



STATEMENT OF POLICIES AND PROCEDURES FOR ISSUING TAXABLE AND TAX-EXEMPT REVENUE BONDS OF THE MEMPHIS AND SHELBY COUNTY PORT COMMISSION

INTRODUCTION

The Memphis and Shelby County Port Commission (the “Port Commission”) is a commission created and governed by State of Tennessee Private Acts 1947, Ch. 500, as amended, and Ch. 529, as amended, City of Memphis Charter Article 61, Section 627, et seq., as amended, and Shelby County Code of Ordinances Section 32-271, et seq., as amended (collectively, the “Act”).

The Port Commission is a joint commission between the County of Shelby, Tennessee (the “County”) and the City of Memphis, Tennessee (the “City”) and is organized under the Act. The purpose of the Act is to, among other things, provide for the ownership, operation, maintenance and development of a harbor and port in the County and/or the City (the “Port”). The Port Commission works with the federal government for the provision of a more modern harbor and encourages developments on the Mississippi River.

The Port Commission is governed by a seven (7) member board. Two of the board members are appointed by the County and three are appointed by the City. In addition, both directors of public works for the County and for the City serve as ex-officio members of the board of the Port Commission with the right to vote. Appointed members of the board of the Port Commission serve two-year terms. All five appointed members of the Port Commission board serve on the board of the Economic Development Growth Engine Industrial Development Port Commission of the City of Memphis and County of Shelby, Tennessee (“EDGE”). The EDGE board has no direct authority over the Port Commission board.

The Act empowers the Port Commission, among other things, to (i) purchase, receive by deed or otherwise hold, lease, improve, exchange and condemn and/or sell real estate for the development and/or extension of the Port and the furtherance of commerce and transportation by water; (ii) contract with any person, firm, corporation or agency, public or private, with reference to any of the objects of its creation and in the performance of the duties imposed on it; provided, any purchase, condemnation, lease, sale or exchange of real estate shall first be approved by the County and the City; (iii) purchase, or otherwise acquire title to land, easements or rights-of-way, to be used in connection with the authority granted by the Act; and (iv) perform any and all other acts which may tend, either directly or indirectly, to promote trade, industry and commerce. The Act prohibits the Port Commission from issuing bonds or notes, or any other obligations constituting a lien upon the properties managed, controlled or owned or to be acquired by it, except by and with the consent of the County and the City. Revenue bonds or notes (the “Bonds”) issued by the Port Commission must first be approved by the Memphis City Council and the Shelby County Commission.

Neither the City, the County, the State, nor any political subdivision thereof shall be liable in any event for the payment of the principal of, or premium or interest on the Bonds or for the performance of any pledge, mortgage, obligation or agreement of any kind whatsoever undertaken by the Port Commission and none of the Bonds nor any of the Port Commission's agreements or obligations shall be construed to constitute an indebtedness of the County, the State, or any political subdivision thereof within the meaning of any constitutional or statutory provisions whatsoever. The Port Commission has no taxing power.

The Port Commission is composed of nine voting members and two non-voting members representing the Memphis City Council and the Shelby County Commission. Members of the Port Commission serve staggered six-year terms.

The Port Commission's Charter authorizes it to exercise all the powers and authority of an Industrial Development Corporation as set forth in the Act and the Port Commission intends that the scope of its authorized activities be as broad as is permitted under the laws of the State of Tennessee.

THE PORT COMMISSION DOES NOT MAKE ANY RECOMMENDATIONS WITH REGARD TO THE PURCHASE OF BONDS OR NOTES, NOR SHOULD ITS APPROVAL OF A FINANCING BE CONSTRUED AS A REPRESENTATION OF ANY SORT WITH REGARD TO THE FINANCIAL CONDITION OR SUITABILITY OF ANY PROJECT OR ISSUANCE. ALL BOND OR NOTE PURCHASERS ARE EXPECTED TO MAKE AN INDEPENDENT INVESTIGATION OF THE BONDS OR NOTES OF THE PORT COMMISSION AND THEIR SECURITY.

