



TOWN COUNCIL – AGENDA REQUEST FORM

THIS FORM WILL BECOME PART OF THE BACKGROUND INFORMATION USED BY THE COUNCIL AND PUBLIC

Please submit Agenda Request Form, **including back up information, 8 days prior** to the requested meeting date. **Public Hearing requests must be submitted 20 days prior to requested meeting date to meet publication deadlines** (exceptions may be authorized by the Town Manager, Chairman/Vice Chair).

MEETING INFORMATION

Date Submitted: December 14, 2017
Submitted by: Finance Director/Assistant Town Manager Paul T. Micali
Department:
Speakers: Paul T. Micali

Date of Meeting: December 21, 2017
Time Required: 15 minutes
Background Info. Supplied: Yes: No:

CATEGORY OF BUSINESS (PLEASE PLACE AN "X" IN THE APPROPRIATE BOX)

Appointment:	<input type="checkbox"/>	Recognition/Resignation/Retirement:	<input type="checkbox"/>
Public Hearing:	<input type="checkbox"/>	Old Business:	<input checked="" type="checkbox"/>
New Business:	<input type="checkbox"/>	Consent Agenda:	<input type="checkbox"/>
Nonpublic:	<input type="checkbox"/>	Other:	<input type="checkbox"/>

TITLE OF ITEM

Post-Issuance Tax Compliance Policy - NH Municipal Bond Bank Bonds

DESCRIPTION OF ITEM

The Town Council to consider approving a bond post-issuance policy.

REFERENCE (IF KNOWN)

RSA:	Warrant Article:	_____
Charter Article:	Town Meeting:	_____
Other:	N/A	

EQUIPMENT REQUIRED (PLEASE PLACE AN "X" IN THE APPROPRIATE BOX)

Projector:	<input type="checkbox"/>	Grant Requirements:	<input type="checkbox"/>
Easel:	<input type="checkbox"/>	Joint Meeting:	<input type="checkbox"/>
Special Seating:	<input type="checkbox"/>	Other:	<input type="checkbox"/>
Laptop:	<input type="checkbox"/>	None:	<input type="checkbox"/>

CONTACT INFORMATION

Name:	Paul T. Micali	Address	8 Baboosic Lake Road
Phone Number	424-7075	Email Address	pmicali@merrimacknh.gov

APPROVAL

Town Manager: Yes No: Chair/Vice Chair: Yes No:

Hold for Meeting Date: _____

MEMORANDUM

To: Town of Merrimack, New Hampshire (the “Town”)
From: David H. Barnes and Renelle L. L’Huillier, Devine, Millimet & Branch,
Professional Association (“Bond Counsel”)
Re: Post-Issuance Tax Compliance Policies and Procedures
Date: December 8, 2017

At the closing of a tax-exempt bond or note issuance, the Town’s governing board signs a No Arbitrage and Tax Certificate. This document provides Bond Counsel with the information necessary to make a determination that the bond or note is tax exempt at the time of issuance. However, there are a number of things that can occur “post-issuance” that could adversely affect the tax-exempt status of the bonds or notes, such as (i) the direct or indirect use of the proceeds by a non-governmental person that might cause the bonds or notes to be taxable private activity bonds; or (ii) the Town’s potential liability for rebate payments to the federal government due to the failure to expend funds quickly enough to qualify for one of the spending exceptions to the rebate rules.

Over the past few years, the Internal Revenue Service (the “IRS”) has focused on the post-issuance tax compliance of municipal bond issuers. During that time, we have seen an increased number of IRS examinations of bonds and tax notes to determine compliance with the requirements of the Internal Revenue Code of 1986, as amended (the “Code”). One of the questions posed by the IRS in such examinations is whether the issuer has adopted written procedures to ensure compliance with the Code provisions applicable to tax-exempt bonds and notes.

In addition, the IRS includes guidance on its website that makes it evident that written procedures are an important part of an issuer’s tax-exempt bond program. Moreover, in the fall of 2011, the IRS updated its Form 8038-G to add questions about whether the issuer has established written procedures to address private activity concerns and to monitor the requirements of section 148 related to arbitrage rebate. The IRS also now requests more detail about an issuer’s reimbursement for pre-issuance expenditures on this form.

