(s) be, and each of them hereby is, authorized and empowered to execute an agreement providing for a payment to The Alliance for Downtown New York, Inc. in the amount of \$1,586,700 for the Downtown Connection bus service in calendar years 2023 and 2024; and be it further

RESOLVED, that the COO or his/her designee(s), and each of them hereby is, authorized and empowered to execute and deliver the agreement on behalf of the Authority, subject to such changes as the officer or officers executing the agreement shall, with the advice of counsel, approve as necessary and appropriate and in the best interest of the Authority, such approval to be conclusive evidence by the execution and delivery of the agreement; and be it further

RESOLVED, that the COO or his/her designee(s) be, and each of them hereby is, authorized and empowered to execute all such other and further documents, and to take all such other and further actions as may be necessary, desirable or appropriate, in connection with the transactions contemplated in the foregoing resolutions, and any such execution of documents and any other and further actions heretofore taken are hereby ratified, and any actions hereafter taken are confirmed and approved.

**AUTHORIZATION TO AMEND A CONTRACT WITH LIRO PROGRAM AND CONSTRUCTION MANAGEMENT, PE P.C. FOR SOUTH BATTERY PARK CITY RESILIENCY PROJECT CONSTRUCTION MANAGEMENT SERVICES TO AMEND THE SCOPE OF WORK, INCREASE THE CONTRACT VALUE AND EXTEND THE CONTRACT TERM**

BE IT RESOLVED that, in accordance with the materials presented at this meeting, the Chief Operating Officer of the Hugh L. Carey Battery Park City Authority (the “COO”) or her/his designee(s) be, and each of them hereby is, authorized and empowered to amend the contract with LiRo Program and Construction Management, PE P.C. for South Battery Park City Resiliency Project Construction Management Services to amend the contract’s scope of work, to increase the contract amount by \$4,157,985.84, from the not-to-exceed amount of \$7,054,855.27 to the not-to-exceed amount of \$11,212,841.11, and to extend the contract term from November 18, 2023 through September 30, 2025; and be it further,

RESOLVED, that the COO or her/his designee(s) be, and each of them hereby is, authorized and empowered to execute and deliver the amendment on behalf of the Hugh L. Carey Battery Park City Authority, subject to such changes as the officer or officers shall, with the advice of counsel, approve as necessary and appropriate and in the best interests of the Authority, such approval to be conclusively evidenced by the execution and delivery of the amendment; and be it further,

RESOLVED, that the COO or her/his designee(s) be, and each of them hereby is, authorized and empowered to execute all such other and further documents and to take all such other and further actions as may be necessary, desirable or appropriate in connection with the transactions contemplated in the foregoing resolutions, and any such execution of documents and any other further actions heretofore taken are hereby ratified and any actions hereafter taken are confirmed and approved.