ARTICLE I DEFINITIONS

1.1. Definitions. As used herein, the following words and phrases shall have the following meaning:

"**Application**" means the application, on a form provided by the Port Commission staff, to the Port Commission for issuance of Bonds by the Port Commission.

"**Bonds**" means bonds or notes issued pursuant to a bond indenture.

"**Inducement Agreement**" means the initial written understanding between the Port Commission and the Applicant with respect to a Project, in the form approved by the Port Commission staff.

"**Project**" shall only mean the land and facilities located at the Port which are financed by the Port Commission for the purposes of carrying out any of the Port Commission's purposes.

"**Trustee**" means the Trustee appointed under the bond indenture, any co-trustee or any successor thereto.

ARTICLE II PROCEDURES

2.1 Meetings. Regular meetings of the Port Commission are held on the third Wednesday of each month at 2:30 p.m. or such other day and time set by the Port Commission at a location set forth in the notice of each meeting. All meetings of the Port Commission will be public meetings as required by law. Regular meetings may be waived or held on a different date, time, or location at the discretion of the Chairman of the Port Commission and notice thereof to the public. Bond counsel will be responsible for the preparation and publication of TEFRA Notices with the assistance of Port Commission Counsel.

2.2 Application. No later than ten (10) days prior to the meeting at which the Application will be considered, unless a shorter period is approved by the Port Commission staff, the entity submitting the Application (the "Applicant") should file a hard copy and an electronic version of the Application with the Port Commission staff along with an application fee of \$2,000.00 made payable to the Port Commission. This fee is not refundable, but will be credited against the final closing fee.

2.3 Inducement. The Applicant must attend the Port Commission meeting to explain the nature and purpose of the proposed Project and to answer questions from the Port Commission. If a Project is approved, the Port Commission will take official action in the form of an Inducement Agreement with the Applicant, in which the Port Commission agrees to issue its Bonds to finance the proposed Project, subject to drafting of documentation in form satisfactory to the Port Commission, the receipt of further information by the Port Commission, the approval of the Bond issuance by the Memphis City Council and the Shelby County Commission and other contingencies. The Applicant shall submit a final bond resolution for approval by the Port Commission, or seek a six-month extension of the term of the underlying Inducement Agreement, on or before the Port Commission meeting held six months following the month in which the Inducement Agreement was approved, or at the next ensuing meeting of the Port Commission if no meeting is held in such month. A fee of \$500.00 shall be paid to the Port Commission for each extension.

2.4 City and County Approval. The Applicant shall be responsible for obtaining the approval of the issuance of the Bonds prior to consideration of a Final Bond Resolution by the Port Commission.

2.5 Final Bond Resolution. No later than ten (10) days prior to the meeting at which the Final Bond Resolution will be considered, the Applicant should file copies of the preliminary official statement or offering memorandum, Certificate of Interim Compliance with Business Opportunity Goals in the form of Exhibit D, and a copy of the resolution with the Port Commission staff. Passage of a final bond resolution will occur after documentation has been prepared by Bond Counsel. Applicants shall close the bond transaction, prior to, or seek a three-month extension of the final bond resolution for good cause shown, at the Port Commission meeting held three months following the month in which the final bond resolution was approved, or at the next ensuing meeting of the Port Commission if no meeting is held in such month. A fee of \$500.00 shall be paid to the Port Commission for each extension.

2.5 Extensions. A new Application need not be submitted for an extension unless there have been material changes in the information presented in the original Application. Any Applicant requesting approval of an extension of time will be required to present to the Port Commission a complete Project update. No extension shall be granted unless the Applicant gives written certification that there have been no adverse material changes in all financial statements theretofore submitted to the Port Commission. Extension fees will be credited toward the final closing fee.

ARTICLE III REQUIREMENTS

3.1 The Public Interest. No financing will be approved unless the Port Commission has first determined that it is in the public interest as required by law.

