FINANCE COMMITTEE

12-0505R

RESOLUTION ADOPTING A POST-ISSUANCE DEBT COMPLIANCE POLICY.

CITY PROPOSAL:

BE IT RESOLVED, by the city council of the city of Duluth, Minnesota (the "City"), as follows:

The city council of the City has chosen, by policy, to take steps to help ensure that all tax-exempt obligations and tax-advantaged obligations will be in compliance with all applicable federal regulations. This policy may be amended, as necessary in the future.

Section 1. Background. The Internal Revenue Service (IRS) is responsible for enforcing compliance with the Internal Revenue Code and most other regulations governing certain obligations (as example: tax-exempt obligations, Build America Bonds, Recovery Zone Development Bonds and various "tax credit" bonds). The IRS expects issuers and beneficiaries of these obligations to adopt and implement a post-issuance debt compliance policy to safeguard against post-issuance violations.

Section 2. Post-Issuance Debt Compliance Objectives. The City desires to monitor these obligations to ensure compliance with the IRS Code and all other regulations governing such obligations. To help ensure compliance, the City has developed procedures which apply to these obligations including bonds, notes, lease purchase contracts or any other form of debt that is subject to compliance.

Section 3. Post-Issuance Debt Compliance.

3.01 The city auditor is designated as the City's compliance officer who shall be responsible for post-issuance compliance of these obligations.

3.02 The city auditor shall assemble all relevant documentation, records and activities required to ensure post-issuance debt compliance as further detailed in the "Post-Issuance Debt Compliance Policy" filed as public document No. _____. At a minimum, the Post-Issuance Debt Compliance Policy for each qualifying obligation will address the following:

1. General Post-Issuance Compliance;

2. Proper and timely use of bond proceeds and bond-financed property;

3. Arbitrage yield restriction and rebate;

4. Timely filings and other general requirements;

5. Additional undertakings or activities that support points 1 through 4 above;

6. Other requirements that become necessary in the future.

The city auditor shall apply the Post-Issuance Debt Compliance Policy to each qualifying obligation and maintain a record of the results. Further, the city auditor will ensure that the Post-Issuance Debt Compliance Policy is updated on a regular and as needed basis.

3.03 The city auditor, or any other individuals responsible for assisting the city auditor in maintaining records needed to ensure post-issuance compliance, are authorized to expend funds as needed to attend training or secure use of other educational resources for ensuring compliance such as consulting, publications, and compliance assistance.

Approved:

Department Director

Approved for presentation to council:

Chief Administrative Officer

Approved as to form:

Attorney

Approved:

Auditor

FINANCE RET:CW:rb 09/28/2012

STATEMENT OF PURPOSE: The purpose of this resolution is to adopt a post-issuance debt compliance policy to help assure compliance with Internal Revenue Service requirements for tax-exempt and tax-advantaged obligations of the City.

Post-Issuance Debt Compliance Policy for Tax-Exempt and Tax-Advantaged Obligations

Adopted: _____, 2012

Statement of Purpose

This Post-Issuance Debt Compliance Policy (the "Policy") sets forth specific policies of the City of Duluth, Minnesota (the "Issuer"), designed to monitor post-issuance compliance of tax-exempt obligations or tax-advantaged obligations ("Obligations") issued by the Issuer with applicable provisions of the Internal Revenue Code of 1986, as amended (the "Code"), and regulations promulgated thereunder ("Treasury Regulations").

The Policy documents practices and describes various procedures and systems designed to identify on a timely basis facts relevant to demonstrating compliance with the requirements that must be satisfied subsequent to the issuance of Obligations in order that the interest on such Obligations continue to be eligible to be excluded from gross income for federal income tax purposes or that the Obligations continue to receive tax-advantaged treatment. The federal tax law requirements applicable to each particular issue of Obligations will be detailed in the arbitrage or tax certificate prepared by bond counsel and signed by officials of the Issuer. This Policy establishes a permanent, ongoing structure of practices and procedures that will facilitate compliance with the requirements for individual borrowings.

The Issuer recognizes that compliance with applicable provisions of the Code and Treasury Regulations is an on-going process, necessary during the entire term of the Obligations and any refunding thereof, and is an integral component of the Issuer's debt management. Accordingly, the analysis of those facts and implementation of the Policy will require on-going monitoring and consultation with bond counsel and the Issuer's accountants.

General Policies and Procedures

The following policies relate to procedures and systems for monitoring post-issuance compliance generally.

A. The City Auditor (the "Compliance Officer") shall be responsible for monitoring post-issuance compliance issues. For utility issues, the Compliance Officer will coordinate with the Director of Public Works and Utilities with respect to monitoring post issuance compliance.

