

**BEFORE THE BOROUGH COUNCIL OF THE  
BOROUGH OF TRAPPE, MONTGOMERY COUNTY, PENNSYLVANIA**

**RESOLUTION NO. 2022-11**

**A RESOLUTION OF THE BOROUGH OF TRAPPE AUTHORIZING**

**Tax-Exempt Debt  
Post-Issuance Tax Compliance Policies and Procedures**

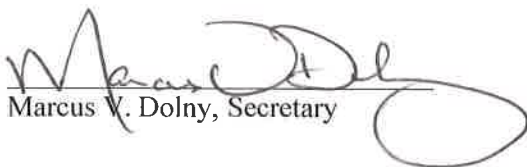
**WHEREAS;** the Borough recognizes tax exempt debt with post-issuance tax compliance policies and procedures as outlined in Exhibit A, included.

**NOW, THEREFORE, BE IT RESOLVED** by the Trappe Borough Council that the Borough recognizes tax exempt debt with post-issuance tax compliance policies and procedures as outlined in Exhibit A, included.

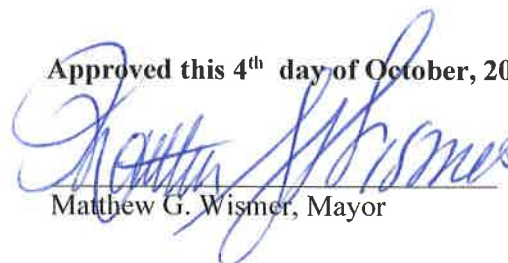
**RESOLVED** this 4th day of October, 2022, by the Trappe Borough Council, of Trappe, Montgomery County, Pennsylvania.

**ATTEST:**

**TRAPPE BOROUGH COUNCIL:**

  
Marcus V. Dolny, Secretary

By:   
Scott Martin, President

Approved this 4<sup>th</sup> day of October, 2022  
  
Matthew G. Wismer, Mayor

Borough of Trappe  
Montgomery County, Pennsylvania

**Tax-Exempt Debt**

**Post-Issuance Tax Compliance Policies and  
Procedures**

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## **Part I. Purpose.**

The Borough of Trappe, Montgomery County, Pennsylvania (the “Issuer”) has covenanted in the applicable issuance documents to comply with all applicable federal tax rules related to its tax-exempt debt referred to herein as “Tax-Exempt Debt”). This includes compliance with all applicable federal tax documentation and filing requirements, yield restriction limitations, arbitrage rebate requirements, use of proceeds and financed projects limitations and recordkeeping requirements. The Borough Council authorized the appropriate personnel of the Issuer, on behalf of the Issuer, to approve and adopt the following policies and procedures (these “Policies and Procedures”) to facilitate compliance with the federal tax law applicable to outstanding Tax-Exempt Debt issuances. This policy is to be used in conjunction with the bond issuance documentation and is not a substitute for specific bond documents.

## **Part II. Accountability**

Except as otherwise described herein, the Borough Manager of the Issuer (the “Manager”) will have primary responsibility for ensuring that outstanding Tax-Exempt Debt issuances are, and will remain, in compliance with applicable federal tax law. The Manager will consult with other departments within the Issuer, as well as third-party professionals (e.g., bond counsel and arbitrage rebate provider), as necessary, to ensure compliance with such rules, including these Policies and Procedures.

The Manager or other person designated by the Manager (the “Compliance Officer”) shall have the primary operating responsibility to monitor adherence to these Policies and Procedures. The Compliance Officer may delegate aspects of such responsibility to other employees or, with the consent of the Borough Council, to contractors of the Issuer, but shall retain overall responsibility for ensuring compliance and coordinating compliance when more than one individual or contractor is given responsibility.

## **Part III. Closing of Debt Issuances**

A. Tax Certificates. In connection with each issuance of tax-exempt debt or other Tax-Exempt Debt, the Issuer will employ bond counsel experienced with the federal tax laws applicable to tax-exempt debt or other counsel experienced in the federal tax laws applicable to any other Tax-Exempt Debt (any of such counsel for a specific issuance are referred to herein as “bond counsel”). Bond counsel, with assistance from the Issuer and other professionals associated with the financing, shall prepare a Tax Certificate in connection with the issuance of each series of tax-exempt debt or other Tax-Exempt Debt, to be executed by an appropriate officer of the Issuer (or as otherwise appropriate) at closing. The Tax Certificate shall serve as the operative document for purposes of establishing the Issuer's reasonable expectations as of the date of issuance, as well as provide a summary of the federal tax rules applicable to such issuance. The Compliance Officer, in consultation with bond counsel, will review each Tax Certificate prior to the closing of the issue.

