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TO: Members of the Board of Directors of the Hospital Facility Authority
of the City of Salem, Oregon

RE: Duties and Liabilities of Members of the Board of Directors of a Hospital Facility
Authority

Dear Member:

People who are asked to serve on the Board of Directors of a hospital facility authority usually have a number of questions about the purpose and responsibilities of that service. We hope this letter will answer some of those questions.

Background. Many states, including Oregon, provide by law for the creation of a public authority called hospital facility authorities to allow public and private non-profit health care facilities to pay for capital improvements through tax-exempt bonds. With the decline in the availability of direct federal funds for hospital facilities, the use of tax-exempt financing for hospital construction and improvements nationally has accelerated. Thus, the hospital facility authority plays a crucial role in the financing of health care facilities. These health care facilities include hospitals and adult continuing care facilities (collectively, the "Borrower").

Creation of an Authority. Oregon statutes provide that a hospital facility authority may be created by the governing body of a county, a city or a local health district. The purpose of the authority is to assist in the financing of hospital facilities by issuing bonds which will be repaid from the revenues of the Borrower. The Borrower may be publicly owned, or it may be a private, nonprofit hospital or continuing care facility.

An authority is usually created by the local county or city governing body. The governing body adopts an ordinance or resolution:

- (i) Establishing the authority;
- (ii) Designating a name, such as the "Hospital Facility Authority of the City of Salem, Oregon" (the "Salem Authority");



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(iii) Prescribing the number of directors who will serve on the Board of Directors. Oregon Revised Statute (“ORS”) Section 441.535(2)(b)) sets forth that not less than five nor more than eleven members shall serve on an authority board. Resolution 2013-01, which amended and restated the bylaws of the Salem Authority (the “Bylaws”), specifies that the Salem Authority be managed and controlled by a board composed of seven members;

(iv) Setting the term limits. The Bylaws, set the term limits of the members of the Salem Authority at four (4) years. There is no limit on the number of successive terms that a member may serve. The appointments or reappointments are made by the City Council of the City of Salem; and

(v) appointing the initial Board of Directors.

At least one director must be a member of the local governing body that established the authority. The directors are appointed by and serve at the pleasure of the local governing body. The directors serve without pay, but may receive reimbursement for their expenses incurred in the performance of their duties. These expenses are usually paid by the Borrower which seeks financing. The authority continues in existence so long as it has bonds outstanding. When all of the obligations of the authority have been paid, or provision has been made for their payment, the authority may be dissolved by the governing body which created it.

Purpose of Authority. Usually, a hospital facility authority is created because a facility in the community desires to expand or refinance existing indebtedness through tax-exempt bonds. If the program involves construction, the Borrower will have had plans and specifications prepared so that construction may commence when financing arrangements have been made. In each case, the Borrower and its accountants will have prepared a schedule of payment which the management believes can be met from future revenues. Frequently, a feasibility study will have been made by a public accounting firm, an actuary or other professional advisor.

Repayment of Bonds. The bonds issued by a hospital facility authority are payable solely from the revenues and other assets of the Borrower, as described in the related bond documents. The directors of the authority are not personally responsible for repayment of the bonds, and the bonds are not regarded as obligations of the city or county creating the authority, or a charge on its tax revenues. A hospital facility authority does not have the power to levy taxes. The bonds are revenue bonds, and whether the investing public will buy them, and whether there will be revenues from the facilities to pay the bonds as they become due, depend upon the revenues of and the management of the facility. The Board of Directors of the hospital



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facility authority will want to satisfy themselves that the projections of revenues over the life of the bonds appear to be adequate to retire the bonds.

Issuance of Bonds. The law does not require that hospital facility bonds be sold at public competitive sale. They usually are sold on a negotiated basis to a bond underwriting firm.

The principal function of the Board of Directors of the hospital facility authority is to approve the documents which have been prepared by Bond Counsel, the attorney for the Borrower and counsel for the underwriters, and to determine that the issuance of the bonds is in the public interest and that, insofar as the Board can determine by the exercise of due diligence, the bonds are not being sold based upon misrepresentations.

How does the financing of hospital facilities through a hospital facility authority actually function? The state statutes provide considerable flexibility in the technical financial arrangements. In a fairly typical transaction, an authority issues bonds and loans the proceeds to a nonprofit corporation which owns and operates the hospital or adult continuing care facility, and the corporation repays the loan over a term of years. The authority may mortgage the facilities to a trustee, usually a bank with corporate trust powers. When the authority has issued and sold the bonds, the proceeds are paid to the trustee, who disburses the money in accordance with the instructions to the trustee. The lease or loan payments are made by the Borrower directly to the trustee. The trustee makes payment from these payments. These arrangements continue until all of the bonds have been paid, at which time the title to the hospital facilities will be reconveyed to the Borrower. Whether a given transaction will involve a transfer of title to the authority, or a mortgage, or a lease or a loan, or some other security device, and whether the Borrower pledges its gross revenues or its net revenues, are matters which are negotiated by the Borrower and the bond underwriter.

