
**City of Minneapolis
Minnesota**

Conduit Bonds Policy

**Adopted: November 18, 2016
by the
Minneapolis City Council
and the
Minneapolis Community Development Agency Board of Commissioners**

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Conduit Bonds Policy

I. Introduction

The City of Minneapolis (the “City”) and the Minneapolis Community Development Agency (the “MCDA”) are active conduit issuers of tax-exempt conduit bonds. The term “conduit issuer” refers to an issuer of tax-exempt and taxable bonds that constitute conduit bonds. The term “tax-exempt bonds” refers to bonds the interest on which is excludable from gross income for federal income tax purposes. The term “taxable bonds” refers to bonds the interest on which is includable in gross income for federal income tax purposes. The term “tax-exempt bonds” also refers to tax credit bonds that provide tax credits or reimbursements of a portion of the interest cost on bonds otherwise issued as taxable obligations. The term “conduit bonds” refers to bonds that are issued by a conduit issuer the proceeds of which are used to make a “conduit loan” to a conduit borrower for a defined qualified purpose. The term “conduit borrower” refers to any entity, other than the conduit issuer, who uses the proceeds of conduit bonds or the facilities financed with the proceeds of conduit bonds for a defined qualified purpose. The “defined qualified purposes” for conduit bonds issued by the City and the MCDA are established by Minnesota law and the provisions of Sections 103 and 141-150 of Internal Revenue Code of 1986, as amended (the “Code”). For tax-exempt conduit bonds, all applicable federal tax law requirements must be met to ensure that interest received by bondholders is excluded from gross income for federal income tax purposes and is excluded from net taxable income of individuals, estates, and trusts for Minnesota income tax purposes. On occasion a conduit issuer will be requested to issue a series of taxable bonds in conjunction with the issuance of a series of tax-exempt bonds. The taxable bonds are issued to pay costs related to the tax-exempt bonds that are not permitted to be financed with the proceeds of tax-exempt bonds.

In Minnesota, most conduit bonds are issued under Minnesota Statutes, Chapter 462C, as amended (the “Housing Act”), or Minnesota Statutes, Sections 469.152-469.165, as amended (the “Development Act”). Conduit bonds can also be issued under other Minnesota laws (and perhaps under home rule charters), but the vast majority of conduit bonds issued in Minnesota by the City, the MCDA, and other political subdivisions are issued under either the Housing Act or the Development Act.

The purpose of this Conduit Bonds Policy is to provide uniform policies and practices for all conduit bonds issued by the City and the MCDA and to ensure compliance by the City and the MCDA with legal requirements, including the Charter of the City, the requirements of applicable federal and Minnesota tax laws, and the requirements of applicable federal and Minnesota securities laws. In addition, this policy describes many of the roles, responsibilities, functions and duties of City staff, bond counsel, the conduit borrower and the underwriter.

II. Effective Date

The effective date of this Conduit Bonds Policy is the date of approval of this Conduit Bonds Policy by the City Council of the City and the Board of Commissioners of the MCDA. This Conduit Bonds Policy shall remain in effect until superseded or terminated by action of the City Council of the City and the Board of Commissioners of the MCDA. The City Council and the Board of Commissioners may amend the terms of this Conduit Bonds Policy from time to time in their discretion.

III. City Bond Programs

The City operates and administers a number of bond programs with the objective of growing a sustainable city. Multifamily Housing Revenue Bonds are used to finance the acquisition and rehabilitation of affordable and mixed-income rental housing for families and seniors. Qualified 501(c)(3) Revenue Bonds provide tax-exempt financing for capital improvement projects by charitable nonprofit organizations. Industrial Revenue Bonds finance industrial and commercial facilities. City staff also administers the MCDA's Bank Qualified Tax-Exempt Bond Program ("BQ Program") to provide cost-effective, tax-exempt financing for capital projects for smaller 501(c)(3) organizations for projects typically in the \$1 million to \$2 million range, subject to a total annual maximum amount. The City's Department of Community Planning and Economic Development ("CPED"), in consultation with the Finance & Property Services Department ("F&PS") and the City Attorney's Office ("CAO"), is responsible for implementing these programs consistent with this Conduit Bonds Policy and the applicable process and procedures manual.

The Common Bond Fund Program typically supports growing manufacturing companies, and is governed by the City's Common Bond Fund Program Policy and its applicable process and procedures manual.

IV. Bond Counsel and Conflicts of Interest

The function of bond counsel in a conduit bond transaction is to render an opinion as to: (a) the validity of the conduit bonds; and (b) the exclusion of interest on the conduit bonds from gross income for federal income tax purposes and the exclusion of interest on the conduit bonds from net taxable income of individuals, estates, and trusts for Minnesota income tax purposes. Bond counsel also typically renders an opinion regarding the exclusion and inclusion of interest on the conduit bonds in alternative minimum taxable income for federal and Minnesota tax purposes, and the application of the Minnesota franchise tax imposed on corporations, including financial institutions, to interest on the bonds. In addition, bond counsel sometimes renders an opinion as to whether the conduit bonds constitute "qualified tax-exempt obligations" for purposes of Section 265(b)(3) of the Code. The tax opinions of bond counsel do not apply, of course, to any series of taxable bonds issued in conjunction with the tax-exempt conduit bonds.

Additional functions of bond counsel can include any one or more of the following:

- (a) supervising the bond proceedings, including the preparation of documents necessary or appropriate for the authorization, issuance, sale, and delivery of the conduit bonds, coordination of the enactment and execution of such documents and, where appropriate, drafting or reviewing enabling legislation;
- (b) assisting or evaluating the structure of the conduit bond issue based on the economic and business decisions of the parties;
- (c) assisting the conduit issuer or others in various aspects of preparing or reviewing the official statement, offering memorandum, or other disclosure document to be disseminated in connection with the initial offer and sale of the conduit bonds, or the

continuing disclosure document to provide for the continuing disclosure obligations with respect to the conduit bonds;

- (d) assisting the conduit issuer or others in obtaining from governmental authorities such approvals, rulings, permissions, and exemptions as bond counsel determines are necessary or appropriate in connection with the conduit bonds;
- (e) assisting the conduit issuer or others in structuring or evaluating the legal structure for investments of the proceeds of the conduit bonds pending their expenditure that comply with limitations imposed by Minnesota law on the investment of the proceeds of conduit bonds and federal requirements for maintaining the exclusion of interest on the conduit bonds from gross income for federal income tax purposes;
- (f) assisting the conduit issuer or others in structuring or evaluating the legal structure of derivative agreements to hedge interest rate risk or other risks relating to the conduit bonds including drafting documents necessary to permit such agreements to qualify as “qualified hedges” for purposes of Treasury Regulations, Section 1.148-4(h), and successor provisions of Treasury Regulations;
- (g) responding to inquiries regarding the issuance, sale and delivery of the conduit bonds;
- (h) advising the conduit issuer or others with regard to ongoing obligations with respect to the conduit bonds;
- (i) preparing mortgages, security agreements, or other documents to be delivered to secure the timely payment of the principal of and interest on the conduit bonds;
- (j) assisting in presenting information to bond rating agencies or other market participants; and
- (k) rendering opinions on related matters such as: (i) the applicability of particular provisions of federal and states securities laws; (ii) the validity and enforceability of documents executed and delivered by conduit issuers; and (iii) the validity and enforceability of security documents.

In all conduit bond transactions in which the City is the conduit issuer, the City is the client of bond counsel. In all conduit bond transactions in which the MCDA is the conduit issuer, the MCDA is the client of bond counsel. This is the case regardless of the source of payment of the fees of bond counsel and regardless of the fact that the City and the MCDA will also be represented by CAO. In order to prevent conflicts of interest that are detrimental to the City, it is the policy of the City that the functions of bond counsel, counsel to the conduit borrower, and counsel to the lender or underwriter shall be undertaken and carried out by separate law firms. It is the responsibility of each of the law firms involved in the bond transaction to disclose to the City any potential or actual conflicts of interest.

The City Council has established and may from time to time re-establish a panel of law firms who are authorized to act as bond counsel with respect to conduit bonds issued by the City or the MCDA. Conduit borrowers must select a bond counsel from such panel to act as bond counsel unless the City Attorney approves a non-panel bond counsel in accordance with City Council delegation.

If bond counsel with respect to a conduit bond issue requests the execution of an engagement letter by the City, the CAO shall review the proposed draft of the engagement letter, request City Council waiver of any identified conflicts, if deemed appropriate, and execute and deliver such engagement letter (after execution by bond counsel) only after all amendments that are requested by the CAO have been incorporated into the engagement letter.

