

**Township of West Milford  
Passaic County, New Jersey**

**~ Resolution No. 2013 – 277 ~**

**RESOLUTION OF THE TOWNSHIP OF WEST MILFORD, IN THE COUNTY OF PASSAIC, NEW JERSEY, ESTABLISHING PROCEDURES TO MONITOR AND ENSURE COMPLIANCE WITH FEDERAL TAX LAW REQUIREMENTS WITH RESPECT TO TAX-EXEMPT DEBT OF THE TOWNSHIP**

**WHEREAS**, the Township of West Milford, in the County of Passaic, New Jersey (the “Township”) has from time to time and will from time to time issue tax-exempt debt, including without limitation bonds and bond anticipation notes; and

**WHEREAS**, in connection with the issuance of tax-exempt debt, the Township is required by Section 149(e) of the Internal Revenue Code to file with the Internal Revenue Service an Information Return for Tax-Exempt Governmental Obligations known as Form 8038-G (or a substantially similar form); and

**WHEREAS**, the most recent revision of Form 8038-G requires the Township to report whether the Township has established written procedures to monitor and ensure compliance with certain requirements of federal tax law relating to its tax-exempt debt; and

**WHEREAS**, bond counsel to the Township has prepared written procedures to monitor and ensure compliance with the requirements of federal tax law relating to tax-exempt debt which procedures are attached hereto as Exhibit A; and

**WHEREAS**, the Township is desirous of establishing such written procedures;

**NOW THEREFORE BE IT RESOLVED BY THE TOWNSHIP COUNCIL OF THE TOWNSHIP OF WEST MILFORD, IN THE COUNTY OF PASSAIC, NEW JERSEY, AS FOLLOWS:**

**Section 1.** In furtherance of the purposes described in the above recitals and in connection with the issuance from time to time by the Township of tax-exempt debt, including bonds and bond anticipation notes, the Township hereby establishes procedures to monitor and ensure compliance with federal tax law which procedures are attached hereto as Exhibit A.

**Section 2.** This resolution shall take effect immediately.

Adopted: September 18, 2013

Adopted this 18<sup>th</sup> day of September, 2013  
and certified as a true copy of an original.

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Antoinette Battaglia, Township Clerk

## EXHIBIT A

### TAX-EXEMPT DEBT COMPLIANCE PROCEDURES (adopted September 18, 2013)

#### I. Purpose of Procedures

The purpose of these procedures is to ensure that the Township of West Milford, in the County of Passaic, New Jersey (the “Township”) complies with applicable requirements of federal tax law necessary to preserve the tax-exempt status of interest on any tax-exempt obligations (collectively referred to as the “Bonds”) issued by the Township. These requirements include restrictions on the uses of proceeds of the Bonds, and the facilities financed with the Bonds. The Township hereby designates the Chief Financial Officer of the Township as the compliance officer (the “Compliance Officer”) for purposes of these procedures. These procedures provide only a general overview of the primary tax restrictions. The Compliance Officer shall consult with the Township’s bond counsel as needed to understand the tax restrictions described in the arbitrage and use of proceeds certificate or similar tax certificate (the “Tax Certificate”) executed by the Township in connection with an issue of Bonds and to ensure compliance with the tax restrictions described in these procedures.

#### II. General Overview of Private Business Use Restrictions

The tax rules prohibit private business use (use by private parties, including nonprofit organizations and the federal government) of tax-exempt financed facilities beyond permitted *de minimis* amounts unless cured by a prescribed remedial action. Private business use may arise as a result of:

- Sale of the financed facility;
- Lease of the facilities (including leases, easements or use arrangements for areas outside the four walls, e.g., hosting of cell phone towers);
- Management or service contracts in which the Township authorizes a private party to operate all, a portion of, or any function of a financed facility (e.g., private management of a water or sewer system, cafeteria or healthcare facility); or
- Preference arrangements in which the Township extends special legal entitlements or preferences to a private party with respect to a financed facility (e.g., preference parking in a public parking lot, naming rights, etc.).

The restrictions on private business use apply throughout the term of the Bonds. An action described above, if taken after the Bonds are issued, could jeopardize the tax-exempt status of the Bonds; however, arrangements with private parties for use of financed facilities can often be structured to comply with an exception, or “safe harbor,” to the private business use restrictions. Accordingly, the Township should consult with its bond counsel whenever such an arrangement with a private party is being considered. If the Compliance Officer identifies private business use of a Bond-financed project, the Compliance Officer will consult with bond counsel to determine whether such private business use will adversely affect the tax-exempt status of the Bonds, and if so, what remedial action is appropriate, if any.