B. Internal Revenue Service Form 8038-G – Tax-Exempt Bonds. Bond counsel, with assistance from the Issuer and other professionals associated with the financing, shall prepare an Internal Revenue Service Form 8038-G in connection with each tax-exempt debt issuance issued by the Issuer, which the Compliance Officer will review prior to closing. Each Internal Revenue Service Form 8038-G prepared for a tax-exempt debt issuance will be filed with the Internal Revenue Service by no later than the 15th day after the 2nd calendar month after the close of the calendar quarter in which the tax-exempt obligation to which such Form 8038-G relates is issued.

#### **Part IV. Use of Debt Proceeds**

A. Restrictions on Private Business Use. The Compliance Officer shall enforce the restrictions on private business use (as defined in Section 141 of the Internal Revenue Code of 1986, as amended (the “Code”), and further described below) that apply to land, buildings, facilities and equipment (“property”) which are financed with proceeds of tax-exempt bonds.<sup>1</sup> Under Section 141 of the Code, no more than generally 10% of such proceeds (5% in certain cases) of any bond issue (including the property financed with the bonds) may be used for private business use.<sup>2</sup>

1. “Private business use” is use by any person other than a state or local government unit, including business corporations, partnerships, limited liability companies, associations, nonprofit corporations, natural persons engaged in trade or business activity, and the United States of America and any federal agency, as a result of ownership of the property or use of the property under a lease, management or service contract (except for certain “qualified” management or service contracts), output contract for the purchase of electricity or water, privately sponsored research contract (except for certain “qualified” research contracts), “naming rights” contract, “public-private partnership” arrangement, or any similar use arrangement that provides special legal entitlements for the use of the bond-financed property.

2. Before the Issuer enters into any use arrangement with a nongovernmental person<sup>3</sup> with respect to bond-financed property, the Compliance Officer will evaluate whether that use arrangement, if put into effect, will be consistent with the restrictions on private business use of the bond-financed property. In connection with the evaluation of any proposed nongovernmental use arrangement, the Compliance Officer shall determine whether to engage bond counsel to obtain advice on whether that use arrangement, if put

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<sup>1</sup> For Tax-Exempt Debt, the Issuer shall obtain advice in the Tax Certificate for such issue as to whether the restrictions in this Part are applicable.

<sup>2</sup> Private business use must be combined with private payments (as defined in Section 141 of the Code) for an issue of bonds to violate the federal tax laws. If private business use is determined, the analysis of any corresponding private payments should be part of the review by the Compliance Officer and bond counsel.

<sup>3</sup> Arrangements with government persons shall be reviewed as well to the extent that the other governmental person has the right to allow nongovernmental persons to use the subject property. The United States of America is a nongovernmental person for purposes of the determination of private business use.

into effect, will be consistent with the restrictions on private business use of the bond-financed property, and, if not, whether any “remedial action” permitted under section 141 of the Code may be taken with respect to such use arrangement.

3. Private business use starts on the first date on which the Issuer enters into a binding contract with a nongovernmental person for use of the financed property which is not subject to any material contingencies.

4. Records shall be maintained of nongovernmental uses, if any, of financed property, including copies of the pertinent leases, contracts or other documentation, any related determination that those nongovernmental uses are not inconsistent with the status of the debt that financed the property, including any advice received from bond counsel, and, if required, any remedial actions taken.

**B. Private Loans.** The Compliance Officer shall enforce the restriction that under section 141 of the Code, no more than the lesser of \$5,000,000 or 5% of the proceeds of a bond issue may be used to make or finance a loan to any person other than a state or local government unit except as approved by bond counsel.

#### **Part V. Accounting for Debt Proceeds.**

**A. General.** Except as otherwise described below or in the applicable Tax Certificate, it is the policy of the Issuer to apply a direct costing method of accounting for and allocating its Tax-Exempt Debt proceeds.

**B. Investment of Proceeds.** Proceeds of Tax-Exempt Debt shall be held in a separate fund or account held by the applicable trustee, and invested as set forth in the ordinance (or other operative document) pursuant to which such debt is issued and subject to any restrictions in the applicable Tax Certificate.

**C. Expenditure of Proceeds on Capital Projects.** Proceeds of Tax-Exempt Debt or other Tax-Exempt Debt issues will be expended as follows:

1. Projects, and associated bidding documents, requisitions and purchase orders to be funded by such issue will be identified.
2. The Issuer’s department responsible for finance and accounting (the “Accounting Department”) will process the invoices for payment by charging them to the appropriate fund.
3. The Accounting Department will generate check runs which produce payment documents. A transaction is run that calculates the amount of payment(s) from each fund which is used to develop the weekly check requisition.