B. The Compliance Officer will coordinate procedures for record retention and review of such records.

C. All documents and other records relating to Obligations issued by the Issuer shall be maintained by or at the direction of the Compliance Officer. In maintaining such documents and records, the Compliance Officer will comply with applicable Internal Revenue Service ("IRS") requirements, such as those contained in Revenue Procedure 97-22.

D. The Compliance Officer shall be aware of options for voluntary corrections for failure to comply with post issuance compliance requirements (such as remedial actions under Section 1.141-12 of the Regulations and the Treasury's Tax-Exempt Bonds Voluntary Closing Agreement Program) and take such corrective action when necessary and appropriate.

E. The Compliance Officer will review post-issuance compliance procedures and systems on a periodic basis, but not less than annually.

Issuance of Obligations – Documents and Records

With respect to each issue of Obligations, the Compliance Officer will:

A. Obtain and store a closing binder and/or CD or other electronic copy of the relevant and customary transaction documents (the "Transcript").

B. Confirm that bond counsel has filed the applicable information report (e.g., Form 8038, Form 8038-G, Form 8038-CP) for such issue with the IRS on a timely basis.

C. Coordinate receipt and retention of relevant books and records with respect to the investment and expenditure of the proceeds of such Obligations with other applicable staff members of the Issuer.

Arbitrage

The following policies relate to the monitoring and calculating of arbitrage and compliance with specific arbitrage rules and regulations.

The Compliance Officer will:

A. Confirm that a certification of the initial offering prices of the Obligations with such supporting data, if any, required by bond counsel, is included in the Transcript.

B. Confirm that a computation of the yield on such issue from the Issuer's financial advisor (or an outside arbitrage rebate specialist) is contained in the Transcript.

C. Maintain a system for tracking investment earnings on the proceeds of the Obligations.

D. Coordinate the tracking of expenditures, including the expenditure of any investment earnings. If the project(s) to be financed with the proceeds of the Obligations will be funded with multiple sources of funds, confirm that the Issuer has adopted an accounting methodology that maintains each source of financing separately and monitors the actual expenditure of proceeds of the Obligations.

E. Maintain a procedure for the allocation of proceeds of the issue and investment earnings to expenditures, including the reimbursement of pre-issuance expenditures. This procedure shall include an examination of the expenditures made with proceeds of the Obligations within 18 months after each project financed by the Obligations is placed in service and, if necessary, a reallocation of expenditures in accordance with Section 1.148-6(d) of the Treasury Regulations.

F. Monitor compliance with the applicable "temporary period" (as defined in the Code and Treasury Regulations) exceptions for the expenditure of proceeds of the Obligations, and provide for yield restriction on the investment of such proceeds if such exceptions are not satisfied.

G. Ensure that investments acquired with proceeds of such issue are purchased at fair market value. In determining whether an investment is purchased at fair market value, any applicable Treasury Regulation safe harbor may be used.

H. Avoid formal or informal creation of funds reasonably expected to be used to pay debt service on such Obligations without determining in advance whether such funds must be invested at a restricted yield.

I. Consult with bond counsel prior to engaging in any post-issuance credit enhancement transactions or investments in guaranteed investment contracts.

J. Identify situations in which compliance with applicable yield restrictions depends upon later investments and monitor implementation of any such restrictions.

K. Monitor compliance with six-month, 18-month or two-year spending exceptions to the rebate requirement, as applicable.

L. Procure a timely computation of any rebate liability and, if rebate is due, to file a Form 8038-T and to arrange for payment of such rebate liability.

M. Arrange for timely computation and payment of "yield reduction payments" (as such term is defined in the Code and Treasury Regulations), if applicable.

Private Activity Concerns

The following polices relate to the monitoring and tracking of private uses and private payments with respect to facilities financed with the Obligations.

The Compliance Officer will:

A. Maintain records determining and tracking facilities financed with specific Obligations and the amount of proceeds spent on each facility.

B. Maintain records, which should be consistent with those used for arbitrage purposes, to allocate the proceeds of the Obligations and investment earnings to expenditures, including the reimbursement of pre-issuance expenditures.

C. Maintain records allocating to a project financed with the Obligations any funds from other sources that will be used for otherwise non-qualifying costs.