#### III. General Overview of Arbitrage Requirements

The tax rules contain investment restrictions relating to Bond proceeds and other moneys relating to the Bonds. Those arbitrage limits are set forth in the Tax Certificate for each Bond issue. The Tax Certificate is included in the Bond closing transcript. Investment earnings on Bond proceeds should be tracked and monitored to comply with applicable yield restriction and rebate requirements. Arbitrage is the difference between the yield on the Township's Bonds and the investment income earned on the Bond proceeds invested in taxable instruments. Under certain circumstances, the Township may be required to rebate “positive arbitrage” that it earns to the U.S. Treasury. The Township must calculate (or hire a consultant to calculate) rebate liability for each Bond issue, and make any required rebate payments on a timely basis. The Township may retain bond counsel, or another arbitrage rebate

consultant, to perform any rebate calculations that are required to be made from time to time with respect to any Bond issue.

The rebate calculation dates are described in the Tax Certificate related to each issue of Bonds, but are generally every fifth (5<sup>th</sup>) anniversary date of the Bond issue through the final maturity or redemption date of a Bond issue. A final rebate payment must be made within sixty (60) days of the final maturity or redemption date of a Bond issue.

**IV. Document Retention Requirements**

Copies of all documents and records sufficient to document the expenditures and uses of Bond proceeds and Bond-financed facilities will be maintained by the Township for the term of a Bond issue (including refunding bonds, if any) plus six (6) years, including the following documents and records:

- Bond closing transcripts;
- Copies of records of investments, investment agreements, credit enhancement transactions, financial derivatives (e.g., an interest rate swap), arbitrage reports and underlying documents, including trustee statements;
- Copies of material documents relating to expenditures financed or refinanced by Bond proceeds, including (without limitation) payment records, as well as documents relating to costs reimbursed with Bond proceeds and records identifying the assets or portion of assets that are financed or refinanced with Bond proceeds;
- All leases, management agreement, or other contracts and arrangements involving private use, or changes in use, of the Bond-financed property; and
- A list (which does not have to be independently created but can be satisfied by reference to existing bond ordinances and computerized records) of assets financed with Bond proceeds, including, if applicable, placed in service dates.

**V. Ongoing Training**

Training shall be made available to the Compliance Officer to support the Compliance Officer's understanding of the tax requirements applicable to the Bonds. Such training may include, but would not be limited to, attending training sessions at local conferences sponsored by, among others, the New Jersey Government Finance Officer's Association, the New Jersey State League of Municipalities, the New Jersey Association of Counties, the New Jersey Tax Collectors and Treasurers Association and Rutgers University, participation in IRS teleconferences, reading technical guidance materials provided by educational organizations, the IRS, and/or bond counsel, and discussing questions and issues with the Township's bond counsel and/or arbitrage rebate consultant.

**VI. Annual Completion of Tax-Exempt Debt Compliance Checklist**

The Compliance Officer will complete the attached "Annual Tax-Exempt Debt Compliance Checklist" with respect to all outstanding Bonds on or before December 31 of each annual period. The Compliance Officer will retain a copy of each completed and signed checklist in a file that is retained in accordance with the document retention requirements described in Section IV above.

**TOWNSHIP OF WEST MILFORD, IN THE COUNTY OF PASSAIC, NEW JERSEY**

**Form of Annual Tax-Exempt Debt Compliance Checklist** (to be completed by the “Compliance Officer” as described in the Tax-Exempt Debt Compliance Procedures)

Date Completed: \_\_\_\_\_

	Yes	No
Has there been a sale of all or any portion of a facility financed with tax-exempt bonds or notes (a “Project”)?		
Has there been a lease of all or any portion of a Project to any party other than a state or local government?		
Has the Township entered into a new, or amended an already existing, management or service contract related to a Project?		
Has the Township entered into a naming rights agreement relating to all or any portion of a Project?		
Has the Township entered into any other arrangement with an entity, other than a state or local government, that provided legal rights (such as a right to use) to that entity with respect to a Project?		
Has the Township invested the proceeds of its tax-exempt bonds or notes at a yield in excess of the arbitrage yield on such bonds or notes?		
Has the Township failed to comply in any material respect with the record retention requirements described in Section IV of the Tax-Exempt Debt Compliance Procedures previously established by the Township?		

If an answer to any question above is “Yes”, or the answer is unclear, the Compliance Officer shall consult with the Township’s bond counsel to determine (i) if the event could adversely impact the tax-exemption of the Township’s outstanding tax-exempt debt and/or (ii) whether any action needs to be taken during the upcoming annual period to ensure compliance with the tax-exempt debt restrictions.

The undersigned is the “Compliance Officer” as described in the Tax-Exempt Debt Compliance Procedures previously established by the Township and has completed the above checklist to the best of the knowledge of the undersigned.

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 Name: Monica Goscicki, CFO  
 Title: Compliance Officer/Chief Financial Officer