V. Application

The Conduit borrower shall submit an application to the City to initiate the issuance of conduit bonds by the City and the MCDA. The application shall be on application forms prepared by CPED, F&PS and CAO staff and approved by the CPED Director, as such application forms may be amended from time to time. Applications shall be submitted to the CPED staff person set forth on the application forms (the "CPED Project Coordinator"). Upon receipt of an application, CPED Project Coordinator shall notify the CPED Director and other interested City officials, and shall form a project team consisting of one or more staff members from CPED, F&PS and the CAO.

The roles, duties and responsibilities of all team members in reviewing the application and, if appropriate, processing the requested financing through all of the steps necessary to issue and administer the conduit bonds, shall be clearly documented in a process and procedures manual. This manual shall be prepared by CPED, F&PS and CAO staff and approved by the CPED Director, as such manual may be amended from time to time (the "Procedures Manual").

Each application submitted to the City or the MCDA must be accompanied by a non-refundable application fee as reflected on the City's then current Schedule of Conduit Bonds Fees. The current Schedule of Conduit Bonds Fees ("Fee Schedule") is set forth on EXHIBIT A to this Conduit Bonds Policy, and is subject to review from time to time by CPED, F&PS and CAO staff and updating by the City Council and Board of Commissioners. The application fee is imposed to reimburse the City or the MCDA for the time and expenses incurred by City staff in reviewing and evaluating each application.

The City and the MCDA may prepare separate applications for the following: (i) a host city approval that is being requested from the City for conduit bonds proposed to be issued by a conduit issuer other than the City or the MCDA but with respect to facilities located in the City; (ii) the approval by the City or the MCDA of amendments only to the documents relating to outstanding conduit bonds issued by the City or the MCDA; and (iii) conduit bonds proposed to be issued by the City or the MCDA solely to refund outstanding conduit bonds of the City, the MCDA, or another conduit issuer.

The conduit borrower shall designate a natural person as a representative of the conduit borrower and a lawyer or law firm as counsel to the conduit borrower who may be contacted by the City with respect to any matter addressed in this Conduit Bonds Policy.

All applications and supporting documents submitted to the City or the MCDA shall remain the property of the City. All such materials should be assumed to be fully accessible to the public unless the Minnesota Government Data Practices Act, Minnesota Statutes, Chapter 13, as amended, or other applicable law provides otherwise.

VI. Facilities Eligible to be Financed

The City and the MCDA will not issue conduit bonds to finance or refinance existing facilities if pursuant to such financing or refinancing the facilities will become exempt from ad valorem property taxation by the City unless: (i) the conduit borrower enters into a payment-in-lieu-of-taxes agreement with the City and with such other taxing entities as required by the City; or (ii) this requirement is waived by the City Council.

The MCDA will issue conduit bonds as qualified tax-exempt obligations, commonly referred to as “bank-qualified bonds,” only if the City and the MCDA determine that the principal amount of such conduit bonds, together with all other conduit bonds issued by the City and the MCDA as bank-qualified bonds in the same calendar year, will not exceed the limitations imposed by Section 265(b)(3) of the Code. The selection of conduit bonds to be issued as bank-qualified bonds in any calendar year shall be on a first-come first-served basis and otherwise in accordance with the guidelines for the BQ Program, as may be amended from time to time.

Conduit bonds that have been given an investment-grade rating from one of the three national rating agencies (Standard & Poor’s Rating Services, Moody’s Investors Service, and Fitch Ratings) may be issued in minimum denominations of \$5,000. An investment-grade rating is a rating of BBB- or higher by S&P and Fitch or a rating of Baa3 or higher by Moody’s.

Conduit bonds that have not been assigned an investment-grade rating by S&P, Moody’s, or Fitch shall be subject to the following restrictions: (i) a requirement that all sales of the Bonds are to be made in minimum denominations of \$25,000; and (ii) a requirement that all initial sales of Bonds are to be made to Qualified Institutional Buyers or Accredited Investors (as such terms are defined in federal securities regulations).

Notwithstanding the foregoing, the City and the MCDA reserve the right to deny any application for conduit bond financing at any time in their sole and absolute discretion.

VII. Conduit Bonds that Require an Allocation of Volume Cap

The City and the MCDA will issue conduit bonds that require an allocation of the Minnesota volume cap pursuant to Section 146 of the Code and Minnesota Statutes, Chapter 474A, as amended (“Chapter 474A”), only if the City determines that the principal amount of such conduit bonds, together with all other conduit bonds issued by the City and the MCDA that require an allocation of the Minnesota volume cap, will not exceed the limitations imposed by Section 146 of the Code (including any applicable Treasury Regulations) and any limitations imposed by Chapter 474A. The selection of conduit bonds to be issued and facilities to be financed with the entitlement allocations granted to the City pursuant to the provisions of Chapter 474A shall be made in the sole discretion of the City. The participation of the City in submissions to the Minnesota Department of Management and Budget, or successor agency of the State of Minnesota (“MMB”), for portions of the annual volume cap awarded under the terms of Chapter 474A shall be at the sole discretion of the City. The conduit borrower shall pay all required fees and deposits in connection with the allocation of volume cap to the conduit bonds for such conduit borrower.

In the event the City holds unused volume cap for a calendar year, the CPED Director will make a recommendation to the City Council on the election to carry such unused volume cap forward for three years. If the City Council makes such election, CPED staff shall notify the Minnesota Office of Management and Budget of the election in writing before 4:30 on the last business day of December, and file a *Carryforward Election of Unused Private Activity Bond Volume Cap, Form 8328*, or successor form ("Form 8328") with the United States Department of the Treasury, Internal Revenue Service, in accordance with the instructions for filing Form 8328. Once a Form 8328 is filed, the City may not revoke the carryforward election or amend the carryforward amounts. Errors on Form 8328 cannot be corrected through an amended filing. In appropriate circumstances, the CPED Director may file a request under the voluntary closing agreement program for tax-exempt bonds and tax credit bonds ("TEB VCAP") on behalf of the City or MCDA to correct mathematical, typographical, and similar errors.

VIII. Procedures

If, after the receipt and review of an application by the project team referenced in Part V hereof, the CPED Director makes an initial determination to proceed with a conduit bond financing, the conduit borrower shall submit to the CPED Project Coordinator the following documents: (a) a public hearing notice in the form required by the Housing Act or the Development Act (or other applicable Minnesota law) and Section 147(f) of the Code and applicable Treasury Regulations; (b) a form of *Application for Approval of Industrial Development/Revenue Bond Project Pursuant to Minn. Stat. 469.152 – 469.165*, and required exhibits, to be submitted to the Minnesota Department of Employment and Economic Development, or successor agency of the State of Minnesota ("DEED"), if required by the terms of the Development Act; (c) a form of Housing Program to be submitted to the Metropolitan Council for its review and comments, if required by the terms of the Housing Act; (d) a form of preliminary resolution or final resolution to be considered for approval by the Community Development & Regulatory Services ("CD&RS") Committee of the City Council or the Operating Committee of the Board of Commissioners and by the City Council or the Board of Commissioners, as applicable; and (e) such other documents as required by the Procedures Manual.

In the case of a proposed public offering of conduit bonds, in addition to the foregoing, prior to the public hearing or consideration by the City Council or Board of Commissioners of a preliminary resolution or final resolution with respect to conduit bonds, an underwriter of such conduit bonds shall deliver to the CPED Project Coordinator and the conduit borrower a document (the "G-17 Letter") setting forth the written disclosures required by Rule G-17 of the Municipal Securities Rulemaking Board (the "MSRB") and the interpretive notices issued by the MSRB under Rule G-17. The CPED Project Coordinator shall obtain an acknowledgement of receipt of such G-17 from the Finance Officer and deliver a copy to the underwriter and the conduit borrower.

When required by applicable law, the CD&RS Committee of the City Council (jointly with the Operating Committee, if applicable) shall conduct a public hearing on the proposed conduit bonds and the facilities to be financed with the conduit bonds. A notice of public hearing, in a form reviewed by the CAO and approved by bond counsel, shall be published the required number of days prior to the public hearing in the official newspaper of the City and in a newspaper of general circulation in the City. Another form of notice may be employed if such form of notice is approved by bond counsel.

For purposes of the public approval requirements of Section 147(f) of the Code, (i) the City Council is the "applicable elected representative" of the City and the MCDA and (ii) the preliminary

resolution and the final resolution shall constitute the approval of the conduit bonds by such applicable elected representative. In the case of conduit bonds being issued by the MCDA, both the City Council and the Board of Commissioners shall approve the issuance of the conduit bonds. If the conduit bonds are being issued to finance facilities located, in whole or in part, outside the boundaries of the City, the approval of the conduit bonds by the governmental entity having jurisdiction over the area in which the bond-financed facilities are located may be required by Section 147(f) of the Code and applicable Treasury Regulations. All such required approvals (and the public hearings that precede such approvals) shall be completed prior to the issuance of the conduit bonds.