4. Funds will be transferred from the various accounts to the disbursement account. All invoices and records of payment (either in the form of paper checks or electronic funds transfer confirmations) will be retained by the Accounting Department.

The Accounting Department shall maintain an active ledger, updated with each payment of an expenditure from Tax-Exempt Debt proceeds that for each outstanding debt issuance shows:

1. The name and date of issue of the issue to which the proceeds relate.
2. The specific projects and costs, including any “soft costs” such as architectural and engineering, financed with the proceeds of the issue.
3. The proceeds of the issue used to finance each project at a point in time.
4. The amount of unspent proceeds of the issue to be used to finance projects.
5. The date on which the debt proceeds were fully expended.

#### **Part VI. Arbitrage.**

A. Arbitrage Rebate Monitor. The Issuer will retain an independent, third-party arbitrage rebate monitor (the “Arbitrage Rebate Monitor”) to review its outstanding Tax-Exempt Debt issuances. The Arbitrage Rebate Monitor will perform calculations regularly (but not less often than every five years) to ascertain whether the Issuer owes an arbitrage rebate payment or yield reduction payment to the Internal Revenue Service, and whether any issue qualifies for an exception to the arbitrage rebate rules.

B. Payment of Arbitrage Rebate and Yield Reduction Liability. In the event the Issuer owes arbitrage rebate or has accrued a yield reduction payment liability to the Internal Revenue Service, the Issuer will timely submit Internal Revenue Service Form 8038-T, Arbitrage Rebate Yield Reduction and Penalty in Lieu of Arbitrage Rebate, to be prepared by the Arbitrage Rebate Monitor, together with payment in the amount equal to the arbitrage rebate or yield reduction payment liability calculated by the Arbitrage Rebate Monitor in accordance with the Tax Certificate related to such debt issue. The Compliance Officer shall review each Form 8038-T prior to submission.

C. Yield Restriction Limitations. Each Tax Certificate prepared for Tax-Exempt Debt issues shall contain the applicable yield restriction investment limitations, including the applicable investment limitations imposed on proceeds of the debt issuance and any temporary periods during which the Issuer may invest proceeds of the debt issuance at an unrestricted yield.

D. Arbitrage Rebate Exceptions. Each Tax Certificate prepared for Tax-Exempt Debt issuances shall contain the arbitrage rebate exception(s) applicable to the debt issuance, which

arbitrage rebate exceptions will be applied by the Arbitrage Rebate Monitor in assessing whether the Issuer owes arbitrage rebate.

E. Interest Rate Hedges. Prior to entering into any interest rate hedge arrangement or agreement, the Issuer will engage a third party financial advisor for all interest rate hedges to be entered into by the Issuer, whether any such hedge is acquired through a direct negotiation with the provider or procured through a bidding process. In all cases, the Issuer will obtain appropriate certifications from its financial advisor and/or the provider to establish the fair market value of the hedge. The Issuer will consult with bond counsel prior to entering into any interest rate hedge (including any amendments to or other modifications of existing interest rate hedges). The Issuer shall (either in the applicable Tax Certificate or otherwise) obtain advice from bond counsel on the effect of each interest rate hedge on the yield of the applicable issue of tax-exempt debt or Tax-Exempt Debt and take all steps advised by bond counsel to appropriately identify any hedges which are intended to be integrated into the yield on an issue.

## **Part VII. Recordkeeping.**

A. General. The Issuer is aware of its ongoing recordkeeping responsibilities associated with its Tax-Exempt Debt issuances. Unless otherwise provided in the applicable Tax Certificate, the provisions of this Part VII shall apply to all records described herein.

B. Means of Maintaining Records. The Issuer may maintain all records required to be held as described in paper and/or electronic (e.g., CD, disks, tapes) form. It is the policy of the Issuer to maintain as much of its records electronically as feasible.

C. Transcript and Use of Debt Proceeds. The Issuer shall maintain, or cause to be maintained, all records relating to the tax-exempt status of its Tax-exempt Debt issuances and the qualification of other Tax-Exempt Debt and the representations, certifications and covenants set forth in its respective Tax Certificates until the date three (3) years after the last outstanding obligation of the issue to which such records and Tax Certificate relate has been retired. The records that must be retained include, but are not limited to those shown on Attachment A.