3.2 Ratings and Credit Enhancement. Bonds issued by the Port Commission shall be so collateralized as to bear an investment grade rating from a nationally recognized rating agency; or, if not so rated, should be secured by credit enhancement or collateral of a type and nature satisfactory to the Port Commission; or contain provisions on the face of the Bonds and in the bond documents restricting initial and subsequent transfers to "accredited investors" or "qualified institutional buyers" as such terms are defined in 17 CFR §230.501(a) and 17 CFR §230.144A and require accredited investors who are natural persons to purchase the Bonds in minimum denominations of \$25,000.00.

3.3 Minority and Women Business Participation. The use of local professionals in the issuance of the Bonds and the operation of the Projects and the use of local labor, suppliers, contractors and businesses in the acquisition, construction, rehabilitation, and operation of the Projects is strongly encouraged.

The Applicant must spend with City and County-certified Minority/Women Business Enterprises (MWBE) an amount equal to at least 25% of the hard construction costs and site work associated with the Project. Examples include contracting with MWBEs to provide supplies, professional services in the issuance of the Bonds and the construction, rehabilitation, and operation of the Project ("MWBE Commitment"). The MWBE Commitment shall not be required for the refinancing of existing bonds when there is no new development or construction.

Applicants must fulfill their MWBE Commitment within three (3) years (or as authorized by the Board) of the bond closing or the termination of the bond issue, whichever occurs first. Applicant shall file a final certificate, in the form approved by the Bond staff, with the board regarding its compliance with Applicant's MWBE Commitment during the construction phase of the Project.

Additionally, Applicant shall file an annual report by March 1 of each year the Bonds are outstanding for the prior calendar year that shows spending with City/County-certified MWBEs. The annual report will also show the number of jobs, average wages, and capital improvement associated with the Project during the prior calendar year. Board staff will provide the format for these reports.

Upon (i) failure of the Applicant to achieve its MWBE Commitment, (ii) Applicant's receipt

of written notice from EDGE specifying such failure and requesting that it be remedied, (iii) the failure of the Applicant to meet the MWBE Commitment within twelve (12) months of receipt of the EDGE written notice or (iv) the failure of the Applicant to work-out an amended MWBE Commitment acceptable to EDGE wherein the MWBE shortfall is made-up over an agreed-upon period of time, (v) Applicant shall pay to EDGE the difference between the amount that should have been expended with certified MWBEs during such period based on the Applicant's MWBE Commitment, less the amount actually spent by the Project with City/County certified MWBEs. The amount shall be remitted to EDGE within thirty (30) days of receipt of written demand from EDGE. The Applicant shall pay interest at the highest legal rate for any amount outstanding after the expiration of the initial thirty (30) day notice period.

In the event EDGE should employ attorneys or incur other expenses for the enforcement of performance or observance of any obligation or agreement on the part of the Applicant or its subsidiaries or affiliates herein, then the Applicant agrees that it will on demand therefor pay to EDGE, the reasonable fee of such attorneys and such other reasonable expenses incurred by EDGE.

3.4 Governmental Approvals.

A. The Port Commission will not approve any Project that has not been appropriately zoned by, or received all required variances, from the governing body having jurisdiction over the land on which the facilities are to be constructed. Additionally, should changes in design necessitate zoning variances after execution of an Inducement Agreement, the Port Commission reserves the right to withdraw its Inducement Agreement and to refuse to finance such Projects until and unless the appropriate variances are obtained and substantiated by certificate provided to the Port Commission.

B. The Applicant is responsible for obtaining any required reservation of private activity bond authority from the Tennessee Department of Economic and Community Development.

3.5 Securities Laws. Adequate provision, in the form of an indemnity or otherwise, shall be made to assure the Port Commission that full disclosure is made with regard to each financing and that all securities laws have been complied with. Adequate provisions shall be made for continuing disclosure by the Applicant.

3.6 Trustee. All Bond issues must utilize a financial institution or trust company to act as Trustee, unless such Bond issue is acquired in full by a financial institution or trust company for its own account. The Port Commission encourages the use of qualified local institutions. At the time of appointment, each Trustee (or in the case of a Trustee included in a bank holding company, the parent bank holding company) should have a combined capital stock, surplus, and undivided profits of at least \$100,000,000.00.

