

Village of Tuxedo Park - Board Resolution for Post-Issuance Compliance Policies

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To: Elizabeth Doherty <edoherty@tuxedopark-ny.gov>

Cc: John Ledwith <jledwith@tuxedopark-ny.gov>; David McFadden <dmcfadden@tuxedopark-ny.gov>; Alex Neubert <aneubert@HarrisBeach.com>

Good Afternoon Elizabeth,

In a conversation with John Ledwith yesterday as our firm was assisting the Village in completing a tax questionnaire for EFC, it was asked whether or not the Village has in place Post-Issuance Compliance Procedures, we advised John to state "yes" and that we would also provide the Village with such policy for adoption.

As such, attached is a proposed form of Resolution for consideration by the Village Board of Trustees at their meeting on September 21st to adopt certain written Post-Issuance Compliance Policies and Procedures.

The Resolution does not need to be published in the Village's official newspaper but we do ask that a certified copy be forwarded to us after adoption.

If you have any questions or require any additional information, please do not hesitate to reach out to Alex or me. Thank you.

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Statement of Confidentiality

This electronic message may contain privileged or confidential information. If you are not the intended recipient of this e-mail, please delete it from your system and advise the sender.

RESOLUTION OF THE BOARD OF TRUSTEES OF THE VILLAGE OF TUXEDO PARK, ORANGE COUNTY, NEW YORK (THE "VILLAGE") AUTHORIZING AND ADOPTING POST ISSUANCE COMPLIANCE POLICIES AND PROCEDURES RELATED TO THE VILLAGE'S TAX-EXEMPT OBLIGATIONS, SUCH POLICIES AND PROCEDURES INTENDED TO ENSURE THAT THE REQUIREMENTS IMPOSED UPON THE VILLAGE PURSUANT TO THE INTERNAL REVENUE CODE OF 1986, AS AMENDED, WILL BE SATISFIED

WHEREAS, the Village of Tuxedo Park, Orange County, New York (the "Village") previously has issued bond and notes (the "Tax-Exempt Obligations"), the interest on which is excluded from gross income of the owners thereof pursuant to Section 103 of the Internal Revenue Code of 1986, as amended (the "Code"); and

WHEREAS, the Village intends to issue additional series of Tax-Exempt Obligations in the future; and

WHEREAS, in order to ensure that the interest on Village's Tax-Exempt Obligations will continue to be excluded from gross income of the owners thereof for purposes of federal income taxation, and that the Village complies with its tax certifications relating to the Tax-Exempt Obligations, the Village Board has determined, based on the advice of the Village's Bond Counsel, to adopt certain written Post-Issuance Compliance Policies and Procedures in the form attached hereto as Exhibit A and made a part hereof (the "Post-Issuance Compliance Procedures").

NOW, THEREFORE, BE IT RESOLVED by the Village Board of Trustees of the Village of Tuxedo Park, Orange County, New York (the "Board"), as follows:

Section 1. The Board hereby approves and adopts the Post-Issuance Compliance Procedures.

Section 2. The Board hereby appoints the Village Treasurer of the Village to serve as the "Designated Tax Compliance Official" under the Post-Issuance Compliance Procedures and hereby authorizes and directs the Village Treasurer, acting in such capacity, to take such actions, after appropriate consultation with Bond Counsel to the Village, as the Village Treasurer deems necessary, appropriate or desirable to effect the implementation of the Post Issuance Compliance Procedures, and hereby further authorizes the Village Treasurer, as such Designated Tax Compliance Official, to delegate to such other Village officials or employees as the Village Treasurer shall determine is necessary or appropriate, the responsibility to take certain specific actions called for by the Post-Issuance Compliance Procedures.

Section 3. This Resolution shall take effect immediately.

The question of the adoption of the foregoing resolution was duly put to vote on a roll call, which resulted as follows.

<u>David C. McFadden, Mayor</u>	VOTING	_____
<u>Paul Brooke, Trustee</u>	VOTING	_____
<u>Christopher Kasker, Trustee</u>	VOTING	_____
<u>Joshua Scherer, Trustee</u>	VOTING	_____
<u>Tinka Shaw, Trustee</u>	VOTING	_____

The foregoing resolution was thereupon declared duly adopted.