Any resolution adopted by the City Council or Board of Commissioners granting preliminary approval or final approval for the issuance of conduit bonds shall be effective for one year. If a final resolution is not adopted by the City Council or Board of Commissioners within one year after the adoption of a preliminary resolution by the City Council or Board of Commissioners, then the preliminary resolution shall cease to be effective. If conduit bonds are not issued within one year after the adoption of a final resolution by the City Council or Board of Commissioners authorizing the issuance of such conduit bonds, then the final resolution shall cease to be effective.

All documents to be executed by the City in connection with an issue of conduit bonds shall be executed by the Finance Officer or such other officer or officers of the City authorized by the City ordinances and the bond resolution. All documents to be executed by the MCDA in connection with an issue of conduit bonds shall be executed by the MCDA Executive Director and the Finance Officer or such other officer or officers of the MCDA authorized by the Bylaws of the MCDA and the bond resolution.

IX. Administrative Fees and Expenses

The conduit borrower shall pay to the City an annual administrative fee. The annual administrative fee may be used by the City to offset all or a portion of the costs of the City related to its role as conduit issuer (or as agent for MCDA as conduit issuer) and may also be used for other governmental purposes of the City or MCDA, as applicable. The City recognizes that the administrative fee may increase the effective yield of the conduit loan. In order to ensure that the yield on the conduit loan does not exceed the yield on purpose investments permitted by Section 148 of the Code and Treasury Regulations, Sections 1.148-1 – 1.148-10, as amended, the City may adjust its administrative fee whenever it is advised by bond counsel that such an adjustment is necessary to prevent the conduit bonds from constituting “arbitrage bonds,” within the meaning of Section 148(a) of the Code.

The conduit borrower shall pay annual administrative fees on the outstanding principal amount of the conduit bonds in accordance with the Fee Schedule that’s applicable on the date the Council or Board of Commissioners grant final approval for the issuance of the conduit bonds. If the City must monitor compliance with various project requirements after the conduit bonds are fully retired, then the conduit borrower shall pay all fees and expenses of such monitoring activities.

The City reserves the right to impose a charge against a conduit borrower for any extraordinary expenses that the City may pay or incur with respect to conduit bonds issued for the benefit of the conduit borrower.

X. Cooperation with Other Governmental Bodies

At the request of a conduit borrower, the City Council may grant “host approval” (as defined in Treasury Regulations, Section 5f.103-2(c)(3)) for conduit bonds proposed to be issued by a conduit issuer, other than the City or the MCDA, with respect to bond-financed facilities located in or to be located in the City. The host approval fee shall be in accordance with the Fee Schedule in effect at the time the City Council grants “host approval.”

Any request that the City participate in a joint powers agreement with respect to the issuance of conduit bonds must be submitted to the CPED Project Coordinator. Such joint powers agreement shall use a form that has been approved by the CAO and be authorized by the City Council. If so approved and authorized, the Finance Officer shall execute and deliver such joint powers agreement on behalf of the City.

The City and MCDA shall use their best efforts to comply with any requests made by the Metropolitan Council, the Minnesota Department of Employment and Economic Development, the Minnesota Department of Management and Budget, or any other agency of the State of Minnesota with respect to conduit bonds proposed to be issued by the City or the MCDA or with respect to outstanding conduit bonds previously issued by the City or the MCDA. Any expenses to be incurred with respect to compliance with such requests shall be paid by the conduit borrower with respect to such conduit bonds.

XI. Tax Compliance Responsibilities

(a) Form 8038 Filings. Bond counsel shall be responsible for preparing and filing the *Information Return for Tax-Exempt Private Activity Bond Issues, Form 8038*, or successor form (the “Form 8038”), with respect to each issue of conduit bonds. The name, title, and contact information of the Finance Officer shall be listed on Form 8038 (currently Line 10a) as the “Name and title of officer or other employee of the issuer whom the IRS may call for more information” with respect to all conduit bonds issued by the City and the MCDA. The Finance Officer shall sign each Form 8038. A fully-executed copy of the Form 8038 with respect to each issue of conduit bonds shall be delivered to the CPED Project Coordinator and confirmed in writing by the Finance Officer prior to the delivery of the Form 8038 to the Internal Revenue Service by bond counsel. The CPED Project Coordinator shall be informed in writing of any proposed request for an extension of time to file a Form 8038 pursuant to Revenue Procedure 2002-48, 2002-37 I.R.B. 531 (September 16, 2002), or any successor authority. A copy of the request for an extension of time to file a Form 8038 with respect to an issue of conduit bonds shall be delivered to the CPED Project Coordinator on the same date that the request for an extension of time to file a Form 8038 is delivered to the Internal Revenue Service.

(b) Execution of Tax Certificates by City and MCDA. The conduit borrower, with the assistance of bond counsel and counsel to the conduit borrower, shall be responsible for the preparation of the arbitrage certificate, tax certificate, tax exemption agreement, or other documents relating to compliance with the federal tax requirements related to conduit bonds (the “Tax Document”). At the request of the conduit borrower, with the approval of bond counsel, the Finance Officer will execute an endorsement to such Tax Document if the bonds are being issued by the City. Such endorsement shall be substantially in the form set forth on EXHIBIT B to this Conduit Bonds Policy and approved by the CAO and bond counsel. If the bonds are being issued by the MCDA, “MCDA” shall

be substituted for the term "City" on the endorsement to the Tax Document and the endorsement shall be executed by the MCDA Executive Director and the Finance Officer.

(c) Books and Records Letter. In the event a conduit borrower proposes to obtain a qualified hedge with respect to a series of conduit bonds, the conduit issuer of such conduit bonds, pursuant to Treasury Regulations, Section 1.148-4(h)(2)(viii), must identify the hedge contract on its books and records maintained for the hedged conduit bonds not later than three (3) days after the date on which the conduit borrower and the hedge provider enter into the hedge contract. (Under proposed Treasury Regulations issued on September 26, 2007, this period would be extended to fifteen (15) days.) The conduit borrower, with the assistance of bond counsel, counsel to the conduit borrower, and others, shall be responsible for the preparation of all the written documentation necessary to satisfy the requirements of Treasury Regulations, Section 1.148-4(h)(2)(viii). Such written documentation, together with a copy of the fully-executed hedge contract, shall be submitted to the CPED Project Coordinator at least two (2) days prior to the deadline for identifying the hedge contract on the books and records of the City. (In the event the proposed regulations are adopted and the time for identifying a hedge contract is extended to fifteen (15) days, such written documentation, together with a copy of the fully-executed hedge contract, shall be submitted to the CPED Project Coordinator at least one (1) week prior to the deadline.) If such documentation is in a form acceptable to the CAO and substance acceptable to bond counsel and the F&PS staff, then the Finance Officer will execute such books and records documentation prior to the applicable deadline.

(d) Remedial Actions. Conduit bonds that constitute "qualified 501(c)(3) bonds" (and certain other exempt facility bonds) may cease to be qualified bonds and interest on such conduit bonds may cease to be excludable from gross income for federal income tax purposes if the conduit borrower takes a "deliberate action," subsequent to the date of issue of such conduit bonds, that causes the conduit bonds to fail to satisfy the federal tax requirements imposed by Section 145 (and Section 144) of the Code with respect to such conduit bonds. A "deliberate action" is defined by Treasury Regulations, Sections 1.141-2(d)(3) and 1.145-2(a) to mean any action that is within the control of the conduit borrower. Pursuant to Treasury Regulations, Section 1.141-12, the conduit borrower may take remedial actions to cure the deliberate action and preserve the status of the conduit bonds as tax-exempt bonds. The conduit borrower, with the assistance of bond counsel and counsel to the conduit borrower, shall be responsible for taking any such remedial actions. Prior to taking any remedial actions with respect to a series of conduit bonds issued by the City or MCDA, the conduit borrower shall provide written notice to the Finance Officer of the circumstances with respect to the deliberate action and a summary of the remedial actions proposed to be taken by the conduit borrower. No remedial actions may be taken with respect to conduit bonds of the City or MCDA without the express written consent of the Finance Officer.

If the Finance Officer approves the proposed remedial actions, certain actions may be required by the City or MCDA in order to successfully complete the remedial actions with respect to a series of conduit bonds. Such actions may include: (i) notification of the Internal Revenue Service of the establishment of a defeasance escrow (Treasury Regulations, Section 1.141-12(d)(3)); (ii) if the conduit bonds are deemed to be reissued, filing a Form 8038 with respect to such reissued conduit bonds; and (iii) if the conduit bonds are deemed to be reissued and under certain circumstances, hold a public hearing with regard to the reissued conduit bonds. The Finance Officer is authorized to initiate or take such remedial actions that do not, as determined by bond counsel, require a City Council or Board of Commissioners action.