3.7 Conflicts. To avoid conflicts of interest, no financing will be approved if,

A. Port Commission Counsel or Bond Counsel has a professional legal relationship or direct or indirect ownership in the Applicant or any sponsor of the financing other than

incidental representation, but the Port Commission may waive this condition in appropriate circumstances. In the event of a conflict involving Port Commission Counsel, special counsel shall be retained by the Port Commission to represent it in connection with the particular Project being considered; or

B. Any current Port Commission member receives a benefit in violation of the Port Commission’s conflict rules contained in the Port Commission’s bylaws.

3.8 Bond Fees, Port Commission Counsel Fees, and Expenses.

A. The Port Commission shall receive a \$2,000.00 filing fee which shall be credited against the Closing Fee.

B. The Port Commission shall receive a closing fee equal to 50 basis points (1/2 of 1% or 0.005) of the first one million dollars of the bonds (.005 x 1st \$1 million) plus 15 basis points (15/100th of 1% or 0.0015 for the issued bonds in excess of one million dollars (0.0015 x amount in excess of \$1 million) (“Closing Fee”).

C. The Applicant is responsible for payment at closing of Port Commission Counsel's legal fees and expenses as outlined below:

| <u>Amount of Bond Issue</u> | <u>Fee</u> |
|-----------------------------|---|
| \$0 - \$2,000,000 | The greater of .003 of face amount of Bond issue or \$2,000 |
| \$2,000,001 - \$4,000,000 | \$6,000 plus .0025 of face amount of Bond issue over \$2,000,000 |
| \$4,000,001 - \$6,000,000 | \$11,000 plus .002 of face amount of Bond issue over \$4,000,000 |
| \$6,000,001 - \$8,000,000 | \$15,000 plus .0015 of face amount of Bond issue over \$6,000,000 |
| Over \$8,000,000 | \$18,000 plus .001 of face amount of Bond issue over \$8,000,000 |

Notwithstanding the above fee structure, in normal bond issues with no unusual complications, Port Commission Counsel’s fee will not exceed fifty per centum (50%) of Bond

Counsel's fee provided that Bond Counsel's fee has been determined by an arm's length negotiation without any volume or other discount. Port Commission counsel and the Applicant shall establish any additional and reasonable fee to be paid by the Applicant prior to Port Commission action.

D. The Port Commission shall also receive an annual administrative fee equal to 2.5 basis points (0.025% or 0.00025) of the original principal amount of the issued debt by January 30th of each year after the first calendar year from the closing.

E. Normal expenses, including long distance phone calls, travel expenses, and photocopies will be billed in addition to the above. The quoted fees are for normal issues with no unexpected or unusual complications. In the event of any such complications, the fee will be adjusted accordingly. In the event the proposed Bond issue fails to close, fees will be on an hourly basis for time actually expended to date.

3.9 Post-Issuance Tax Compliance. The Port Commission requires every conduit borrower to certify that it has in place post-issuance tax compliance policy and procedures consistent with the standards promulgated by the Internal Revenue Service in its relevant pronouncements. The Port Commission is not responsible for monitoring or approving such policies. Every conduit borrower will complete with the aid of Bond Counsel and submit to Port Commission Counsel at the closing of the bond or note financing, the Certificate of Written Procedures for Post-Closing Ongoing Compliance in the form provided by the Port Commission staff.

ARTICLE IV DEBT MANAGEMENT POLICY

4.1 Transparency. The Port Commission shall comply with all legal requirements for notice and for open public meetings related to debt issuance. The Port Commission will comply with all legal requirements regarding adequate public notice of all meetings of the Port Commission. In the interest of transparency, all costs (including interest, issuance, continuing, and one-time) shall be disclosed to the Port Commission members, Port Commission counsel, and other stakeholders in a timely manner. The Port Commission will make available copies of each Report on Debt Obligation (State Form No. CT-0253) to any person upon request. All documents, transcripts, applications, and materials related to any debt issuance shall be treated as public documents available for review and copying by the public upon request, except for those documents and communications protected by attorney client privilege or otherwise protected from disclosure by federal or state law.