September 21, 2022

STATE OF NEW YORK)
COUNTY OF ORANGE) SS.:

I, the undersigned Village Clerk of the Village of Tuxedo Park, Orange County, New York, DO HEREBY CERTIFY as follows:

1. I am the duly qualified and acting Clerk of the Village of Tuxedo Park, Orange County, New York (the "Village") and the custodian of the records of the Village, including the minutes of the proceedings of the Village Board of Trustees (the "Board"), and am duly authorized to execute this certificate.

2. A regular meeting of the Board was held on September 21, 2022 and attached hereto is a true and correct copy of a resolution duly adopted at such meeting and entitled:

RESOLUTION OF THE BOARD OF THE VILLAGE OF TUXEDO PARK, ORANGE COUNTY, NEW YORK (THE "VILLAGE") AUTHORIZING AND ADOPTING POST ISSUANCE COMPLIANCE POLICIES AND PROCEDURES RELATED TO THE VILLAGE'S TAX-EXEMPT OBLIGATIONS, SUCH POLICIES AND PROCEDURES INTENDED TO ENSURE THAT THE REQUIREMENTS IMPOSED UPON THE VILLAGE PURSUANT TO THE INTERNAL REVENUE CODE OF 1986, AS AMENDED, WILL BE SATISFIED

3. That said meeting was duly convened and held and that said resolution was duly adopted in all respects in accordance with the law and regulations of the Village. To the extent required by law or said regulations, due and proper notice of said meeting was given. A legal quorum of members of the Board was present throughout said meeting, and a legally sufficient number of members voted in the proper manner for the adoption of the resolution. All other requirements and proceedings under the law, said regulations, or otherwise, incident to said meeting and the adoption of the resolution, including the publication, if required by law, have been duly fulfilled, carried out and otherwise observed.

4. The seal appearing below constitutes the official seal of the Village and was duly affixed by the undersigned at the time this certificate was signed.

IN WITNESS WHEREOF, I have hereunto set my hand and have hereunto affixed the corporate seal of the Village this 21st day of September, 2022.

VILLAGE OF TUXEDO PARK

By: _____
Elizabeth Doherty, Village Clerk

[SEAL]

EXHIBIT A

VILLAGE OF TUXEDO PARK

POST-ISSUANCE COMPLIANCE POLICIES AND PROCEDURES Related to Tax-Exempt Obligations

Adopted: September 21, 2022

These Post-Issuance Compliance Policies and Procedures (the “Procedures”) are adopted by **VILLAGE OF TUXEDO PARK**, Orange County (the “Village”) to ensure that interest on tax-exempt obligations of the Village (the “Bonds”) remains excludable from gross income under Section 103 of the Internal Revenue Code of 1986 (the “Code”).

In order to ensure continued compliance with requirements of the Code and the applicable regulations (the “Applicable Federal Tax Law”) associated with the issuance of Bonds, the Village will consult with the Village’s bond counsel, in advance, regarding deviations from the facts and expectations set forth in the closing certifications relating to any issue of Bonds.

If as a result of changes to the Applicable Federal Tax Law or the New York State Local Finance Law these Procedures are in conflict with such laws, the Village will consult with Bond Counsel regarding the proper course of action, including amending these Guidelines.

I. Procedures

The Village Treasurer (the “Designated Tax Compliance Official”) is the primary person to consult with the Village’s bond counsel (“Bond Counsel”), financial advisor and other advisors on a continual basis for the entire term of the Bonds. The Designated Tax Compliance Official may delegate to his or her staff or other Village personnel or contract with independent contractors (such as an arbitrage/rebate consultant) responsibility for different aspects of post-issuance tax compliance. However, the Designated Tax Compliance Official will be ultimately responsible for implementing the procedures described herein.

II. Securing Closing Documents

Following each issuance of Bonds, the Designated Tax Compliance Official or his or her designee will:

- a. Confirm the filing of the Form 8038 or Form 8038-G (or applicable successor form) with Internal Revenue Service (“IRS”). Filing of the applicable Form 8038 is usually undertaken or overseen by Bond Counsel at or soon after the closing of a bond issue.
- b. Obtain and store the Transcript of Proceedings prepared by Bond Counsel (which typically includes the applicable Form 8038 and the Arbitrage and Tax Certificate containing the Village’s expectations as of the date of issuance of the bond issue).