D. Investment Records. The Issuer will require its investment manager(s) and/or its trustees to maintain detailed records with respect to every investment acquired with proceeds of its Tax-Exempt Debt, as further described on Attachment B. The Issuer shall be provided with copies of such records regularly and maintain all such records until the date three (3) years after the last outstanding obligation of the issue to which such records and non-purpose investments relate has been retired.

E. Arbitrage Rebate and Yield Reduction Payment Records. The Manager shall maintain all records of arbitrage rebate payment and yield reduction payment calculations performed by the Arbitrage Rebate Monitor and records related to any arbitrage rebate payments or yield reduction payments made to the Internal Revenue Service, including the calculations performed by the



Arbitrage Rebate Monitor substantiating such payments, together with the Internal Revenue Service Form 8038-T that accompanied all such payments, until the date three (3) years after the last outstanding obligation of the issue to which such records and rebate payments relate has been retired.

F. Overpayment of Arbitrage Rebate Records. In the event the Issuer has overpaid to the United States an arbitrage rebate or yield reduction payment liability, the Issuer shall maintain all records of such arbitrage rebate payments or yield reduction payments, including calculations performed by the Arbitrage Rebate Monitor, together with the Internal Revenue Service Form 8038-R, Request for Recovery of Overpayments Under Arbitrage Rebate Provisions that accompanied the request for a recovery of such overpayment until the date three (3) years after the last outstanding obligation of the issue to which such records and rebate overpayments relate has been retired.

G. Refundable Credit Payment Records. If applicable, the Manager shall maintain all records of each claimed refundable credit payment for Build America Bonds and the calculations with respect to such refundable credits, together with the Internal Revenue Service Form 8038-CP requesting each such payment until the date three (3) years after the last outstanding obligation of the issue to which such records and refundable credit payments relate has been retired.

H. Other Records. In addition to the records described above, the Issuer will maintain the records shown on Attachment C, to the extent applicable to a particular tax-exempt debt offering, until the date three (3) years after the last outstanding obligation of the issue to which such relate has been retired.

I. Applicability of Recordkeeping Requirement in the Event of a Refunding. In the event the Issuer issues tax-exempt debt or other Tax-Exempt Debt to retire prior debt, the Issuer shall maintain all of the records described in this part with respect to the refunded debt until the date that is three (3) years after the last outstanding tax-exempt obligation or other Tax-Exempt Debt of the issue the proceeds of which were used to retire the refunded debt has been retired.

## **Part VIII. Annual Review**

The Compliance Officer shall review, at regular intervals, on at least an annual basis, whether the provisions of this Compliance Policy have been followed for each issuance by the Issuer of Tax-Exempt Debt and whether any violations of the applicable federal tax law have been determined for any issue of Tax-Exempt Debt. This review shall include an examination of the records generated by compliance with these Policies and Procedures to determine whether such records show any violation or potential violation of the applicable federal tax law for any issue of Tax-Exempt Debt.

1. In the case of failure to follow this Compliance Policy, the Compliance Officer shall review such failure with the appropriate Issuer employees or contractor and determine appropriate action to ensure future compliance.
2. In the case of a violation or potential violation of the applicable federal tax law, the Compliance Officer shall review the appropriate remedial actions as described in Part IX.

## **Part IX. Remedial Actions**

If the Compliance Officer determines that an action or failure to act on the part of the Issuer has resulted in, or could result in, a violation of the applicable federal tax law for any issue of Tax-Exempt Debt, the Compliance Officer shall consult with the Issuer's solicitor and/or bond counsel as to the appropriate remedy for such violation or potential violation and take such steps as are reasonably required to implement such remedies so as to continue to comply with the Issuer's covenants to maintain the tax-exempt status of Tax-Exempt Debt or to preserve the status of Tax-Exempt Debt, as applicable. No remedial action may be proposed or put into action without prior approval of the Borough Council.

Currently available remedies for certain violations of the federal tax laws include:

1. For violations of the restrictions on private business use, Treasury Regulations Section 1.141-12 set forth certain remedial actions which can be taken following a deliberate action which causes private business use, including redemption of bonds, alternative use of proceeds and alternative use of financed facilities, all subject to the various conditions set forth in such regulations. Certain remedies must be taken by the date of the deliberate action or shortly thereafter (within 90 days, for example, for redemptions). A deliberate action occurs on the first date on which the Issuer enters into a binding contract with a nongovernmental person for use of the financed property which is not subject to any material contingencies.
2. The Internal Revenue Service has a voluntary closing agreement program for Tax-Exempt Debt ("TEB VCAP") which allows Issuers to resolve voluntarily violations of the Code or applicable regulations through closing agreements with the Internal Revenue Service. TEB VCAP is not available when: (a) absent extraordinary circumstances, the violation can be remediated under existing remedial action provisions or other tax-exempt bond closing agreement programs; (b) the issue is under examination; (c) the tax-exempt status or tax-advantaged status of the debt is at issue in any court proceeding or is being considered by the IRS Office of Appeals; or (d) the Internal Revenue Service determines that the violation was due to willful neglect.