In order to address this increased level of review by the IRS, we have prepared a form of Post-Issuance Tax Compliance Policies and Procedures. This form of policy names a “Coordinator” who has the responsibility to monitor compliance with the policy. It follows the requirements of the Code and closely tracks the information included in the No Arbitrage and Tax Certificate that is signed at the closing of a bond or tax note financing.

We have also included a form of resolution that the governing board may pass in order to adopt this formal policy.

As the Town may be planning to finance a project with tax exempt bonds, may need to issue tax anticipation notes or may be considering a lease-purchase arrangement in the near future, we recommend implementing these policies as soon as possible. As a result, the Town would be

able to answer “yes” to the questions on the Form 8038-G, thereby showing the IRS that it is aware of its post-issuance obligations under the Code and that it intends to meet those obligations. An additional reason for the timely adoption of these policies is the IRS’s indication that an issuer who discloses a compliance issue that is discovered as a result of its own internal review will be looked upon favorably by the IRS in determining a resolution to the problem.

If you have questions about the policy or the resolution or would like to review these materials together, please let us know. Once the governing board adopts the policy, please send us a copy of the minutes of the meeting at which the board voted and a copy of the policy as adopted.

RESOLUTION OF
THE TOWN COUNCIL
OF THE TOWN OF MERRIMACK, NEW HAMPSHIRE

_____, 201__

WHEREAS, the Town of Merrimack, New Hampshire (the “Town”) from time to time, on a tax-exempt basis, issues (i) bonds and bond anticipation notes to finance capital projects, (ii) tax anticipation notes to pay the Town’s maintenance and operation expenses and (iii) municipal leases to finance the lease-purchase of certain equipment, all pursuant to the provisions of New Hampshire RSA Chapter 33, as amended;

WHEREAS, the federal income tax laws included in the Internal Revenue Code of 1986, as amended (the “Code), require that issuers of tax-exempt debt comply with certain post-issuance requirements set forth in the Code;

WHEREAS, for purposes of maximizing the likelihood that the Town complies with such requirements of the Code, the Board of Selectmen of the Town (the “Board”) desires to adopt the Post-Issuance Tax Compliance Policies and Procedures, attached hereto as Exhibit A;

NOW THEREFORE, BE IT RESOLVED by the Board as follows:

VOTED: That the Post-Issuance Tax Compliance Policies and Procedures, attached hereto as Exhibit A are hereby approved.

VOTED: That the Board hereby names the _____ as the “Coordinator” under the Post-Issuance Tax Compliance Policies and Procedures and that the _____ has accepted such nomination.

VOTED: That this resolution shall take effect from and after its adoption.

EXHIBIT A

POST-ISSUANCE TAX COMPLIANCE POLICIES AND PROCEDURES

TOWN OF MERRIMACK, NEW HAMPSHIRE

POST-ISSUANCE TAX COMPLIANCE POLICY AND PROCEDURES FOR TAX-EXEMPT OBLIGATIONS

The purpose of this Post-Issuance Tax Compliance Policy and Procedures is to establish policies and procedures in connection with tax-exempt bonds and notes (the "Bond" or "Bonds") issued by the Town of Merrimack, New Hampshire (the "Issuer") so as to maximize the likelihood that all applicable post-issuance requirements of federal income tax law needed to preserve the tax-exempt status of the Bonds are met.