(e) Conduit Bond Modifications and Reissuance. Any proposed modifications to documents executed by the City or MCDA in connection with conduit bonds must be reviewed and approved by the Finance Officer with the assistance of bond counsel and the CAO. The form of a resolution approving any such proposed modifications must be accompanied by an opinion of bond counsel as to whether or not the modifications will cause the conduit bonds to be “reissued” for federal income tax purposes under Section 1001 of the Code. After approval by the Finance Officer and if recommended by bond counsel and the CAO, all such modifications must be approved by resolution of the City Council or Board of Commissioners (following a public hearing if, in the opinion of bond counsel, a public hearing is required by applicable law).

(f) Elections Under the Code and Treasury Regulations. The conduit issuer of conduit bonds is permitted to make certain elections under applicable provisions of the Code and Treasury Regulations including the following: (i) the election to waive the right to treat a purpose investment as a program investment (Treasury Regulations, Sections 1.148-1(b) and 1.148-9(g)); (ii) the election to waive the right to invest in higher yielding investments during any temporary period (Treasury Regulations, Section 1.148-2(h)); (iii) the election of the issuer of a pooled financing issue to apply rebate spending exceptions separately to each conduit loan (Treasury Regulations, Section 1.148-7(b)(6)(ii)); (iv) the elections for purposes of the two-year spending exception from rebate (A) to apply certain provisions based on actual facts rather than reasonable expectations, (B) to exclude from available construction proceeds the earnings on a reasonably required reserve fund, and (C) to treat a portion of an issue as a separate construction issue from rebate (Treasury Regulations, Sections 1.148-7(f)(2), 1.148-7(i)(2), and 1.148-7(j)); (v) the election to pay a one and one-half percent penalty in lieu of arbitrage rebate (Treasury Regulations, Section 1.148-7(k)); and (vi) the election to treat portions of a bond issue as separate issues (Treasury Regulations, Section 1.148-9(h)). If the conduit borrower requests that the City or MCDA make any of the foregoing elections, the conduit borrower shall cause such election or elections to be incorporated into the endorsement to the conduit borrower tax certificate or prepare a separate election document for execution by the Finance Officer (for City-issued bonds) or the MCDA Executive Director and the Finance Officer (for MCDA-issued bonds).

In addition to the preceding elections, under Treasury Regulations, Section 1.148-6(d)((1)(iii), a conduit issuer may account for the allocation of proceeds of conduit bonds to expenditures not later than eighteen (18) months after the later of the date the expenditure is paid or the date the project, if any, that is financed by the conduit bonds is placed in service; provided that the allocation must be made in any event by the date sixty (60) days after the fifth anniversary of the date of issue of the conduit bonds or the date sixty (60) days after the retirement date of the conduit bonds, if earlier. If the conduit borrower proposes to have the City or MCDA make an allocation of the proceeds of conduit bonds to expenditures in accordance with Treasury Regulations, Section 1.148-6(d)((1)(iii), the conduit borrower shall have the allocation incorporated into a document and submit it to the Finance Officer and bond counsel for review and execution by the Finance Officer.

(g) Form 8038-T. Conduit issuers are required to file an *Arbitrage Rebate, Yield Reduction and Penalty in Lieu of Arbitrage Rebate, Form 8038-T*, or successor form (“Form 8038-T”), with the United States Department of the Treasury, Internal Revenue Service, in accordance with the instructions for filing Form 8038-T, to make the following types of payments with respect to conduit bonds: (i) yield reduction payments; (ii) arbitrage rebate payments; (iii) penalty in lieu of rebate payments; (iv) a payment to accompany an election to terminate the election to pay a penalty in lieu of arbitrage rebate; and (v) a payment for failure to timely pay any of the foregoing payments. A request by a conduit borrower that the City or MCDA file a Form 8038-T with respect to a series of conduit bonds shall be

accompanied by a completed Form 8038-T and the report of a rebate analyst or a legal memorandum of bond counsel supporting the determination of the payment due with the Form 8038-T. The Finance Officer shall execute the Form 8038-T if the Finance Officer is satisfied that the payment is required. The name, title, and contact information of the Finance Officer shall be listed on Form 8038-T (currently Line 9) as the “Name and title of officer or other employee of the issuer whom the IRS may call for more information” with respect to every Form 8038-T filed by the City or the MCDA.

Conduit issuers are required to file a *Request for Recovery of Overpayments Under Arbitrage Rebate Provisions, Form 8038-R*, or successor form (“Form 8038-R”), with the United States Department of the Treasury, Internal Revenue Service, in accordance with the instructions for filing Form 8038-T, to recover an overpayment of rebate for an issue of conduit bonds. A request by a conduit borrower that the City or MCDA file a Form 8038-R with respect to a series of conduit bonds shall be accompanied by a completed Form 8038-R and the report of a rebate analyst or a legal memorandum of bond counsel supporting the determination of the overpayment recoverable pursuant to Form 8038-R. The Finance Officer shall execute the Form 8038-R if the Finance Officer is satisfied that the recovery of the overpayment is appropriate. The name, title, and contact information of the Finance Officer shall be listed on Form 8038-R (currently Line 9) as the “Name and title of officer or other employee of the issuer whom the IRS may call for more information” with respect to every Form 8038-R filed by the City or the MCDA.

(h) Record Retention Requirements. Section 6001 of the Code and Treasury Regulations, Section 1.6001-1(a), provide that “any person required to file a return of information with respect to income, shall keep such permanent books of account or records, including inventories, as are sufficient to establish the amount of gross income, deductions, credits, or other matters required to be shown by such person in any return of such tax or information.” The conduit borrower shall provide to the CPED Project Coordinator, with respect to each series of conduit bonds issued by the City or MCDA, two transcripts of proceedings including all customary documentation related to such conduit bonds. The CPED Project Coordinator will forward one transcript to the F&PS staff. Each conduit borrower shall assume the record retention requirements under Section 6001 of the Code and Treasury Regulations, Section 1.6001-1(a), with respect to the conduit bonds issued by the City or the MCDA for the benefit of such conduit borrower. Each conduit borrower shall provide to the Internal Revenue Service any records and other documents requested by the Internal Revenue Service in connection with such conduit bonds. In addition, such conduit borrower shall provide any and all records that the City may request with respect to such conduit bonds.

(i) Responses to Requests for Information. The Internal Revenue Service, the United States Department of the Treasury, the Securities and Exchange Commission, and the Municipal Securities Rulemaking Board may request information (sometimes in the form of compliance questionnaires) from the City or the MCDA regarding conduit bonds issued by the City or the MCDA. Each conduit borrower agrees as a condition to the issuance of conduit bonds by the City or the MCDA that the City and the MCDA may disclose any information in the possession of the City or the MCDA that is requested by such organizations with respect to conduit bonds issued by the City or the MCDA.

(j) Submissions Under the Voluntary Closing Agreement Program. The Internal Revenue Service has established the voluntary closing agreement program for tax-exempt bonds and tax credit bonds (“TEB VCAP”) to provide remedies with respect to the tax-exempt status of conduit bonds that cannot be corrected under other established programs (such as the remedial action regulations of Treasury Regulations, Section 1.141-12). Information regarding TEB VCAP is currently provided in Notice

2008-31, 2008-1 I.R.B. 592, and Section 7.2.3 of the Internal Revenue Manual. If a conduit borrower proposes to utilize TEB VCAP to solve a problem relating to the tax-exempt status of an outstanding issue of conduit bonds, the conduit borrower must notify the Finance Officer and provide to the Finance Officer a summary of the tax-exemption issue and the proposed remediation action to be requested from the Internal Revenue Service under VCAP. The Finance Officer shall review all requests to be submitted under TEB VCAP for conduit bonds issued by the City or the MCDA and, after consultation with bond counsel and the CAO, the Finance Officer may execute any TEB VCAP requests submitted to the Internal Revenue Service in the Finance Officer's discretion. Upon approval by the City Council or Board of Commissioners, the Finance Officer or the MCDA Executive Director and the Finance Officer as applicable, shall execute, on behalf of the City or the MCDA, a proposed closing agreement with the Internal Revenue Service.

(k) Private Letter Ruling Submissions. The Internal Revenue Service has established procedures for the submission of requests for private letter rulings from the Internal Revenue Service with respect to the tax-exempt status of conduit bonds. The procedures relating specifically to tax-exempt bonds can be found at Revenue Procedure 96-16, 1996-3 I.R.B. 45 (supplemented by the definitions and requirements set forth in Revenue Procedure 2012-1 and its successor revenue procedures). If a conduit borrower or any other party to a transaction relating to conduit bonds issued by the City or the MCDA proposes to utilize a private letter ruling to solve a problem relating to the tax-exempt status of the conduit bonds, such party must notify the Finance Officer and provide to the Finance Officer a summary of the tax-exemption issue and the proposed action to be requested from the Internal Revenue Service pursuant to the private letter ruling request. The Finance Officer shall review all private letter ruling requests proposed to be submitted to the Internal Revenue Service with respect to conduit bonds issued by the City or the MCDA and, after consultation with bond counsel and the CAO, the Finance Officer may execute any private letter ruling request submitted to the Internal Revenue Service and any supplements to such private letter ruling request.