3. For certain violations of the rebate and arbitrage rules, an Issuer can pay a penalty under Treasury Regulations Section 1.148-3(h) or make yield reduction payments under Treasury Regulations Section 1.148-5(c).

The Compliance Officer shall also review this Compliance Policy in light of such violation or potential violation and determine whether amendments are needed to the procedures set forth herein in order to prevent any future occurrence thereof.

**Part X. Training**

Based on his or her experience, the Compliance Officer, upon assuming such role, shall determine whether he or she needs to attend training in order to perform the duties hereunder. The Compliance Officer shall also determine the same for any delegate, and shall arrange for the appropriate training in each case. In addition, the Compliance Officer or the appropriate delegate shall attend (in person or via the internet) at least one conference, seminar or webinar each year in which current issues with respect to compliance with the arbitrage rules and private business use rules of the federal tax code are discussed. All expenditures for training shall be subject to approval by the Manager.

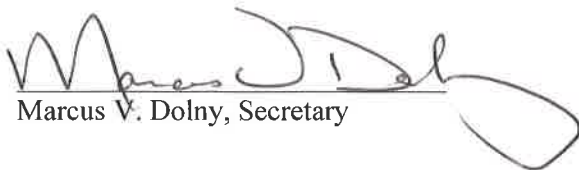
The Compliance Officer may consult with bond counsel, attend such other training program (for him or herself or another employee) or obtain such training materials as are reasonably required in order to permit the Compliance Officer or any delegate to perform his or her duties hereunder.

**Part XI. Amendments**

These Post-Issuance Compliance Policies and Procedures may be revised from time to time, subject to the advice of bond counsel, to reflect changes in federal tax law (including Internal Revenue Service guidelines) or other changes such as those required as a result of changes in the Issuer's administrative structure or procedures or otherwise.

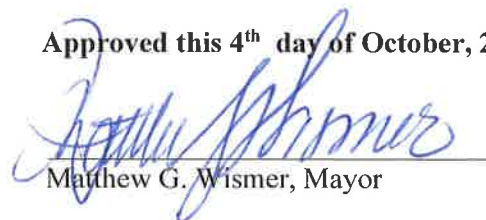
**ATTEST:**

**TRAPPE BOROUGH COUNCIL:**

  
\_\_\_\_\_  
Marcus V. Dolny, Secretary

By:   
\_\_\_\_\_  
Scott Martin, President

Approved this 4<sup>th</sup> day of October, 2022

  
\_\_\_\_\_  
Matthew G. Wismer, Mayor

Attachment A

Transcript Records/Documents

Name of Issuer
Principal Amount
Date of Issue
Purpose of Issue
Interest Payment Dates
Principal Payment Dates
Final Maturity Date
CUSIP for Final Maturity
Pledge/Security
Trustee or Paying Agent/Contact
Bond Counsel/Contact
Underwriter/Contact
Financial Advisor
Escrow Agent (if applicable)
Verification Agent (if applicable)
Swap/Investment Advisor (if applicable)
Swap Counterparty (if applicable)
Trust Agreement or Indenture (if applicable)
Tax Certificate
Copy of IRS Form 8038 (together with proof of filing)
Issue Price Certificate (and any other documentation related to issue price)
Official Statement
Escrow Agreement
Verification Report
Credit Enhancement Documents
Bond Counsel Opinion(s)

Attachment B

Investment Records

Type and amount of investment
Purchase date
Purchase price
Any discount or premium
Information establishing fair market value on the date such investment became allocated to gross proceeds of the debt
Any accrued interest paid or received
Par or face amount
Coupon or stated interest rate
Periodicity of interest payments
Compounding period
Maturity date
Disposition price
Disposition date
Broker
Broker's fees paid or other administrative costs (if any)
Yield

Attachment C

Other Records

Meeting minutes for the resolutions described immediately below

Resolutions authorizing the issuance of, or the reimbursement of expenditures using proceeds of, the financing

Documentation relating to any third-party funding for a project to which tax-exempt debt proceeds will be applied (including government grants)

Records of any Internal Revenue Service audit(s) or compliance check(s), or any other Internal Revenue Service inquiry related to the debt.