III. Recordkeeping

The Designated Tax Compliance Official or his or her designee will:

- a. Establish a plan for keeping relevant books and records as to the investment and the expenditure of bond proceeds.
- b. Keep accurate records including:
 - (i) Basic records relating to the bond transactions (including the bond resolutions, closing documents, and the Bond Counsel Opinion (see Securing Closing Documents, above);
 - (ii) Documentation evidencing the expenditure of bond proceeds;
 - (iii) Documentation evidencing use of bond-financed property by public and private sources (*i.e.*, copies of leases, management contracts);
 - (iv) Documentation evidencing all sources of payment or security for the bonds; and
 - (v) Documentation pertaining to any investment of bond proceeds (including the purchase and sale of securities, subscriptions for United States Treasury Securities-State and Local Government Series (“SLGs”), yield calculations for each class of investments, actual investment income received from the investment of proceeds, guaranteed investment contracts and rebate calculations).
- c. Keep all records in a manner that ensures their complete access to the IRS so long as they are material.
- d. Keep the relevant records for each issue of bonds for as long as such issue of bonds is outstanding (including any bonds issued to refund such issue of bonds) plus three years after the final redemption date of the bonds.

IV. Arbitrage Rebate and Arbitrage Yield Restriction

The Designated Tax Compliance Official or his or her designee will:

- a. Engage the services of the Village’s financial advisor or an arbitrage/rebate consultant for assistance in compliance with arbitrage related issues.
- b. Consult with the Village’s bond counsel, and/or financial advisor to determine if an issue of Bonds is exempt from the rebate requirement under the exception for “small issuers” (Section 147(f)(4)(D) of the Code).
- c. Work with the Village’s bond counsel, financial advisor and/or arbitrage/rebate consultant to monitor compliance with “temporary period exceptions” for expenditure of bond proceeds, typically three years for new money bonds and provide for yield restriction of investments or “yield reduction payments” if exceptions are not satisfied.
- d. Work with the Village’s bond counsel and financial advisor to ensure investments acquired with bond proceeds are purchased at fair market value. This may include use of bidding procedures under the regulatory safe harbor (Section 1.148-5(d) of the Regulations).

- e. Consult with the Village's bond counsel or arbitrage rebate consultant prior to the creation of funds which would reasonably be expected to be used to pay debt service on tax-exempt bonds to determine in advance whether such funds must be invested at a restricted yield (i.e., yield restricted).
- f. Consult with the Village's bond counsel and financial advisor before engaging in post issuance credit enhancement transactions (e.g., bond insurance, letter of credit) or hedging transactions (e.g., interest rate swap, cap).
- g. Consult with the Village's bond counsel, financial advisor, and/or arbitrage rebate consultant to identify situations in which compliance with applicable yield restrictions depends upon subsequent investments (e.g., purchase of 0% SLGS from the U.S. Treasury) and monitor implementation.
- h. Work with an arbitrage rebate consultant to arrange for timely computation of any rebate/yield reduction payment liability and, if an amount is payable, for the timely filing of Form 8038-T, Arbitrage Rebate, Yield Reduction and Penalty in Lieu of Arbitrage Rebate (or applicable successor form), and payment of such liability. Rebate/Yield Reduction payments are ordinarily due at 5-year intervals.
- i. Consult with the Village's bond counsel to ensure that any remedial action required with respect to nonqualified bonds meets the requirements set forth in the Code and the Regulations and review the need to enter into a closing agreement with the IRS pursuant to the voluntary closing agreement program set forth in the Internal Revenue Manual.

V. Private Use of Bond-Financed Facilities

The Designated Tax Compliance Official or his or her designee will:

- a. Create and maintain records regarding which bond or note issues were used to finance which facilities. These records shall incorporate the refunding or partial refunding of any bond issues.
- b. Record the allocation of bond proceeds to expenditures, including reimbursements. These records will be consistent with the expenditures used for arbitrage purposes.
- c. Record the allocation of bond proceeds and funds from other sources in connection with any bond funded project. Review expenditure of bond proceeds with bond counsel to ensure bond proceeds are used for qualifying costs.
- d. Review with bond counsel prior to the sale or lease of a bond-financed facility, or the granting of a license or management contract, or any other arrangement allowing private use of a bond financed facility, the terms of such arrangement.
- e. Keep records of private use, if any, of bond financed facilities to monitor the amount of private use of bond financed facilities. Private use of bond-financed facilities shall be reviewed no less frequently than once a year (in connection with the preparation of the annual financial statements). If a change in private use occurs, bond counsel will be consulted to determine if remedial action is necessary.