(l) Post-Issuance Compliance. The City's Post-Issuance Compliance Policy with respect to conduit bonds is that each conduit borrower with respect to conduit bonds issued by the City or the MCDA shall adopt a post-issuance compliance policy and procedure prior to the issuance of conduit bonds by the City or the MCDA for such conduit borrower. A copy of the post-issuance compliance policy and procedures adopted by a conduit borrower shall be delivered to the CPED Project Coordinator and bond counsel. Such post-issuance compliance policy and procedure shall address the post-issuance obligations of the conduit borrower under applicable tax and securities laws and regulations with respect to the conduit borrower and the conduit bonds to be issued by the City or the MCDA for the benefit of such conduit borrower. Upon approval of bond counsel, such post-issuance compliance policy shall be incorporated into a disclosure agreement or other bond document as determined appropriate by bond counsel.

XII. Internal Revenue Service Audits of Conduit Bonds

In the event the Finance Officer receives correspondence from the Internal Revenue Service indicating that a series of conduit bonds that purported to be tax-exempt and that was issued by the City or the MCDA is the subject of an audit by the Internal Revenue Service, the Finance Officer will make reasonable efforts to notify the conduit borrower with respect to such conduit bonds and its counsel (if known to the Finance Officer) of such audit and deliver to the conduit borrower and its counsel a copy of the correspondence received by the Finance Officer from the Internal Revenue

Service. Every conduit borrower with respect to conduit bonds issued by the City or the MCDA shall be deemed to have agreed to assume the defense of every Internal Revenue Service audit with respect to such conduit bonds and shall indemnify the City and the MCDA for any expenses, payments, penalties, or other losses or damages paid or incurred by the City or the MCDA with respect to any audit of conduit bonds.

At the request of the conduit borrower, the Finance Officer (with respect to City-issued bonds) or the MCDA Executive Director and the Finance Officer (with respect to MCDA-issued bonds) will execute and deliver to the conduit borrower or its counsel a *Power of Attorney and Declaration of Representative, Form 2848*, or successor form ("Form 2848"), with respect to conduit bonds for which an audit by the Internal Revenue Service has commenced. At the request of the conduit borrower, the Finance Officer (with respect to either City-issued or MCDA-issued bonds) will execute and deliver to the conduit borrower or its counsel a *Tax Information Authorization, Form 8821*, or successor form ("Form 8821"), with respect to conduit bonds for which an audit by the Internal Revenue Service has commenced.

The conduit borrower and its counsel shall provide periodic updates to the Finance Officer of the following: (i) the status of the audit; (ii) the resolution of the audit; (iii) the penalties, interest, and other payments, if any, paid to the Internal Revenue Service with respect to such audit. At the request of the Finance Officer, any or all documents submitted to the Internal Revenue Service by the conduit borrower or its counsel in connection with such audit shall be delivered to the Finance Officer.

Bond counsel for the conduit bonds subject to an audit by the Internal Revenue Service may act as counsel to the conduit borrower with respect to such audit only if the CAO obtains a conflicts waiver from the City Council.

XIII. Disclosure Documents in Public Offerings of Conduit Bonds

Every official statement or other disclosure document in a public offering of conduit bonds proposed to be issued by the City shall contain statements substantially similar to the statements with respect to the City set forth in EXHIBIT C to this Conduit Bonds Policy. Similar statements shall be included in every official statement or other disclosure document in a public offering of conduit bonds proposed to be issued by the MCDA, except that the term "MCDA" shall be substituted for the term "City." Such statements may be amended, deleted, or supplemented only with the consent of the Finance Officer and the CAO, except that terms such as "Official Statement," "Bonds," "Company," "Indenture," "Loan Agreement," "Mortgage," "Reserve Fund," "Loan Repayments," "Holders," and "Rule" may be changed without the express consent of the CAO and the Finance Officer if the purpose of such changes are to render the terms consistent with the other terms of the official statement or disclosure document.

Notwithstanding the City's provision of the EXHIBIT C statements, the City does not assume responsibility for the accuracy or completeness of the official statement except for the information under the captions "The City" and "Litigation – the City" or "The MCDA" and "Litigation – the MCDA".

XIV. Representation of the City in Conduit Bond Documents

The representations of the City in any conduit bond documents shall be substantially similar to those set forth in EXHIBIT D to this Conduit Bonds Policy. The representations of the MCDA in any conduit bond documents shall be substantially similar to those set forth in EXHIBIT D, except that the term “MCDA” shall be substituted for the term “City.” Such statements may be amended, deleted, or supplemented only with the consent of the CAO.

XV. Continuing Disclosure Obligations

The City and the MCDA are not “obligated persons” under the terms of Rule 15c2-12 (17 C.F.R. Section 240.15c2-12) promulgated by the Securities and Exchange Commission under the Securities Exchange Act of 1934, with respect to conduit bonds issued by the City or the MCDA. As a result, neither the City nor the MCDA will monitor compliance by the conduit borrower or other obligated persons with the continuing disclosure obligations under Rule 15c2-12 and will not monitor compliance by the conduit borrower or other obligated persons with the terms of any continuing disclosure agreement or undertaking executed and delivered by the conduit borrower or other obligated party in connection with the issuance of conduit bonds by the City or the MCDA.

XVI. Additional Project Requirements

The City and MCDA require compliance with certain contracting and employment policies depending on whether the bond proceeds are being used for construction or refinancing and depending on whether the proceeds are used for qualified 501(c)(3) purposes or being loaned to a 501(c)(3) entity. The specific requirements are set forth in EXHIBITS E-1, E-2 and E-3, subject to updating from time to time as the underlying requirements are modified by the City prior to bond issuance.

Exhibit A

Schedule of City Conduit Bonds Fees

Conduit Bonds for Economic Development Projects

Application fee - \$0

Host approval fee - \$5,000, paid with host approval application and reimbursable if host approval is not granted

Closing fee - \$0

Administrative fees

Payment dates: Paid semi-annually in arrears (January 1 and July 1)
The first payment date is typically 3-9 months from the dated date of the bonds.

Amount: The annual administrative fee is equal to 1/4 of 1% (.25%) of the outstanding principal amount of the bonds. This annual fee is paid semi-annually in an amount equal to 1/8 of 1% (.125%) of the outstanding principal amount of bonds on the day before the payment date (December 31 and June 30). The first payment amount shall be prorated from the dated date of the bonds to the first payment date.

Exception: For bonds that are issued for 501(c)(3) health care organizations, the payment amount on the first \$10 million of outstanding principal shall be calculated as stated above, plus 1/16 of 1% on any outstanding principal that is greater than \$10 million but less than or equal to \$30 million. No annual administrative fee will be collected on any outstanding principal over \$30 million.

Note: For bond issues that require entitlement authority, the applicant will also have to pay additional fees to other entities. These may include, but are not limited to, a non-refundable application fee and a refundable deposit charged by the DEED.

Exhibit A (continued)

Schedule of City Conduit Bonds Fees

Conduit Bonds for Residential Rental Projects

Application fee - \$3,000 (non-refundable)

Host approval fee - \$5,000 paid with host approval application and reimbursable if host approval is not granted.

Closing Fee - \$25,000 paid at closing.

Administrative fees

Payment dates: Paid semi-annually in arrears (January 1 and July 1).
The first payment date is typically 3-9 months from the dated date of the bonds.

Amount: The annual administrative fee is equal to 1/4 of 1% (.25%) of the outstanding principal amount of the bonds. This annual fee is paid semi-annually in an amount equal to 1/8 of 1% (.125%) of the outstanding principal amount of bonds on the day before the payment date (December 31 and June 30). The first payment amount shall be prorated from the dated date of the bonds to the first payment date.

Exception 1 (*): For bond issues with a first call date that is greater than three years but less than or equal to five years from the dated date of the bonds, the annual percentage listed above shall be increased to 1/2 of 1% (0.5%) and the semi-annual percentage listed above shall be increased to 1/4 of 1% (.25%).

Exception 2 (*): For bond issues with a first call date that is three years or less from the dated date of the bonds, the annual percentage listed above shall be increased to 1.0% and the semi-annual percentage listed above shall be increased to 1/2 of 1% (.50%).