4.2 Professionals. The Port Commission shall require all professionals engaged in the process of issuing debt to clearly disclose all compensation and consideration received related to services provided in the debt issuance process by both the Port Commission and the lender or other conduit issuer, if any. This includes "soft" costs or compensations in lieu of direct payments. Such disclosure shall be made in the Project Application and the Report on Debt Obligation.

4.3 Counsel. The Port Commission shall enter into an engagement letter agreement with each lawyer or law firm representing the Port Commission in a debt transaction. No engagement letter

is required for any lawyer who is an employee of the Port Commission or lawyer or law firm which is under a general appointment or contract to serve as counsel to the Port Commission. The Port Commission does not need an engagement letter with counsel not representing the Port Commission, such as underwriters' counsel. Bond Counsel will be nominated by the Applicant. However, Bond Counsel must be listed in the most recent edition of The Bond Buyer's Municipal Marketplace publication ("Red Book"). Bond Counsel shall either enter into an engagement letter with the Port Commission or shall state in writing that it does not represent the Port Commission. If Bond Counsel does not represent the Port Commission in a transaction, the Port Commission will enter into a fee payment letter agreement with such Bond Counsel's firm specifying the party represented in the debt transaction and that the Port Commission is not obligated with respect to the payment of such Bond Counsel's fees and expenses.

4.4 Financial Advisor. If the Port Commission chooses to hire financial advisors, the Port Commission shall enter into a written agreement with each person or firm serving as financial advisor for debt management and transactions. Whether in a competitive or negotiated sale, the financial advisor shall not be permitted to bid on, privately place, or underwrite an issue for which they are or have been providing advisory services for the issuance.

4.5 Underwriter. If there is an underwriter, the Port Commission shall require the Underwriter to clearly identify itself in writing (*e.g.*, in a response to a request for proposals or in promotional materials provided to an issuer) as an underwriter and not as a financial advisor from the earliest stages of its relationship with the Port Commission with respect to that issue. The Underwriter must clarify its primary role as a purchaser of securities in an arm's-length commercial transaction and that it has financial and other interests that differ from those of the Port Commission. The Underwriter in a publicly offered negotiated sale shall be required to provide pricing information both as to interest rates and to takedown per maturity to the Port Commission or Port Commission counsel in advance of the pricing of the debt.

4.6 Conflicts. Professionals involved in a debt transaction hired or compensated by the Port Commission shall be required to disclose to the Port Commission existing client and business relationships between and among the professionals to a transaction (including but not limited to financial advisor, swap advisor, bond counsel, swap counsel, Trustee, paying agent, underwriter, counterparty, and remarketing agent), as well as conduit issuers, sponsoring organizations and program administrators. This disclosure shall include that information reasonably sufficient to allow the Port Commission to appreciate the significance of the relationships. Professionals who become involved in the debt transaction as a result of a bid submitted in a widely and publicly advertised competitive sale conducted using an industry standard electronic bidding platform are not subject to this disclosure. No disclosure is required that would violate any rule or regulation of professional conduct.

ARTICLE V AMENDMENTS

The Port Commission may amend or modify its Statement of Policies and Procedures as it deems necessary; however, any amendment to the Port Commission's Statement of Policies and Procedures occurring after issuance of Bonds for a particular Project shall not apply to such Project

unless written approval is obtained from the Applicant and the Trustee obtains an opinion satisfactory to the Port Commission, the Trustee, and the Applicant by counsel knowledgeable in such matters to the effect that such amendments will not adversely affect the rights of holders of the Bonds issued in connection with such Project. The Port Commission has specifically granted authority to the Port Commission staff to create all necessary forms for the bond application process pursuant to these policies.

The Port Commission reserves the right to impose additional specific requirements with respect to any Project prior to approval of a Final Bond Resolution. The requirements of these Policies and Procedures may be waived by a majority vote of Port Commission members present at the meeting at which a Project is considered.