1. Compliance Coordinator:
 - a) The _____ ("Coordinator") shall be responsible for monitoring post-issuance compliance.
 - b) The Coordinator will maintain a copy of the transcript of proceedings in connection with the issuance of any tax-exempt obligations. The Coordinator will obtain such records as are necessary to meet the requirements of this policy.
 - c) The Coordinator shall consult with bond counsel, a rebate consultant, financial advisor, Internal Revenue Service ("IRS") publications and such other resources as are necessary to understand and meet the requirements of this policy.
 - d) Training and education of the Coordinator and his/her staff will be sought and implemented upon the occurrence of new developments and upon the hiring of new personnel to implement this policy.
2. Record-Keeping.
 - a) Financing Transcripts. The Coordinator shall confirm the proper filing with the IRS of an 8038 Series return, and maintain a transcript of proceedings for all tax-exempt obligations issued by the Issuer, including but not limited to all tax-exempt bonds, notes and lease-purchase contracts. Each transcript shall be maintained for as long as the Bonds are outstanding, plus three (3) years after the final redemption date of the Bonds. Said transcript may be maintained in electronic format and shall include, at a minimum:
 - 1) Form 8038s;
 - 2) minutes, resolutions, and certificates;
 - 3) certifications of issue price from the underwriter, if applicable;
 - 4) formal elections required by the IRS;

- 5) trustee statements, if applicable;
- 6) records of refunded bonds, if applicable;
- 7) correspondence relating to bond financings;
- 8) reports of any IRS examinations for bond financings;
- 9) documents related to governmental grants associated with construction, renovation or purchase of bond financed facilities, if applicable; and
- 10) publications, brochures, and newspaper articles, where applicable.

b) Modification to Financing Documents. The Coordinator shall determine if there is any “significant modification” to bond documents resulting in reissuance under Treasury Regulations §1.1001-3, in consultation with bond counsel and any other legal counsel and financial advisor. The Coordinator shall retain proof of filing new Form 8038 and relevant documentation plus final rebate calculation on pre-modification bonds.

3. Proper Use of Proceeds. The Coordinator shall review the resolution authorizing issuance for each tax-exempt obligation issued by the Issuer and shall:

- a) obtain a computation of the yield on such issue from the Issuer’s financial advisor;
- b) create a separate Project Fund (with as many sub-funds as shall be necessary to allocate proceeds among the projects being funded by the issue) and a separate Cost of Issuance Fund as necessary to allocate proceeds to Bond issuance costs into which the proceeds of the issue shall be deposited, as applicable;
- c) review all requisitions, draw schedules, draw requests, invoices and bills requesting payment from the Project Fund;
- d) determine whether payment from the Project Fund is appropriate, and if so, make payment from the Project Fund (and appropriate sub-fund if applicable);
- e) maintain records of the payment requests and corresponding records showing payment;
- f) maintain records showing the earnings on, and investment of, the Project Fund;
- g) ensure that all investments acquired with proceeds are purchased at fair market value;
- h) identify bond proceeds or applicable debt service allocations that must be invested with a yield-restriction and monitor the investments of any yield-

restricted funds to ensure that the yield on such investments does not exceed the yield to which such investments are restricted;

- i) maintain records related to any investment contracts, credit enhancement transactions, and the bidding of financial products related to the proceeds; and
- j) monitor and maintain records of the reimbursement of costs previously expended by the Issuer to ensure that such reimbursement occurs not more than 18 months after the later of (i) the dates of the expenditures or (ii) the date the project/asset was placed in service (but not more than 3 years after the original expenditures were paid) except with respect to those expenditures for which the Issuer obtained a certificate of licensed engineer/architect to the effect that (I) at least five (5) years was necessary to complete the construction of the part of the project for which such expenditures were required; and (II) such expenditures shall be reimbursed not more than five (5) years after the date that the original expenditures were paid.

4. Arbitrage/Rebate Compliance and Timely Expenditure of Proceeds. The Coordinator shall review the No Arbitrage and Tax Certificate (or equivalent) (the "Certificate") for each tax-exempt obligation issued by the Issuer and the expenditure records provided in Section 2 of this policy, above, and shall ensure that the Issuer takes the following actions:

- a) monitor and ensure that proceeds of each such issue are spent within the temporary period set forth in the Certificate;
- b) if at the time of issuance, it appears that that the Bonds will qualify for the small issuer exception to the rebate requirement, the Coordinator will monitor the amount of subsequent tax-exempt obligations issued or proposed to be issued in the calendar year in which the Bonds closed to ensure that the Issuer does not exceed the \$5 million or \$15 million threshold, as applicable, in such calendar year;
- c) if at the time of issuance, based on reasonable expectations set forth in the Certificate, it appears likely that the issue will qualify for an exemption from the rebate requirement, the Issuer may defer taking any of the actions set forth in subsection (d) below. Not later than the time of completion of construction or acquisition of the project, and depletion of all funds from the Project Fund, the Issuer shall make a determination if the expenditure of the Bond proceeds qualified for an exemption from the rebate requirements based on spending within a 6 month, 18 month or 2 year period after issuance. If a rebate exemption is determined to be applicable, the Issuer shall prepare and keep in the permanent records of the issue a memorandum evidencing this conclusion together with records of expenditure to support such conclusion. If the transaction does not qualify

for rebate exemption, the Issuer shall initiate the steps set forth in (d) below;

- d) if at the time of issuance it appears likely that arbitrage rebate calculations will be required, or upon determination that calculations are required pursuant to (c) above, the Issuer shall:
- i. engage the services of expert advisors (each a “Rebate Service Provider”) to assist in the calculation of arbitrage rebate payable in respect of the investment of Bond proceeds, or else shall ensure that it has adequate financial, accounting and legal resources of its own to make such calculations, and, prior to each rebate calculation date, cause the trustee or other financial institution investing bond proceeds to deliver periodic statements concerning the investment of Bond proceeds to the Rebate Service Provider;
 - ii. provide to the Rebate Service Provider additional documents and information reasonably requested by the Rebate Service Provider;
 - iii. monitor efforts of the Rebate Service Provider;
 - iv. assure payment of required rebate amounts, if any, no later than 60 days after each 5-year anniversary of the issue date of the Bonds, and no later than 60 days after the last Bond of each issue is redeemed;
 - v. during the construction period of each capital project financed in whole or in part by Bonds, monitor the investment and expenditure of Bond proceeds and consult with the Rebate Service Provider to determine compliance with any applicable exceptions from the arbitrage rebate requirements during each 6-month spending period up to 6 months, 18 months or 2 years, as applicable, following the issue date of the Bonds;
 - vi. retain copies of all arbitrage reports, trustee statements and other documents as required herein; and
 - vii. in lieu of engaging an outside Rebate Service Provider, the Issuer may make a determination that it has sufficient capabilities using its own personnel, supported by its regular accounting and legal advisers, to be able to make the required rebate calculations. Such determination shall be evidenced in writing with specific reference to the personnel and advisers to carry out the calculations, and such written determination shall be maintained in the records of the bond transaction.

5. Proper Use of Bond Financed Assets.

- a) The Coordinator shall maintain appropriate records and a list of all bond financed assets. Such records shall include the actual amount of proceeds (including investment earnings) spent on each of the bond financed assets.
- b) With respect to each bond financed asset, the Coordinator will monitor and confer with bond counsel with respect to all proposed:
 - i. management contracts,
 - ii. service agreements,
 - iii. research contracts,
 - iv. naming rights contracts,
 - v. leases or sub-leases,
 - vi. joint venture, limited liability or partnership arrangements,
 - vii. sale of property, or
 - viii. any other change in use of such asset.
- c) Section 141 of the Code sets forth private activity tests for the purpose of limiting the volume of tax-exempt bonds that finance activities of persons other than state and local governmental entities. These tests serve to identify arrangements that actually or reasonably expect to transfer the benefits of tax-exempt financing to non-governmental persons, including the federal government. The Coordinator shall provide to the users of any bond financed property a copy of this Compliance Policy and other appropriate written guidance advising that:
 - i. “Private business use” means use by any person other than the Issuer, including business corporations, partnerships, limited liability companies, associations, non-profit 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), “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;
 - ii. No more than 10% of the proceeds of any tax-exempt bond issue (including the property financed with the Bonds) may be used for private business use, of which no more than 5% of the proceeds of the tax-exempt bond issue (including the property financed with the bonds) may be used for any “unrelated” private business use – that is, generally, a private business use that is not functionally related to the government’s purposes of the Bonds; and no more than the lesser of \$5,000,000 or 5% of the proceeds of a tax-exempt bond issue may be used to make or finance a loan to any person

other than a state or local government unit;

