

GUIDELINES FOR INTEREST RATE EXCHANGE AGREEMENTS (Municipal Court Facilities and Municipal Health Facilities)

Authorization

Subject to the provisions of Section 2926 of the Public Authorities Law (“Section 2926”), the Dormitory Authority of the State of New York (“DASNY”) is authorized to enter into interest rate exchange and similar agreements (commonly referred to as “swaps”) in connection with debt issued on behalf of a municipality for court facilities and combined occupancy structures (“Court Facilities”) and debt issued on behalf of a municipality for health facilities (“Health Facilities”). Subject to certain requirements and procedures, the maximum total notional amount of interest rate exchange and similar agreements (other than Excluded Agreements as described below) that can be entered into by DASNY on behalf of a municipality shall not exceed twenty percent of debt incurred by DASNY for such municipality for Court Facilities or Health Facilities, as the case may be. These policy, procedures, reporting and control guidelines (the “Guidelines”) establish the requirements to be met and the process to be used by DASNY when entering into interest rate exchange agreements in connection with Court Facilities and Health Facilities debt.

Purpose of Agreement

DASNY may enter into an interest rate exchange or similar agreement(s), based on the International Swap and Derivatives Association (“ISDA”) Master Agreement as further described in the section “**Form of Agreements**”, in connection with Court Facilities and Health Facilities debt obligations (the “Agreement”) if the Agreement is reasonably expected to:

- A. reduce or hedge an exposure to changes in interest rates;
- B. result in a lower net cost of borrowing with respect to the Court Facilities or Health Facilities obligations; or
- C. provide benefits and/or flexibility to the municipality or DASNY with respect to financial exposure or financial position.

DASNY shall not enter into an Agreement unless the Agreement is reasonably expected to achieve one or more of the objectives listed above and the municipality concurs with such determination. In addition, DASNY, together with the municipality, shall periodically evaluate any Agreements for risks and exposures including, but not limited to, the following categories:

- counterparty risk;
- termination risk;
- rollover risk;
- basis risk;
- tax event risk; and
- amortization risk.

DASNY, in consultation with the municipality, shall also consider the long-term implications associated with entering into such agreements including, but not limited to, the following:

- costs of borrowing;
- historical trends;
- use of capacity for variable rate bonds and related credit enhancements; and
- any potential impact on the future ability to call bonds, including opportunities to refund related debt obligations.

Under an Agreement, DASNY may be either the floating rate or fixed rate payor. The Agreement may also provide for the establishment of maximum or minimum interest rates (or both), payable thereunder and contain any other protections designed to limit exposure to changes in interest rates.

DASNY shall not enter into any Agreement for the purpose of speculation.

Excluded Agreements

An Excluded Agreement may be executed by DASNY for the purpose of reducing or eliminating a situation of risk or exposure under an existing Agreement, including but not limited to a counterparty downgrade, default, or other actual or potential economic loss.

Compliance with Applicable Law

DASNY will take necessary or appropriate actions, from time to time, to comply with the requirements of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the “Act”) and other applicable laws that relate to DASNY’s interest rate exchange and similar agreements. DASNY will establish policies and procedures that are necessary or appropriate in order for DASNY’s interest rate exchange and similar agreements to be maintained in accordance with the requirements of the Act and other applicable laws, which policies and procedures will be modified from time to time, as necessary, to comply with the Act and other applicable laws. Subject to the approval of DASNY’s Board, DASNY will amend its interest rate exchange and similar agreements, in a manner determined by DASNY to be necessary or appropriate, from time to time, to comply with the requirements of the Act and other applicable laws.

Term of the Agreement

The term of any Agreement shall not exceed the final maturity of the bonds, notes or other obligations of DASNY issued or outstanding in connection with such agreement.

Selection of Counterparties and Other Procurements

DASNY shall select counterparties through an evaluation of qualifications based upon a Request for Qualifications solicited from interested providers. The evaluation of prospective counterparties shall include consideration of the following criteria:

- A. the requirements of Section 2926;

- B. substantial and significant experience and presence in the municipal swap market;
- C. maintenance of a two-way swap book which facilitates hedging of exposure,
- D. demonstrated capability to develop creative and innovative ideas,
- E. relationship with and understanding of the needs of DASNY and the State; and
- F. other factors deemed appropriate by DASNY.

Upon the completion of the evaluations, a list of approved counterparties shall be prepared. Such list may include senior and other counterparty designations. Such Request for Qualifications may establish maximum limits to any one approved counterparty, such as a maximum notional amount per firm. DASNY may consult with a municipality on the notional amount limit for each counterparty. In no event shall the aggregate notional amount of outstanding interest rate exchange agreements with the approved counterparties (other than Excluded Agreements) exceed the 20 percent maximum notional amount permitted under Section 2926 for debt outstanding for a municipality's Court Facilities or Health Facilities.

The counterparty for a particular transaction will be selected from the approved list in accordance with the procedures provided in this section and in accordance with a competitive process based on the lowest overall net cost of the transaction, and such additional factors as DASNY deems pertinent. Alternatively, DASNY shall have the option to negotiate agreements or use a bidding process involving a combination of competitive bids and negotiations with counterparties to effectuate other sound business purposes.

DASNY may use counterparties previously approved by the Board from a competitive process for swap transactions.