(*) The Finance Officer, in consultation with the CPED Director, may adjust the administrative fees for a bond issue with a first call date that is less than or equal to five years, if such adjustment is warranted based on current market conditions, unusual or extraordinary circumstances associated with the bond issue, and/or other criteria that the Finance Officer and CPED Director may determine as appropriate from time to time. Any request from a Borrower to adjust the administrative fees of a bond issue with a first call date that is less than or equal to five years must be submitted in writing to both the Finance Officer and CPED Director, along with a detailed justification of why the Borrower feels such adjustment is warranted.

Note: For bond issues that require entitlement authority, the applicant will have to pay additional fees to other entities. These may include, but are not limited to, non-refundable special tax credit counsel fees, a non-refundable application fee and a refundable deposit charged by DEED.

EXHIBIT B

Standard City Endorsement to Conduit Borrower's Tax Document

1. The Finance Officer of the City has been authorized by Resolution No. 20____R-____, adopted by the City Council of the City on _____, 20__, and approved by the Mayor on _____, 20__ (the "Bond Resolution") and by applicable provisions of the Charter of the City and Minnesota Statutes, _____, as amended (the "Act"), to execute and deliver the Series 20__ Bonds and thereby qualifies as an officer of the City responsible for issuing the Bonds.

2. The City expects that the amount and use of the gross proceeds of the Bonds will be as represented and certified by _____, a _____ (the "Borrower") in the Borrower Tax Certificate. The Finance Officer has made no independent investigation with respect to such representations and certifications.

3. The facts and estimates that form the basis for such expectations by the City are solely those facts and estimates of the Borrower set forth in: (a) the Loan Agreement; (b) the Tax Exemption Agreement; (c) the Borrower Tax Certificate; (iv) the Official Statement; and (v) the other documents included in the transcript prepared by bond counsel with respect to the Bonds. The Finance Officer has made no independent investigation with respect to such facts and estimates.

4. Pursuant to _____ of the Borrower Tax Certificate and _____ of the Loan Agreement, the Borrower will monitor the investment of the proceeds of the Series 20__ Bonds to assure compliance with the arbitrage rules and regulations set forth in Section 148 of the Internal Revenue Code of 1986, as amended (the "Code").

5. Pursuant to _____ of the Borrower Tax Certificate and _____ of the Loan Agreement, the Borrower has agreed to monitor any and all private use related to the Project financed with the proceeds of the Series 20__ Bonds in order to ensure that the Series 20__ bonds continue to be a "qualified bond" within the meaning of Sections 145 and 141(e) of the Code. Pursuant to the Borrower Tax Certificate, the Borrower will consult with Bond Counsel at any time a change in use of the Project requires remedial action pursuant to Section 1.141-12 of the Treasury Regulations promulgated under Section 141 of the Code.

EXHIBIT C

Official Statement Disclosures with Respect to the City

1. To be inserted on the front cover of the Official Statement

The Bonds are not secured by or payable from any taxes, revenues or assets of the City except for the City's interest in the Loan Agreement and amounts held pursuant to the Indenture as described herein.

2. To be inserted in the disclaimer section of the Official Statement

Neither the City nor any of its members, agents, employees, or representatives have reviewed this Official Statement or investigated the statements or representations contained herein, except for those statements relating to the City set forth under the captions "THE CITY" and "LITIGATION — The City." Except with respect to the information contained under such captions, neither the City nor any of its members, agents, employees or representatives makes any representation as to the completeness, sufficiency and truthfulness of the statements set forth in this Official Statement. Members of the governing body of the City and any other person executing the Bonds are not subject to personal liability by reason of the issuance of the Bonds. The City assumes no responsibility for this Official Statement and has not reviewed or undertaken to verify any information contained herein.

3. To be inserted under the heading "THE CITY" in the Official Statement

The City is a municipal corporation and home rule city and political subdivision of the State of Minnesota organized and existing under its Charter and the Constitution and laws of the State of Minnesota. The Bonds will be issued pursuant to Minnesota Statutes, _____, as amended (the "Act"). The City is not pledging its credit to the Bonds. The City does not and will not in the future monitor the financial condition of the Company, the operation of the Company's facilities, or otherwise monitor payment of the Bonds or compliance with the documents relating thereto. The responsibility for the operation of the Company's facilities will rest entirely with the Company.

The Bonds are special, limited obligations of the City. No recourse by any Holder of the Bonds will be had for the payment of the principal of, premium, if any, or interest on any of the Bonds or for any claim based thereon or upon any obligation, covenant, or agreement in the Indenture or the Loan Agreement, against any past, present, or future officer, member, counsel, advisor, or agent of the City or any successor thereto, as such, directly or through the City or any successor thereto, under any rule of law or equity, statute or constitution, or by the enforcement of any assessment or penalty or otherwise, and all such liability of any such officer, member, counsel, advisor, or agent has been expressly waived as a condition of and in consideration of the execution of the Indenture, the Loan Agreement, and the issuance of the Bonds.

Except for certain rights of the City to payment of fees, expenses and indemnification, all payments made by the Company pursuant to the Loan Agreement will be made directly to the Trustee

for disbursement to the Holders. None of the revenues to pay the Bonds will come from the City and therefore the City's financial information and status is irrelevant to any investment decision with respect to the Bonds. As a result, no information regarding the City will be provided in respect of any continuing disclosure requirement relating to the Bonds. The City has not assumed responsibility for any information in this Official Statement, except for the information under this caption and the caption "LITIGATION – The City."

4. To be inserted under the heading BONDHOLDERS' RISKS of the Official Statement

No person should purchase any Bonds without carefully reviewing the following information, which summarizes some, but not all factors that should be carefully considered before such purchase.

Nature of Special, Limited Obligations

The Bonds are special, limited obligations of the City, payable solely from amounts pledged under the Indenture to the payment of principal, interest, and premium, if any, on the Bonds (which includes Loan Repayments from the Company, amounts in the Reserve Fund, and other amounts held by the Trustee under the Indenture and proceeds realized under the Mortgage), and do not give rise to a general obligation or general liability of the City or a charge against its general credit or taxing powers and shall never constitute nor give rise to a pecuniary liability of the City. *The Bonds do not constitute a debt, moral obligation, liability or loan of credit or a pledge of the full faith and credit or taxing power of the City, the State, or of any political subdivision thereof.*

5. To be inserted under the heading CONTINUING DISCLOSURE of the Official Statement

The City does not have any obligation with respect to the Continuing Disclosure Agreement because the City is not an "obligated party" under the terms of the Rule. The City will not monitor the compliance by the Company with the terms of the Continuing Disclosure Agreement.

6. To be inserted under the heading LITIGATION of the Official Statement

The City has represented to the Underwriter that there is no pending or, to the actual knowledge of the City official responsible for signing the Bond Purchase Agreement, without inquiry or investigation, threatened suit, action or proceeding against the City before any court, arbitrator, administrative agency or other governmental authority that challenges the City's execution and delivery of the Bonds, the Indenture or the Loan Agreement.

7. To be inserted under the heading MISCELLANEOUS of the Official Statement

The Company and the City have authorized and approved the use and distribution of this Official Statement, although the City has not reviewed or approved any matters herein and assumes no responsibility for the accuracy or completeness of the information herein except for the information under the caption "THE CITY" and "LITIGATION – The City" in this Official Statement.

EXHIBIT D

Standard Representations of the City

1. The City has not participated in the preparation of the Official Statement relating to the Bonds and has made no independent investigation with respect to the information contained therein, including any appendices thereto. Except as set forth below in this subsection __, the City makes no representations or warranties with respect to the information contained in the Official Statement. The information contained in the Official Statement under the captions "THE CITY" and "LITIGATION – The City" is true and correct in all material respects. Subject to the foregoing, the City hereby consents to the distribution of the Official Statement by the Underwriter in connection with the offering and sale of the Bonds.

2. The City is a political subdivision and municipal corporation organized and existing under its Charter and the Constitution and laws of the State of Minnesota.

3. There is no pending or, to the undersigned's actual knowledge, without inquiry or investigation, threatened suit, action, or proceeding against the City before any court, arbitrator, administrative agency, or other governmental authority that challenges the City's execution and delivery of the Bonds, the Indenture, or the Loan Agreement.

4. To the actual knowledge of the undersigned, without inquiry or investigation, the execution and delivery of the Bonds, the Indenture, and the Loan Agreement will not constitute a breach of or default under any existing (a) provision of any special legislative act or charter provision relating to the establishment of the City, or (b) agreement, indenture, mortgage, lease, or other instrument to which the City is a party or by which it is bound.

5. No proceeding of the City for the issuance, execution or delivery of the Bonds, the Indenture or the Loan Agreement has been repealed, rescinded, amended or revoked.