- iii. Before entering into any special use arrangement with a non-governmental person that involves the use of bond financed property, the Coordinator will consult with bond counsel, provide bond counsel with a description of the proposed non-governmental use arrangement, and determine whether that use arrangement, if put into effect, will be consistent with the restrictions on private business use of the bond financed property; and
 - iv. In connection with the evaluation of any proposed non-governmental use arrangement, the Issuer will consult with bond counsel to obtain federal tax advice in whether that use arrangement, if put 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 §141 of the Code may be taken as means of enabling that use arrangement to be put into effect without adversely affecting the tax-exempt status of the Bonds.
- d) The Coordinator shall maintain a copy of any such proposed agreement, contract, lease or arrangement, together with the response by bond counsel with respect to said proposal for at least three (3) years after retirement of all tax-exempt obligations issued to fund all or any portion of bond financed assets;
 - e) The Coordinator shall consult with bond counsel and other legal counsel and advisers in the review of any change in use of bond-financed or refinanced assets to ensure compliance with all covenants and restrictions set forth in the Certificate;
 - f) The Coordinator shall confer at least annually with other personnel responsible for bond-financed or refinanced assets to identify and discuss any existing or planned use of bond-financed or refinanced assets, to ensure that those uses are consistent with all covenants and restrictions set forth in the Certificate; and
 - g) To the extent that the Coordinator discovers that any applicable tax restrictions regarding use of bond proceeds and bond-financed or refinanced assets will or may be violated, the Coordinator shall consult promptly with bond counsel and other legal counsel and advisers to determine a course of action to remediate all nonqualified bonds, if such counsel advises that a remedial action is necessary.

6. Bank Qualification. If the Bonds are issued in a par amount of \$10 million or less and designated by the Issuer as “bank qualified” under Section 265(b)(3) of the Code, the Coordinator will monitor the amount of subsequent tax-exempt

obligations issued or proposed to be issued in the calendar year in which the Bonds closed to ensure that the Issuer does not exceed the \$10 million threshold in such calendar year.

7. General Project Records. For each project financed with tax-exempt obligations, the Coordinator shall maintain a copy of all material documents relating to capital expenditures financed or re-financed by tax-exempt proceeds, until three (3) years after retirement of the tax-exempt obligations or obligations issued to refund those obligations including (without limitation), the following:

- a) appraisals, demand surveys or feasibility studies,
- b) applications, approvals and other documentation of grants,
- c) depreciation schedules,
- d) contracts respecting the project, including construction contracts,
- e) purchase orders,
- f) invoices,
- g) trustee requisitions and payment records,
- h) documents relating to costs reimbursed with Bond proceeds, and
- i) records identifying the assets or portion of assets that are financed or refinanced with Bond proceeds, including a final allocation of proceeds.

8. Advance Refundings. The Coordinator, shall be responsible for the following current, post issuance and record retention procedures with respect to advance refunding bonds:

- a) Identify and select bonds to be advance refunded with advice from internal financial personnel, and a financial advisor;
- b) The Coordinator shall identify, with advice from the financial advisor and bond counsel, any possible federal tax compliance issues prior to structuring any advance refunding;
- c) The Coordinator shall review the structure with the input of the financial advisor and bond counsel, of advance refunding issues prior to the issuance to ensure (i) that the proposed refunding is permitted pursuant to applicable federal tax requirements if there has been a prior refunding of the original bond issue; (ii) that the proposed issuance complies with federal income tax requirements which might impose restrictions on the redemption date of the refunded bonds; (iii) that the proposed issuance complies with federal income tax requirements which allow for the proceeds and replacement proceeds of an issue to be invested temporarily in higher yielding investments without causing the advance refunding bonds to become “arbitrage bonds”; (iv) that the proposed issuance will not result in the issuer’s exploitation of the difference between tax exempt and taxable interest rates to obtain a financial advantage nor overburden the tax exempt market in a way that might be considered an abusive

transaction for federal tax purposes; and (v) that the proposed refunding complies with applicable State law.