DASNY shall also procure credit enhancement, liquidity facilities, and establish reserves in connection with such agreements, if necessary or advisable, with the same standards and using the same methods as it employs for the selection of credit enhancement, liquidity facilities, and the determination for the establishment of reserves for its bonds, notes, or other obligations.

DASNY shall select swap advisors through an evaluation of qualifications based upon a Request for Proposals solicited from interested providers. DASNY may select one or more swap advisors who may be used from time to time to advise DASNY with respect to interest rate exchange and similar agreements or any other matters for which the swap advisor has the appropriate expertise. DASNY will establish policies and procedures to ensure that it utilizes the services of a swap advisor or swap advisors with respect to its interest rate exchange and similar agreements that satisfy the requirements of the Act and/or other applicable law, as deemed necessary or appropriate by DASNY, and such policies and procedures shall provide for the ongoing monitoring of such swap advisor or swap advisors.

Credit Ratings of Counterparties

As required by Section 2926, a counterparty shall have credit ratings from at least two nationally recognized statistical rating agency that are within the three highest investment grade categories,

or the payment obligations of the counterparty shall be unconditionally guaranteed by an entity with such credit ratings.

In the event a counterparty is downgraded or DASNY is notified of the termination of an Agreement by the counterparty, DASNY will promptly provide the affected municipality with notification of such downgrade or termination in writing and, if applicable, comply with the collateralization provisions in Section 2926.

Collateralization

Pursuant to the provisions of Section 2926, in the event that the rating of any counterparty, or of the entity unconditionally guaranteeing its payment obligations, is downgraded so that the counterparty, or such guarantor if applicable, does not have credit ratings meeting the criteria contained in the section “Credit Ratings of Counterparties” above, DASNY shall require the counterparty to deposit collateral with DASNY or a custodian acting on its behalf pursuant to a written collateral agreement. Such collateral shall consist of direct obligations of, or obligations the principal and interest on which are guaranteed by, the United States of America (including cash) with a net market value of at least one hundred two percent of the net market value of the contract to DASNY (“collateral requirement”). Any collateral agreement shall require that the net market value of the contract and the collateral be marked-to-market periodically, but not less than once each month. If the market value of the collateral shall be found to be less than one hundred two percent of the net market value of the contract to DASNY, than the counterparty shall be required to post additional collateral to meet such requirement.

Form of Agreements and Approvals

DASNY shall enter into written Agreements based on the ISDA Master Agreement and Schedule to the Master Agreement (the “Master Agreement”) with each approved counterparty. Each Agreement, including the modification or termination thereof, shall be subject to the approval of DASNY’s governing board. This may include the approval as to form of such Master Agreement, and delegations to staff of such matters as deemed necessary or desirable to effectuate the purposes of Section 2926, these Guidelines, and a particular swap transaction, provided that they do not alter or amend the requirements of these Guidelines. Transactions entered into under the Master Agreement shall be evidenced by written Confirmations.

Monitoring and Reporting Requirements

Pursuant to the provisions of Section 2926, DASNY shall monitor its interest rate exchange program and all transactions made thereunder with respect to the items listed below. On or before March 1st in any State fiscal year in which DASNY enters into or continues to be a party to an Interest Rate Exchange Agreement, DASNY will report to the Director of the Division of the Budget, the chairs of the Senate Finance Committee and the Assembly Ways and Means Committee, [any municipality on whose behalf DASNY has executed an Agreement] and the State Comptroller, with respect to:

- A. the value of the Bond Market Association (BMA) index and/or such other indices applicable to DASNY’s Agreements;

- B. payments required to be paid and received, and payments actually paid and received under each agreement;
- C. the status of individual Agreements in effect, including a summary of the terms and conditions thereto, such as notional amounts, rates, terms, bases or indices employed, a description of each counterparty thereto and their respective credit ratings, and the method of their procurement;
- D. the status of any credit enhancement, liquidity facility or reserves associated with the Agreement including an accounting of all costs and expenses incurred, whether or not incurred in conjunction with the procurement of such credit enhancement or liquidity facilities;
- E. the mark-to-market valuations of each Agreement, and an assessment of counterparty risk, termination risk, and other associated risks, and the amount of collateral which has been required to be posted, if any, and the amount which has been actually posted; and
- F. identification of each transaction placed in the preceding month, including a summary of the terms and conditions thereof.

DASNY's annual financial statements and annual report shall include a discussion and accounting of each existing Agreement in accordance with generally accepted accounting principles. If not otherwise required, DASNY shall also include a brief general description of each such Agreement, including their terms and conditions, in such reports.

DASNY shall maintain records of its interest rate exchange and similar agreements in accordance with the requirements of the Act and other applicable laws and shall provide for the retrieval of such records in accordance with the requirements of applicable law.

Execution

Each Agreement shall also be subject to a written independent finding that the terms and conditions reflect a fair market value of such Agreement as of the date of its execution, regardless of whether such Agreement was solicited on a competitive or negotiated basis. Any Excluded Agreements executed by DASNY shall also be subject to a written independent finding that supports DASNY entering into such Agreements in accordance with Section 2926 and these Guidelines.

DASNY shall not enter into any Agreement, Excluded Agreement or Confirmation (including extensions, reversals, options and terminations thereof) or amend or supplement any of the same without the express written consent of the municipality for whose benefit such Agreement, Excluded Agreement or Confirmation is being executed.

Revised 4/10/13