EXHIBIT E-1

Requirement for Projects That Are Only Refinancing:

Affirmative Action Plan. The Borrower covenants that it has an affirmative action plan that has been approved by the Minneapolis Department of Civil Rights as meeting the requirements of Section 139.50 of the Minneapolis Code of Ordinances. The Corporation covenants to comply with applicable provisions of Chapters 139 and 141 (Title 7, Civil Rights) of the Minneapolis Code of Ordinances, and other applicable federal, state and local laws, rules and regulations regarding equal employment opportunities, including nondiscrimination provisions contained in Chapter 181, Minnesota Statutes, the Americans with Disabilities Act of 1990 (as amended), Section 109 of the Housing and Community Development Act of 1974 (as amended), the Age Discrimination Act of 1975 (as amended) and Executive Order 11246, as amended by Executive Order 12086.

EXHIBIT E-2

Revised 6-12-14

Additional Project Requirements - 501(c)(3) Projects

(a) *Hours and Wages.* Borrower covenants and agrees that with respect to construction of the Project, it will comply with the wage and hour standards issued by the United States Secretary of Labor pursuant to the Davis-Bacon Act, 40 U.S.C. Sections 276a-276a-5, as amended, and the Contract Work Hours and Safety Standards Act, 40 U.S.C. Sections 327-333. Borrower shall cause its general contractor and all subcontractors with employment hours to submit [**weekly- if federal monitoring**] certified payroll into the Minneapolis Department of Civil Rights (MDCR) on-line database [**by the 10th of each month following any month in which labor is performed-if local monitoring**].

(b) *Apprenticeship Program.* Borrower agrees to provide or cause its general contractor to provide evidence satisfactory to the City of Minneapolis that its general contractor with a contract in excess of \$100,000 and each subcontractor with a contract in excess of \$50,000 performing construction work on the Project participates in a registered apprenticeship program as certified by the State Department of Labor.

(c) *Preaward Review.* Borrower agrees to cause its general contractor to submit a pre-construction booklet to the Minneapolis Department of Civil Rights in accordance with Section 139.50, Minneapolis Code of Ordinances. The general contractor shall list all subcontractors, suppliers and service providers with contract dollar totals and a projection of total work hours, divided by race and sex.

(d) *Affirmative Action.* Borrower covenants that it has an affirmative action plan that has been approved by the Minneapolis Department of Civil Rights as meeting the requirements of Section 139.50, Minneapolis Code of Ordinances. The minimum employment goals for Borrower and for any contractor, subcontractor or vendor with a contract in excess of \$50,000 shall be as follows: 6% of the total Project construction hours are to be performed by females, 32% by minority workers.

EXHIBIT E-3

Revised 6-12-14

Additional Project Requirements– Construction Projects

(a) *Hours and Wages.* Borrower covenants and agrees that with respect to construction of the Project, it will comply with the wage and hour standards issued by the United States Secretary of Labor pursuant to the Davis-Bacon Act, 40 U.S.C. Sections 276a-276a-5, as amended, and the Contract Work Hours and Safety Standards Act, 40 U.S.C. Sections 327-333. Borrower shall cause its contractor and all subcontractors with employment hours to submit certified payroll into the Minneapolis Department of Civil Rights (MDCR) on-line database by the 10th of each month following any month in which labor is performed.

(b) *Apprenticeship Program.* Borrower agrees to provide or cause its general contractor to provide evidence satisfactory to the City of Minneapolis that its contractor with a contract in excess of \$100,000 and each subcontractor with a contract in excess of \$50,000 performing construction work on the project participates in a registered apprenticeship program as certified by the State Department of Labor.

(c) *Preaward Review.* Borrower agrees to cause its general contractor to submit a pre-construction booklet to the Minneapolis Department of Civil Rights in accordance with Section 139.50, Minneapolis Code of Ordinances. The general contractor shall list all subcontractors, suppliers and service providers with contract dollar totals and a projection of total work hours, divided by race and sex.

(d) *Affirmative Action.* Borrower covenants that it has an affirmative action plan that has been approved by the Minneapolis Department of Civil Rights as meeting the requirements of Section 139.50 of the Minneapolis Code of Ordinances. The minimum employment goals for Borrower and for any contractor, subcontract or vendor with a contract in excess of \$50,000 shall be as follows: 6% of the total Project construction hours are to be performed by females, 32% by minority workers.

(e) *Small & Underutilized Business Requirements.* Borrower and its contractors must comply with the Small & Underutilized Business Enterprise Program (SUBP) requirements as outlined in Minneapolis Code of Ordinances Chapter 423 and the provisions attached hereto as Exhibit __ (the SUBP Requirements”). The SUBP Requirements apply to any development project that receives assistance in excess of one hundred thousand dollars (\$100,000). Any questions about the SUBP Requirements should be directed to the Small and Underutilized Business Enterprise Program, City of Minneapolis, Civil Rights Department, 239 City Hall, 350 South 5th Street, Minneapolis, Minnesota 55416, Attention: Director Small & Underutilized Business Enterprise Program (612-673-3076).

If Project is rehabilitation of rental housing:

(f) *Relocation.* Borrower will submit a relocation plan for the Project to the City of Minneapolis for approval and carry out all permanent and temporary displacement from the Project in accordance with such plan and in compliance with all applicable local, state and federal relocation regulations and policies.

MINNEAPOLIS DEPARTMENT OF CIVIL RIGHTS

Small and Underutilized Business Enterprise Program (SUBP)

SPECIAL PROVISIONS FOR REQUEST FOR PROPOSAL, OR ANY PART OR COMBINATION THEREOF, IN EXCESS OF \$100,000

I. PURPOSE

These provisions explain the City of Minneapolis Small and Underutilized Business Enterprise Program (SUBP) requirements applicable to this contract, the process the Minneapolis Department of Civil Rights (MDCR) will follow to evaluate proposer's efforts to obtain SUBP participation, the standards MDCR will use to measure compliance with these requirements, and the sanctions that may result from noncompliance with these requirements.

II. POLICY

It is the policy of the City of Minneapolis to provide equal opportunities to all contractors, and to redress the discrimination in the city's marketplace and in public contracting against minority-owned business enterprises (MBEs) and women-owned business enterprises (WBEs). The City of Minneapolis shall set contract goals for the participation of Minnesota Uniform Certification Program (MnUCP) certified MBEs and WBEs in the marketplace based upon their qualifications and availability. Firms certified by the MnUCP can be found at <http://mnucp.metc.state.mn.us/>. The city's marketplace includes the geographical area of the Minnesota counties of Anoka, Carver, Chisago, Dakota, Hennepin, Isanti, Ramsey, Scott, Sherburne, Washington, and Wright. Only firms in these counties will be counted towards meeting SUBP goals.

III. SUBP GOALS ON THIS PROJECT

Each proposer must either meet the goals listed below or show that it made every necessary and reasonable effort to meet the M/WBE goals prior to submitting the RFP. MDCR shall determine whether a proposer has made adequate good faith efforts to meet the SUBP goals. If a proposer fails to meet the project goals and does not demonstrate good faith efforts, the proposal may be rejected and the proposer may not be awarded the contract.

The goals on this project are: ___% MBEs and ___% WBEs.

IV. REQUIRED DOCUMENTATION AND SUBMITTAL OF INFORMATION

All proposers must make every necessary and reasonable effort to subcontract with MBEs/WBEs prior to submitting the RFP to the City of Minneapolis. All proposers must thoroughly document their efforts to solicit and incorporate M/WBE participation in order to meet the SUBP goals.

All proposers must submit with their RFP a completed Contract SUBP Participation Form, listing the MBEs and WBEs they intend to contract with and the respective subcontract amounts.

If the Contract SUBP Participation Form demonstrates, and MDCR has verified, sufficient M/WBE participation to meet the SUBP goals, the preliminarily selected proposer must submit the following within three (3) business days of receiving from MDCR notification of the preliminary selection:

Proposers List. The Proposers List must include all M/WBE and non-M/WBE subcontractors, sub-consultants, service providers or suppliers that submitted a RFP or quote for the project. It also indicates which firms the preliminarily selected proposers propose to use.

If the Contract SUBP Participation Form does not demonstrate, or MDCR could not verify, sufficient M/WBE participation to meet the SUBP goals, the preliminarily selected proposer must submit, within three (3) business days of receiving from MDCR notification of the preliminary selection, documentation demonstrating that the proposer made sufficient good faith efforts to meet the goals. The documentation must include the following:

1. *Proposers List.* The Proposers List must include all M/WBE and non-M/WBE subcontractors, sub-consultants, service providers or suppliers that submitted a RFP or quote for the project. It also indicates which M/WBE firms the preliminarily selected proposer proposes to use.

2. *Certificate of Good Faith Efforts.* The Certificate of Good Faith Efforts must list all M/WBE and non-M/WBE firms (including all subcontractors, sub-consultants, service providers, and suppliers) from which the preliminarily selected proposer solicited RFPs or quotes for the project.