- d) The Coordinator shall collect and review data related to arbitrage yield restriction and rebate requirements for advance refunding bonds. To ensure such compliance, the Coordinator shall engage a rebate consultant to prepare a verification report in connection with the advance refunding issuance. Said report shall ensure said requirements are satisfied.
- e) The Coordinator shall, whenever possible, purchase SLGS to size each advance refunding escrow. The financial advisor and/or bond counsel shall be included in the process of subscribing SLGS. To the extent SLGS are not available for purchase, the Coordinator shall, in consultation with bond counsel and the financial advisor, comply with IRS regulations.
- f) To the extent the Issuer elects to purchase a guaranteed investment contract, the Coordinator shall ensure, after input from bond counsel, compliance with any bidding requirements set forth by the IRS regulations.
- g) In determining the issue price for any advance refunding issuance, the Coordinator shall obtain and retain issue price certification by the purchasing underwriter at closing.
- h) After the issuance of an advance refunding issue, the Coordinator shall ensure timely identification of violations of any federal tax requirements and engage bond counsel in attempt to remediate same in accordance with IRS regulations.

9. Continuing Disclosure. The Coordinator shall assure compliance with each continuing disclosure certificate and annually, per continuing disclosure agreements, file audited annual financial statements and other information required by each continuing disclosure agreement. The Coordinator will monitor material events as described in each continuing disclosure agreement and assure compliance with material event disclosure. Events to be reported shall be reported promptly, but in no event not later than ten (10) Business Days after the day of the occurrence of the event. Currently, such notice shall be given in the event of:

- a) Principal and interest payment delinquencies;
- b) Non-payment related defaults, if material;
- c) Unscheduled draws on debt service reserves reflecting financial difficulties;

- d) Unscheduled draws on credit enhancements relating to the bonds reflecting financial difficulties;
- e) Substitution of credit or liquidity providers, or their failure to perform;
- f) Adverse tax opinions, the issuance by the Internal Revenue Service of proposed or final determinations of taxability, Notices of Proposed Issue (IRS Form 5701-TEB) or other material notices or determinations with respect to the tax-exempt status of the bonds, or material events affecting the tax-exempt status of the bonds;
- g) Modifications to rights of Holders of the Bonds, if material;
- h) Bond calls (excluding sinking fund mandatory redemptions), if material, and tender offers;
- i) Defeasances of the bonds;
- j) Release, substitution, or sale of property securing repayment of the bonds, if material;
- k) Rating changes on the bonds;
- l) Bankruptcy, insolvency, receivership or similar event of the Issuer;
- m) The consummation of a merger, consolidation, or acquisition involving the Issuer or the sale of all or substantially all of the assets of the Issuer, other than in the ordinary course of business, the entry into a definitive agreement to undertake such an action or the termination of a definitive agreement relating to any such actions, other than pursuant to its terms, if material; and
- n) Appointment of a successor or additional trustee or the change of name of a trustee, if material.

10. Compliance with Continuing Disclosure Filings Under S.E.C. Rule 15c2-12. Under S.E.C. Rule 15c2-12, the Issuer may be required to periodically provide financial documentation, reports, notice and updates of documents to EMMA, the Electronic Municipal Market Access website managed by the Municipal Securities Rulemaking Board. Compliance is required in accordance with the Issuer's Material Events Disclosure Certificate and/or Continuing Disclosure Certificate executed in connection with a bond or note issue.

11. Due Diligence and Remedial Actions. In all activities related to the Issuer's Bonds, the Coordinator and his/her staff will exercise due diligence to comply with the Code provisions governing tax-exempt obligations. The Issuer is aware of (a) the

Voluntary Closing Agreement Program (known as “VCAP”) operated by the IRS which allows issuers to voluntarily enter into a closing agreement in the event of certain non-compliance with Federal tax requirements and (b) the remedial actions available under Section 1.141-12 of the Income Tax Regulations for private use of bond financed property which was not expected at the time the Bonds were issued.

12. Periodic Review. The Issuer will monitor compliance with the guidelines contained in this policy as well as any other covenants not specifically included herein and will review and update these guidelines at least annually and whenever necessary due to change in law or circumstances.