RESOLUTION NO. 1193

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF DES MOINES, WASHINGTON, authorizing a post issuance compliance policy for tax-exempt general obligation bonds.

WHEREAS, the City of Des Moines ("City") is authorized to incur debt by issuing and selling general obligation bonds from time to time as may be deemed necessary for the general welfare of the City and its general corporate purpose, and

WHEREAS, such debt may qualify as tax-exempt general obligation bonds under regulations promulgated by the Internal Revenue Service, and

WHEREAS, such tax-exempt qualification places certain compliance requirements upon the City for the duration of time that the bond issues are outstanding and beyond, and

WHEREAS, the City desires to adopt policies and procedures to ensure compliance with such requirements, thereby it is in the best interests of the City to adopt a Post Issuance Compliance Policy for Tax-Exempt General Obligation Bonds; now therefore,

THE CITY COUNCIL OF THE CITY OF DES MOINES RESOLVES AS FOLLOWS:

Sec. 1. The above recitals are found to be true and correct.

Sec. 2. Officers and City staff listed in the Post Issuance Compliance Policy for Tax-Exempt General Obligation bonds, as attached, are hereby authorized and directed to take such necessary, appropriate or desirable actions to effect implementation of the Post Issuance Compliance Policy for Tax-Exempt General Obligation Bonds.

ADOPTED BY the City Council of the City of Des Moines, Washington this 14th day of June, 2012 and signed in authentication thereof this 14th day of June, 2012.

[signature]
MAYOR

APPROVED AS TO FORM:

P. Bosman
City Attorney

ATTEST:

Sandy Paul Care
City Clerk

CITY OF DES MOINES, WASHINGTON

Post Issuance Compliance Policy for Tax-Exempt General Obligation Bonds

Purpose

Use of tax-exempt bond proceeds must comply with Federal tax rules pertaining to the expenditure of proceeds, use of bond financed property, investment of proceeds in compliance with arbitrage rules, and retention of records. The policy of the City of Des Moines, Washington (the "Issuer") for monitoring compliance of its bond issues with these rules is as follows:

The Issuer will comply with the following procedures:

1. **Expenditure of Proceeds**

The chief financial officer of the Issuer shall have the responsibility for allocating bond proceeds to particular investments, expenditures, and assets. The chief financial officer of the Issuer may delegate this responsibility, but shall retain the primary responsibility for insuring that the following procedures are followed.

a) Proceeds of a bond issue must be identified. The chief financial officer shall refer to the nonarbitrage and tax certificate (the "Tax Certificate") delivered by bond counsel in conjunction with each issuance of tax-exempt bonds of the Issuer for help in identifying the amount of the proceeds of such bonds and for identification of funds holding bond proceeds.

b) Investments of bond proceeds must be tracked. The chief financial officer shall ensure that all investments of bond proceeds are recorded, including identification of the investment, the purchase price of the investment, the date of the investment, the date of any receipts from the investment, and the date of repayment or sale of the investment. Earnings from investments of bond proceeds will be treated as additional bond proceeds and similarly tracked.

c) Proceeds must be tracked until they are allocated to expenditures. Proceeds may be allocated to a capital expenditure by direct tracing or by another reasonable method (such as treating an expenditure made from another source as having been made from bond proceeds if that source is reimbursed from bond proceeds).

i. If the Issuer uses direct tracing of bond proceeds, the chief financial officer shall establish the form and procedure for preparation and review of requisitions of bond proceeds. Requisitions must identify the financed property in conformity with the Tax Certificate, including certifications as to the character and average economic life of the bond-financed property.

ii. If the Issuer uses bond proceeds to reimburse costs that were paid prior to the issuance of the bonds, the chief financial officer shall document the use of bond proceeds to make such reimbursements and will only allow such reimbursements to the extent permitted in the Tax Certificate.

iii. If the Issuer uses any other method for allocating bond proceeds to expenditures, the chief financial officer shall prepare at least annually until all proceeds have been spent a written allocation of bond proceeds to expenditures, including the dates and amounts of such expenditures. The chief financial officer shall only allocate bond proceeds to expenditures if there is a reasonably concurrent actual outlay of cash by the Issuer to a third party.

iv. The chief financial officer shall prepare a written "final allocation" of bond proceeds to expenditures no later than the earlier of 18 months after the in-service date of the financed property and the fifth anniversary date of the issue of the bonds. If not all bond proceeds are allocated to expenditures by that date, allocations thereafter may only be made using a tracing method.