3. *Good Faith Efforts Affidavit.* The Good Faith Affidavit is a notarized document certifying the truth and accuracy of the information contained in the Certificate of Good Faith Efforts.

4. *Supporting Documentation to Demonstrate Good Faith Efforts.* The preliminarily selected proposer must submit information that demonstrates its efforts to achieve the SUBP goals. The documentation must identify the actions taken to achieve the SUBP goals, including those listed in the section below entitled, "Good Faith Efforts Evaluation Where Goal Not Met." The information may include, but is not limited to, copies of solicitation letters, actual RFPs received, faxes, phone conversations, and emails to M/WBE firms.

V. FAILURE TO SUBMIT INFORMATION.

A proposer that fails to submit the required information by the due date will be deemed nonresponsive and the City of Minneapolis may reject the Proposal.

VI. IDENTIFYING THE LEVEL OF MBE AND WBE PARTICIPATION

MDCR determines whether a Contract has met City goals by dividing the dollar amount listed for each M/WBE by the Proposal's total dollar amount. If the total dollar amount of M/WBE participation does not meet established W/MBE goals, MDCR will determine the Contractor has not met the established W/MBE goals. Upon a determination that goals have not been met, MDCR conducts a Good Faith Efforts review (*see section VIII GOOD FAITH EFFORTS below*).

MDCR will utilize the following guidelines in determining the percentage of eligible business participation that will be counted toward the project goal:

- a) If a business is not an MBE or WBE at the time of the execution of the contract, M/WBE it will not be counted towards City M/WBE goals.
- b) If a subcontractor has ceased to be an MBE or WBE, as defined by Minneapolis Code of Ordinances, Chapter 423, it will not be counted toward the project goal.
- c) When an MBE or WBE participates in a contract, the value of the work actually performed will be counted as follows:
 - 1) The entire amount of that portion of a construction contract that is performed by the MBE's/WBE's own forces, including the cost of supplies and materials utilized by the M/WBE for the work of the contract, including supplies purchased or equipment leased by the M/WBE (except supplies and equipment the M/WBE subcontractor purchases or leases from the prime M/WBE contractor or its affiliate).
 - 2) The entire amount of fees or commissions charged by the M/WBE for providing a bona fide service, such as professional, technical, consultant, or managerial services, or for providing bonds or insurance specifically required for the performance of a contract toward M/WBE project goals, provided that MDCR determines the fee to be reasonable and not excessive as compared with fees customarily allowed for similar services.
 - 3) When an M/WBE subcontracts part of the work of its contract to another business, the value of the subcontract work may be counted toward M/WBE project goals only if the MBE's/WBE's subcontractor is itself an M/WBE. Work that an M/WBE subcontracts to a non-MBE/non-WBE will not count toward M/WBE project goals.
- d) When an M/WBEM/WBE performs as a participant in a joint venture, the city will count a portion of the total dollar value of the contract equal to the distinct, clearly defined portion of the work of the contract that the M/WBEM/WBE performs with its own forces toward M/WBEM/WBE project goals.

VII. COMMERCIALY USEFUL FUNCTION

MDCR will count expenditures of an M/WBEM/WBE toward M/WBEM/WBE project goals only if the M/WBEM/WBE is performing a commercially useful function on that contract:

- 1) An M/WBEM/WBE performs a commercially useful function when it is responsible for execution of the work of the contract and is carrying out its responsibilities by actually performing, managing, and supervising the work involved. To perform a commercially useful function, the M/WBEM/WBE must also be responsible, with respect to materials and supplies used on the contract, for negotiating price, determining quality and quantity, ordering the material, installing (where applicable) and paying for the material itself. To determine whether an M/WBEM/WBE is performing a commercially useful function, MDCR may evaluate the amount of work subcontracted, industry practices, whether the amount the M/WBEM/WBE is to be paid under the contract is commensurate with the work it is actually performing, and other relevant factors.
- 2) An M/WBEM/WBE does not perform a commercially useful function if its role is limited to that of an extra participant in a transaction, contract, or project through which the funds are passed in order to obtain the appearance of M/WBEM/WBE participation. In determining whether an

M/WBE is such an extra participant, MDCR may examine similar transactions, particularly those in which MBEs and WBEs do not participate, and other relevant factors.

- 3) If an M/WBE does not perform or exercise responsibility for at least 30 percent of the total cost of its contract with its own work force, or the M/WBE subcontracts a greater portion of the work of a contract than would be expected on the basis of normal industry practice for the type of work involved, MDCR may presume that it is not performing a commercially useful function.
- 4) When an M/WBE is presumed not to be performing a commercially useful function, the M/WBE may present evidence to rebut this presumption. MDCR may determine that the business is performing a commercially useful function given the type of work involved and normal industry practices, and other relevant factors.

VIII. GOOD FAITH EFFORTS EVALUATION WHERE GOAL NOT MET

If a Contractor has not met the project M/WBE goals, MDCR conducts a good faith efforts review to determine whether the Contractor has made every reasonable and necessary effort to solicit M/WBEs. Per the SUBP Ordinance, Chapter 423.90(b), MDCR utilizes the following factors to evaluate good faith efforts:

- 1) Soliciting through all reasonable and available means (attendance at pre-Proposal meetings, advertising and/or written notices) the interest of all MBEs/WBEs certified in the scopes of work of the contract. The proposer must solicit MBEs/WBEs in sufficient time prior to Proposal opening or the proposal deadline to allow MBEs/WBEs to respond to solicitations. The proposer must determine with reasonable certainty if the MBEs/WBEs are interested by taking appropriate steps to follow up on initial solicitations.
- 2) Selecting portions of the work to be performed by MBEs/WBEs in order to increase the likelihood that the project goals will be achieved. This includes, where appropriate, breaking out contract work into smaller units to facilitate M/WBE participation, even when a contractor might otherwise prefer to perform these work items with its own forces.
- 3) Providing interested MBEs/WBEs with adequate information about the plans, specifications, and requirements of the contract in a timely manner to assist them in responding to a solicitation.
- 4) The proposer must negotiate in good faith with interested MBEs/WBEs and provide written documentation of such negotiation with each such business. In determining whether the proposer negotiated in good faith, the Department may consider a number of factors including price, scheduling and capabilities as well as the contract goal.
- 5) The fact that there may be some additional costs involved in finding and using MBEs/WBEs is not itself sufficient reason for a proposer's failure to meet the project goals as long as such costs are reasonable.
- 6) If requested by a solicited M/WBE, the proposer must make reasonable efforts to assist such MBEs/WBEs in obtaining bonding, lines of credit or insurance as required by the city or by the proposer, provided that the proposer need not provide financial assistance toward this effort.
- 7) Effectively using the services of minority/woman community organizations; minority/woman contractors' groups; local, state and federal business assistance offices; and other organizations as allowed on a case-by-case basis to provide assistance in the solicitation and placement of MBEs/WBEs.

IX. POST-AWARD SUBSTITUTIONS

A contractor shall not substitute any subcontractor listed in the proposal without the prior written approval of MDCR. A substitution includes having someone or some entity other than the subcontractor listed in the Proposal or proposals perform the work of that subcontractor. A substitution is not allowed until both of the following occur: MDCR receives a written request for approval of the substitution, including the reasons for the substitution; and MDCR issues a written approval of the substitution.

The contractor must make good faith efforts to replace an M/WBE subcontractor that is unable to perform successfully with another M/WBE to perform the same scope of work. The contractor may request assistance from MDCR staff in replacing an M/WBE. Such assistance may include, but is not limited to, providing the contractor with information regarding the identification and availability of other M/WBEs.

X. PENALTIES FOR NONCOMPLIANCE WITH THESE SUBP SPECIAL PROVISIONS

Compliance with the requirements of these SUBP Special Provisions is a material condition of performance of the contract, and failure to comply with these SUBP Special Provisions shall be deemed a breach of the contract. If a developer, contractor, subcontractor, supplier, vendor or subrecipient does not make a good faith effort to fulfill its obligations under Minneapolis Code of Ordinances, Chapter 423 and these SUBP Special Provisions, or fails to materially comply with the provisions of Minneapolis Code of Ordinances, Chapter 423 and these SUBP Special Provisions, the City of Minneapolis may take the following actions wholly, partly, or in any combination:

- a) Temporarily withhold cash payments pending correction of the deficiency.
- b) Disallow the use of funds for all or part of the cost of the activity or action not in compliance.
- c) Suspend or debar the developer, contractor, subcontractor, supplier, vendor or subrecipient as ineligible for all current or potential contracts.
- d) Designate the developer, contractor, subcontractor, supplier, vendor or subrecipient as high-risk for future contracts and require of the developer, contractor, subcontractor, supplier, vendor or subrecipient increased reporting requirements, mandatory audits and similar measures.