D. Monitor the expenditure of proceeds of an issue and investment earnings for qualifying costs.

E. Monitor private use of financed facilities to ensure compliance with applicable limitations on such use. Examples of potential private use include:

1. Sale of the facilities, including sale of capacity rights;

2. Lease or sub-lease of the facilities (including leases, easements or use arrangements for areas outside the four walls, e.g., hosting of cell phone towers) or leasehold improvement contracts;

3. Management contracts (in which the Issuer authorizes a third party to operate a facility, e.g., cafeteria) and research contracts;

4. Preference arrangements (in which the Issuer permits a third party preference, such as parking in a public parking lot);

5. Joint-ventures, limited liability companies or partnership arrangements;

6. Output contracts or other contracts for use of utility facilities (including contracts with large utility users);

7. Development agreements which provide for guaranteed payments or property values from a developer;

8. Grants or loans made to private entities, including special assessment agreements; and

9. Naming rights arrangements.

Monitoring of private use should include the following:

1. Procedures to review the amount of existing private use on a periodic basis; and

2. Procedures for identifying in advance any new sale, lease or license, management contract, sponsored research arrangement, output or utility contract, development agreement or other arrangement involving private use of financed facilities and for obtaining copies of any sale agreement, lease, license, management contract, research arrangement or other arrangement for review by bond counsel.

If the Compliance Officer identifies private use of facilities financed with tax-exempt or tax-advantaged debt, the Compliance Officer will consult with the Issuer's bond counsel to

determine whether private use will adversely affect the tax status of the issue and if so, what remedial action is appropriate. The Compliance Officer should retain all documents related to any of the above potential private uses.

Qualified Tax-Exempt Obligations

If the Issuer issues "qualified tax-exempt obligations" in any year, the Compliance Officer shall monitor all tax-exempt financings (including lease purchase arrangements and other similar financing arrangements and conduit financings on behalf of 501(c)(3) organizations) to assure that the $10,000,000 "small issuer" limit is not exceeded.

Federal Subsidy Payments

The Compliance Officer shall be responsible for the calculation of the amount of any federal subsidy payments and the timely preparation and submission of the applicable tax form and application for federal subsidy payments for tax-advantaged obligations such as Build America Bonds, New Clean Renewable Energy Bonds and Qualified School Construction Bonds.

Reissuance

The Compliance Officer will identify and consult with bond counsel regarding any post-issuance change to any terms of an issue of Obligations which could potentially be treated as a reissuance for federal tax purposes.

Record Retention

The following polices relate to retention of records relating to the Obligations issued.

The Compliance Officer will:

A. Coordinate with staff regarding the records to be maintained by the Issuer to establish and ensure that an issue remains in compliance with applicable federal tax requirements for the life of such Obligations.

B. Coordinate with staff to comply with provisions imposing specific recordkeeping requirements and cause compliance with such provisions, where applicable.

C. Coordinate with staff to generally maintain the following:

1. The Transcript relating to the transaction (including any arbitrage or other tax certificate and the bond counsel opinion);

2. Documentation evidencing expenditure of proceeds of the Obligations;

3. Documentation regarding the types of facilities financed with the proceeds of an issue, including, but not limited to, whether such facilities are land, buildings or equipment, economic life calculations and information regarding depreciation;

4. Documentation evidencing use of financed property by public and private entities (e.g., copies of leases, management contracts, utility user agreements, developer agreements and research agreements);

5. Documentation evidencing all sources of payment or security for the issue; and

6. Documentation pertaining to any investment of proceeds of the issue (including the purchase and sale of securities, SLGs subscriptions, yield calculations for each class of investments, actual investment income received by the investment of proceeds, guaranteed investment contracts, and rebate calculations).

D. Coordinate the retention of all records in a manner that ensures their complete access to the IRS.

E. Keep all material records for so long as the Obligations are outstanding (including any refunding of the Obligations), plus seven years.

Continuing Disclosure

Under the provisions of SEC Rule 15c2-12 (the "Rule"), underwriters are required to obtain an agreement for ongoing disclosure in connection with the public offering of securities in a principal amount in excess of $1,000,000. Unless the Issuer is exempt from compliance with the Rule as a result of certain permitted exemptions, the Transcript for each issue of Obligations will include an undertaking by the Issuer to comply with the Rule. The Compliance Officer of the Issuer will monitor compliance by the Issuer with its undertakings, which may include the requirement for an annual filing of operating and financial information and will include a requirement to file notices of listed "material events."

Conduit Bond Financings

In conduit bond financings, such as industrial revenue bonds or qualified 501(c)(3) bonds, the Issuer is not in a position to directly monitor compliance with arbitrage requirements and qualified use requirements because information concerning and control of those activities lies with the private borrower. The Issuer's policy in connection with conduit financings is to require that the bond documents in such financings impose on the borrower (and trustee or other applicable party) responsibility to monitor compliance with qualified use rules and arbitrage and other federal tax requirements and to take necessary action if remediation of nonqualified bonds is required.