Post Issuance Compliance Procedures. The Internal Revenue Code of 1986 (the "Code") requires issuers of bonds, such as the Authority, to adopt post issuance compliance guidelines that will ensure appropriate action is taken in order that interest on tax-exempt bonds remain excludable from gross income under the Code. The Guidelines are intended to formally memorialize certain policies and procedures of the Authority previously adopted or followed by the Authority in connection with the issuance of its bonds. An example of the Tax Compliance Guidelines is attached hereto as Exhibit A.



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Reporting Requirements for Public Officials. Pursuant to ORS 244.050(1)(s), hospital facility authority board members are considered “public officials.” Public official is defined in ORS 244.020(14) as “any person who is serving the State of Oregon or any of its political subdivisions or any other public body as an elected official, appointed official, employee or agent.....” ORS 244.025(1) states that a public official may not receive any gift with an aggregate value in excess of \$50.00 from any single source. ORS 244.050(2) requires a public official to file with the Oregon Government Ethics Commission, on or before April 15 of each year, a statement of economic interest as required under ORS 244.060. ORS Section 244.060 is attached hereto as Exhibit B. An example of the Form is attached as Exhibit C and the website for future filings is http://www.oregon.gov/ogec/pages/forms_publications.aspx.

Securities Laws. The Securities and Exchange Commission requires issuers of bonds, including conduit issuers such as the Salem Authority, to make sure that the bonds it issues and its Borrowers comply with the primary and continuing disclosure requirements of the federal securities laws.

As you will note, the principal duties of the directors are:

1. Determining that the construction or refinancing of the facilities is in the public interest. The authority does not have sole responsibility for determining the need for additional facilities in the community.
2. Approving the legal documents to be satisfied that the financing arrangement is in the public interest and that the offering documents comply with the requirements of the federal securities laws. In this connection, the board will have the assistance of the bond counsel and the underwriter in the actual preparation of the documents and in developing the official statement or any offering documents. The Board will also need to make sure that the Borrower has post-issuance compliance procedures in place to maintain the tax-exempt status of the Bonds and to make sure the Borrower complies with its continuing disclosure requirements.
3. Complying with reporting requirements for public officials in accordance with ORS Chapter 244.



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Following the issuance and sale of the bonds, payments will be made by the Borrower directly to the trustee, and the trustee will make payment to the bondholders. The directors have no legal responsibility for making the payments.

We hope these observations are helpful.

Very truly yours,

ORRICK, HERRINGTON & SUTCLIFFE LLP

Douglas E. Goe

EXHIBIT A
TAX COMPLIANCE GUIDELINES

**HOSPITAL FACILITY AUTHORITY
OF THE CITY OF SALEM, OREGON**

TAX COMPLIANCE GUIDELINES

Dated: April 29, 2013

I. Purpose

These guidelines (the “Guidelines”) are adopted by the Hospital Facility Authority of the City of Salem, Oregon (the “Issuer”) to ensure that appropriate action is taken in order that interest on tax-exempt bonds of the Issuer (the “Bonds”) remains excludable from gross income under Section 103 of the Internal Revenue Code of 1986 (the “Code”). The Guidelines are intended to formally memorialize certain policies and procedures of the Issuer previously adopted or followed by the Issuer in connection with the issuance of its Bonds.

The Issuer understands that failure to comply with the policies and procedures set forth in the Guidelines could result in the retroactive loss of the exclusion of interest on Bonds from federal gross income, and, thus, the Issuer will, in the Tax Certificate and Agreement for each issue of Bonds (the “Tax Certificate”), require the conduit borrower to consult with its legal counsel and with Orrick, Herrington & Sutcliffe LLP as bond counsel or other counsel nationally recognized in the area of municipal finance (“Bond Counsel”), in advance, regarding deviations from the facts and expectations as set forth in the closing certifications relating to any issue of Bonds.

II. Ongoing Relationship with Outside Advisors

The Issuer maintains an ongoing relationship with outside legal counsel and Bond Counsel and other advisors to serve as a resource for advice regarding the Bonds’ federal tax compliance.

III. Persons Responsible for Tax Compliance

The Issuer issues Bonds for the purpose of loaning the proceeds (the “Bond Proceeds”) to other entities (“Conduit Borrowers”) to finance or refinance certain assets (the “Bond-financed Assets”), and the Issuer relies upon representations and covenants of the Conduit Borrower in issuing the Bonds and executing the Tax Certificate and other documents in connection with the issuance of the Bonds. The Chair, the Vice Chair or the Secretary-Treasurer of the Issuer are the persons who generally execute the Bond documents, including the Tax Certificate. The Recording Secretary of the Issuer is a primary contact with respect to the Issuer’s Bonds. The Issuer relies upon actions by the Conduit Borrowers and upon the advice of its outside advisors for ongoing compliance matters with respect to the Bonds. The Issuer’s legal counsel, Orrick, Herrington & Sutcliffe LLP, is the primary party to consult with Bond Counsel and the Conduit Borrowers on a continual basis for the entire term of the Bonds.