d) The chief financial officer shall compare the allocation of proceeds to expenditures of proceeds to the statements of the Issuer concerning its expectation to spend or commit 5% of net sale proceeds within 6 months, to spend 85% of net sale proceeds within 3 years, and to proceed with due diligence to complete the project and fully spend the net sale proceeds, set forth in the Tax Certificate. In the event that those expectations are not met, the chief financial officer shall consult with bond counsel to determine whether further action is necessary. Similarly, the chief financial officer shall compare the allocation of proceeds to expenditures to the timetables set forth for the arbitrage rebate exceptions described in the Tax Certificate.

e) As proceeds are allocated to expenditures for capital assets, the chief financial officer shall prepare and maintain a schedule of all capital assets treated as financed with the bonds. The chief financial officer shall maintain a separate schedule for each bond issue. If only a portion of a capital asset is treated as financed with a particular bond issue, the chief financial officer shall consult with bond counsel as to how to document the particular allocation. The chief financial officer shall provide a copy of such schedule to the manager of each department of the Issuer with responsibility for bond-financed assets (e.g., Marina, Parks, Transportation, etc.).

2. **Use of Bond-Financed Property**

The chief financial officer of the Issuer and the manager of each department with responsibility for bond-financed assets shall have the responsibility for monitoring compliance with private business use restrictions applicable to such assets, as follows.

a) Prior to entering into any sale, lease, or other use agreement with respect to bond financed facilities, the manager of the department with responsibility for such facilities shall contact the chief financial officer of the Issuer to ensure that the proposed transaction will not result in any prohibited private business use of the proceeds of the Issuer's tax-exempt bonds. If the proposed use is inconsistent with the Issuer's expectations set forth in the Tax Certificate, the chief financial officer shall consult with bond counsel to determine whether such use would be considered a permitted use of tax-exempt bond financed facilities, or whether a remedial action or voluntary compliance agreement with the Internal Revenue Service is available in order to prevent a loss of tax-exemption.

b) Upon the execution of any sale, lease, or other use agreement with respect to bond financed assets, and otherwise at least annually, the chief financial officer shall update the schedule described in Section 1(e) hereof to reflect such transaction.

3. Investments

Investment of bond proceeds in compliance with the arbitrage bond rules and rebate of arbitrage will be supervised by the chief financial officer of the Issuer.

a) Guaranteed investment contracts ("GIC") will be purchased only using the three-bid "safe harbor" of applicable Treasury regulations, in compliance with fee limitations on GIC brokers in the regulations. Any exceptions to this rule must be discussed with bond counsel.

b) Other investments will be purchased only in market transactions.

c) Calculations of rebate liability will be performed annually by outside consultants.

d) Rebate payments will be made with Form 8038-T no later than 60 days after (i) each fifth anniversary of the date of issuance and (ii) the final retirement of the issue. Compliance with rebate requirements will be reported to the bond trustee and the Issuer.

e) The chief financial officer shall identify the date for first rebate payment at time of issuance, in conjunction with bond counsel, and enter that date in the records for the issue.

4. Records

Management and retention of records related to tax-exempt bond issues will be supervised by the chief financial officer of the Issuer.

a) The chief financial officer shall retain records relating to investment, expenditures, and use of bond financed facilities for the life of the bonds, plus any refunding bonds related thereto, plus three years. Records may be in the form of documents or electronic copies of documents, appropriately indexed to specific bond issues and compliance functions.

i. Retainable records pertaining to bond issuance include transcript of documents executed in connection with the issuance of the bonds and any amendments, and copies of rebate calculations and records of payments, including Forms 8038-T.

ii. Retainable records pertaining to expenditures of bond proceeds include requisitions, trustee statements and final allocation of proceeds.

iii. Retainable records pertaining to use of property include all agreements reviewed for nonexempt use and any reviewed documents relating to unrelated business activity.

iv. Retainable records pertaining to investments include GIC documents under the Treasury regulations, records of purchase and sale of other investments, and records of investment activity sufficient to permit calculation of arbitrage rebate or demonstration that no rebate is due.

v. Retainable records pertaining to any credit enhancement of the bonds during the entire term of the bonds, include bond insurance contracts, letters of credit and standby purchase agreements.

vi. Retainable records pertaining to interest rate swaps, interest rate caps and other hedging contracts, include any ISDA agreements, fairness opinions, termination agreements and records of termination payments.

5. Compliance under Tax Certificate

The chief financial officer shall also periodically review and comply with all provisions of the related Tax Certificate so long as the bonds are outstanding and will consult with bond counsel to take timely remedial actions under section 1.141-12 of the Treasury Regulations (or other remedial actions authorized by the Commissioner of the IRS under Section 1.141-12(h) of the Regulations) to prevent from being considered "deliberate actions" any actions of the Issuer which cause the conditions of the private business tests or the private loan financing test to be met resulting in private activity bonds.

Overall Responsibility

Overall administration and coordination of this policy is the responsibility of the chief financial officer of the Issuer.