In connection with an issuance of Bonds, the Issuer shall require the Conduit Borrower to adopt its own Post-Issuance Compliance Policies with respect to the Bonds of the Issuer and any other tax-exempt obligations that may be issued to benefit such Conduit Borrower.

IV. Investments/Role of Trustee

The investment of Bond Proceeds is managed by the Conduit Borrower through instructions to a bank trustee. Restrictions on such investments required by the Code are set forth in the Tax Certificate.

To the extent that unexpended Bond Proceeds are held by a bank trustee, the trustee is responsible for recording all investments and transactions relating to such Bond Proceeds. The trustee will provide to the Issuer and/or Conduit Borrower regular, periodic statements regarding the investments and transactions involving such Bond Proceeds. To the extent that unexpended Bond Proceeds are held by a party other than a bank trustee such other party is responsible for recording all investments and transactions relating to such Bond Proceeds. The other party will provide to the Conduit Borrower, and to the Issuer, upon request, Issuer regular, periodic statements regarding the investment and transactions involving such Bond Proceeds.

V. Arbitrage Rebate and Yield

The Issuer shall require the Conduit Borrower to represent and covenant in the Tax Certificate and other applicable bond documents to calculate, pay on a timely basis, and maintain all records with respect to rebate on the Bonds. Except for instances in which Bonds are issued to: (i) refund a prior issue that has no unexpended proceeds, and (ii) the Bonds do not have a debt service reserve fund, the Issuer shall direct the Conduit Borrower to engage an arbitrage rebate service provider to assist in the calculation of arbitrage rebate attributable to the investment of bond proceeds. The arbitrage rebate service provider will monitor to assure compliance with required rebate payments, if any, no later than each five (5) year period over the term of the Bonds and upon the final maturity date of each issue of Bonds. The Issuer shall retain copies of any Forms 8038-T that it executes in connection with an issue of Bonds pursuant to Section VII below.

VI. Impermissible Use of Bond Proceeds and Remedial Actions

The Issuer shall require a Conduit Borrower to notify the Issuer, by contacting the Issuer's Bond Counsel, prior to taking any actions with respect to Bond Proceeds or Bond-financed Assets which differ from the covenants and representations set forth in the Tax Certificate that may adversely affect the tax-exempt status of the Bonds. For this purpose, use includes the sale or lease of a Bond-financed Asset or use of a Bond-financed Asset by a non-employee manager or service provider pursuant to a management or service contract. Upon receiving such notification, Bond Counsel shall determine whether such proposed action may adversely affect the tax-exempt status of the Bonds and, if so, advise the Conduit Borrower what steps must be taken to preserve the tax-exempt status of the Bonds. Bond Counsel shall keep in the Issuer informed of such events.

In the event that Bond Counsel concludes that proposed actions of a Conduit Borrower will adversely affect the tax-exempt status of the Bonds, various remedies are available to the Issuer in the event of certain violations on the limits of use of Bond Proceeds, the investment of Bond Proceeds, and the use of the Bond-financed Assets. For example, a "change in use" of the Bond-financed Assets which results in excessive private business use may be corrected through a "remedial action" that is described in the Treasury Regulations. Such remedial actions include a defeasance of the portion of the Bonds affected by the excessive private business use.

In addition, the Issuer shall require a Conduit Borrower to notify the Issuer, by contacting its Bond Counsel, if such Conduit Borrower discovers that action has already been taken with respect to Bond Proceeds or Bond-financed Assets which differ from the covenants and representations set forth in the Tax Certificate that may adversely affect the tax-exempt status of the Bonds. For this purpose, use includes the sale or lease of a Bond-financed Asset or use of a Bond-financed Asset by a non-employee manager or service provider pursuant to a management or service contract. Upon receiving such notification, Bond Counsel shall advise the Conduit Borrower as to the affect of such action on the tax-exempt status of the Bonds (if any) and whether such action may be corrected through the Voluntary Closing Agreement Program described in IRS Notice 2008-31. Bond Counsel shall keep in the Issuer informed of such events.

VII. Record Keeping Requirements

The Issuer, in the Tax Certificate for each issue of Bonds, shall require the Conduit Borrower to maintain a copy of all relevant documents and records sufficient to support that the federal tax requirements relating to the Bonds for the term of the Bonds (including refunding bonds, if any) plus three years, including the following documents and records:

- Bond closing transcript and other relevant documentation.
- Documents created by the Conduit Borrower relating to the allocation of Bond Proceeds to expenditures.
- Documents created by the Conduit Borrower regarding its use of Bond-financed Assets and any contracts and arrangements with outside parties involving use of the Bond-financed Assets.
- All records of investments, investment agreements (including the solicitation and all responses received from the bidding of any investment agreement), United States Treasury Securities-State and Local Government Series ("SLGs") subscription information, arbitrage reports, return filings with the IRS and supporting/substantiating documents.

Such records may be in the form of documents or electronic copies of documents, appropriately indexed to specific Bond issues and compliance functions.

VIII. Information Return Filings

The Issuer shall arrange for the compliance with IRS information return filing requirements (e.g., IRS 8038 forms) on a timely basis as advised by legal counsel and Bond Counsel.